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C.R.P. No.2566 of 2023 &
C.M.P.Nos.15853 and 21869 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**Civil Revision Petition No.2566 of 2023 &
C.M.P.Nos.15853 and 21869 of 2023**

Islamia Ilaighar Narpani Youth Welfare
Association

Islamic Youth Welfare Association,
rep. By its Presidet Mr.Nizar Ahmed,
No.716, Mosque Street,
C.Pallavaram, Chennai – 600 043

...Petitioner

Vs.

The Estate Officer
c/o Cantonment Board,
St.Thomas Mount – cum-Pallavaram,
Chennai – 600 016

...Respondent

Civil Revision Petition filed under Article 227 Constitution of India to set aside the order dated 15.03.2023 on the file of learned Principal District Judge, Kancheepuram at Chengalpattu in Public Premises Civil Miscellaneous Appeal No.31 of 2017 confirming the order of the respondent / Estate Officer dated 03.10.2017 in No.STM/Works/8/2500.

For Petitioner : Mr.M.J.Jaseem Mohamed

For Respondent : Mr.C.Mohan,
Standing Counsel for



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M/s King & Patridge

ORDER

The present petition has been filed to set aside the order dated 15.03.2023 on the file of learned Principal District Judge, Kancheepuram at Chengalpattu in Public premises Civil Miscellaneous Appeal No.31 of 2017 confirming the order of the 1st respondent / Estate Officer dated 03.10.2017 in No.STM/Works/8/2500.

2. The brief facts of the case are as follows:-

Initially, the respondent, after issuing notice and receiving the reply from the petitioner, by way of an order dated 03.10.2017, under Sub Section 5 of the Public Premises (Eviction of Un-authorised Occupants) Act 1971, as amended by the Act, 180, Act 1984 and Act 1994, had directed the petitioner to vacate their premises situated in C.Pallavaram on the ground that the petitioner is in un-authorised occupation of the defence land, in the event of failure to do so, ordered for eviction by the use of such force, as may be necessary. As against the same, the petitioner has preferred P.P.C.M.A.No. 31 of 2017, the appellate court by order dated 15.03.2023 confirmed the orders passed by the respondent. Aggrieved over the same, the petitioner has preferred the present Revision.



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3. The learned counsel for the petitioner would submit that the court below has committed incurable illegality by not pronouncing orders under Chapter 19 Section 10 of the Cantonment Rules & Regulations regarding the prior approval to be obtained by the Estate Officer from the Ministry of Defence before initiating any action under Public Premises Eviction of unauthorised occupants Act.

4. The learned counsel for the petitioner also submit that the respondent have committed grave injustice by colluding with the adjacent and adjoining owner of the schedule premises merely with an oblique motive of making fortune out of the petitioners misfortune. Further, the Estate Officer did not conduct the enquiry appropriately according to the Public Premises (Eviction of unauthorised occupants) Act, 1971 and the respondent failed to consider the documents produced by the petitioner association along with their written submission dated 18.09.2017.

5. That apart, the learned counsel for the petitioner contends that the respondent failed to consider the continuous possession of the petitioner over the property for a period of more than forty years before passing the final orders. Also, the learned counsel for the petitioner has relied on the



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Judgments of the **Hon'ble Supreme Court** reported in **(2016) 10 Supreme**

Court cases 799 [Asikali Akbarali Gilani and Others Vs. Nasirhusain

Mahebubhai Chauhan and Others], wherein it is held that *'If erection of*

such unauthorised structures is not conformity with State Policy, then

Collector is required to take action as per directions of High Court within

two months' . Moreover, the learned counsel also relied on the Judgment of

Hon'ble Supreme Court reported in **(2018) 3 Supreme Court Cases 732**

[Odisha Industrial Infrastructure Development Corporation Ltd., Vs.

Pitabasa Mishra and Others] wherein it is held that the *Government*

grants, largesse, Public Property and public premises, delay in

regularisation of unauthorised occupation / encroached upon land by

Corporation – Not to disentitle the party seeking regularisation, even when

the policy in favour of regularisation is reversed in the meanwhile.

6. Per contra, the learned counsel for the respondent has filed a detailed counter affidavit and submitted that the present Revision is neither maintainable in law nor on facts. Earlier, one S.Sermakani has filed W.P.No.12631 of 2012 against the petitioner and respondent herein to take action against the encroachment made by the petitioner herein, as it was causing inconvenience to the general public and the said Petition was disposed of on 04.06.2012. Since the petitioner has un-authorisedly



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occupied the defence land, the respondent vide letter dated 31.08.2017 had issued notice and called upon the petitioner as to why eviction should not be made for unauthorised occupation, again, the respondent vide letter dated 13.09.2017 had provided an opportunity to produce documents as requested by the petitioner and only thereafter, the respondent had issued a reasoned order under Section 5 of the public premises (Eviction of unauthorised occupants Act, 1971) to vacate the premises.

7. The learned standing counsel for the respondent also contends that again the said S.Sermakani had filed W.P.No.33716 of 2018 to remove the encroachment made by the petitioner. Subsequent to the filing of the present Revision, the petitioner had submitted a requisition letter dated 16.08.2023 to allot Door No.7/16, Mosque street or to lease the land situated next to Kavitha matriculation school, wherein the said request was not accepted by the respondent and requested the petitioner to remove the encroachment.

8. Moreover, the learned standing counsel for the respondent has relied on the following Judgments to substantiate his contention:-

(i) Sunil Kumar Kori Vs. Gopal Das Kabra reported in 2016(10) SCC



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(ii) Aara Silks Vs. Cantonment Board reported in 2016 SCC Online

Mad 28457

(iii) Priyanka Estates International Pvt., Ltd., vs. State of Assam

reported in 2010 (15) SCC 705

(iv) Shanti Sports Club Vs. Union of India reported in 2009(15) SCC

705

(v) P.Mohan Vs. Chief Executive Officer, Cantonment Board reported

in 2017 SCC Online Mad 21105

The above said Judgments relied on by the learned counsel for the respondent are taken into consideration and this Court is of the view that the principle laid down in the said matters squarely applies to the present case on hand and convinced with the arguments put forth by the learned counsel for the respondent.

9. On the other hand, one A.S.Soundara Pandiyan, who is the third party has filed C.M.P.No.21869 of 2023 to implead him as party 2nd respondent in the present Revision on the ground that he is the husband of Sermakani and his shop has entrance on both the sides, since the petitioner had occupied some portion, the entry through one direction is curtailed.

10. The learned counsel appearing for the proposed impleading



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respondent would submit that the revision petitioner is an unregistered association, who had encroached the public road and blocking access to the mosque street. Further, when the petitioner preferred an appeal in C.M.A.No.31 of 2017, the proposed impleading respondent has filed an application in I.A., to implead himself in the appeal and the petitioner after successfully dragging on the proceedings, finally, the main appeal was dismissed vide order dated 15.03.2023 and the I.A., stood closed.

11. The learned counsel appearing for the proposed impleading respondent would also submit that the proposed respondent also expressed his grievance before the respondent several times, but no vigilant steps have been taken. Hence the petitioner has filed a Writ Petition in W.P.No.33716 of 2018 as against the respondent and this Court vide order dated 03.04.2019 had directed the respondent to dispose the above appeal on merits, even after dismissal of the appeal, the encroachments stands still, now on the basis of the pendency of the present Revision, the encroachment is not being removed and the respondent is refusing to take action, thereby pleaded that neither the revision petitioner nor the respondent would be prejudiced if the proposed respondent is impleaded.

12. On the other hand, a counter affidavit has been filed in C.M.P.No.21869 of 2023 by the president of the petitioner-association



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stating that if at all the proposed party filed any application before the appellate authority, he ought to have brought the same to the notice of this Court at the earliest point of time and not at the fag end of the disposal of the main Revision, thereby pleaded to dismiss the said C.M.P.

13. Heard the learned counsel appearing for the petitioner, learned standing counsel appearing for the respondent and the learned counsel for the proposed respondent and perused the documents placed on record.

14. On going through the order passed by the respondent dated 03.10.2017 it is seen that the petitioner – Association is in un-authorised occupation of the defence land by way of structure at Ground floor measuring 143.37 sq.ft., with AC sheet roof and partly brick walls, therefore, in exercise of powers conferred under Sub-Section (1) of Section 5 of the Public Premises (Eviction of un-authorised occupants) Act, the respondent ordered to vacate the said premises, only after issuing show cause notice.

15. It is the case of the petitioner that they are in possession of the property for more than 40 years and the respondent arbitrarily issued demand notice to evict the petitioner-association, for which the petitioner



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gave a reply on 06.09.2017. Again a notice was fixed on 18.09.2017 in the premises and a letter dated 30.09.2017 was issued to vacate the premises.

16. It is not in dispute that the property belong to the Contonment board, which is functioning under the Ministry of Defence, Government of India and the petitioner herein are in unauthorised occupation, for which, show cause notice was issued and only thereafter, notice of eviction has been ordered. Further, the petitioner has not produced any document to show that they are in lawful possession and the documents relied on by the petitioner are internal doucments, which has nothing to do with the claim of the petitioner.

17. Besides the above, the petitioner has not even produced a single document to show that the petitioner-association had contract with the Cantonment Board, before they made physical entry into the premises, therefore, it is clear that the petitioner is an unauthorised occupant and there is no right available for the petitioner to continue their possession, hence the respondent has every right to evict the petitioner from the said premises and the respondent had issued show cause notice, as contemplated under Public Premises Eviction of Unauthorised occupants Act. That apart, the respondent has rightly ordered eviction of the petitioner



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and the appellate court has also confirmed the order of the respondent,
which does not require any interference in the hands of this Court.

In view of the above, the present Revision is dismissed as there is no merits in the claim made by the petitioner and the respondent is at liberty to evict the petitioner as per law. Consequently, connected miscellaneous petitions are closed. No costs.

02.11.2023

Index:Yes/NoInternet:Yes/No
Speaking / Nonspeaking order
ssd

To

1. The Principal District Judge,
Kancheepuram at Chengalpattu
2. The Estate Officer
c/o Cantonment Board,
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V.BHAVANI SUBBAROYAN J.

ssd

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