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C.R.P.No.2591 of 20 --



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.No.2591 of 2019

and

C.M.P.Nos.17077 of 2019 and 9414 of 2020

Sri Iyyappaswamy Nataraja Pillai Lorry Service,
Rep.by its Proprietor,
Mr.N.Gnanasekar,
No.294, Waltax Road,
Chennai – 600079.

... Petitioner

Vs.

1. The Commissioner and Estate Officer,
Greater Corporation of Chennai,
Rippon Buildings,
Chennai – 600003.

2. B.Annamalai Narayanan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decree dated 02.03.2019 made in C.M.A.No.56 of 2018 on the file of the learned Principal Judge, City Civil Court, Chennai confirming the order of the First Respondent in his proceedings in Ni.Ma.Oo.Thu.Na.Ka.No.LE-4/5002/2000 dated 09.08.2018



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in respect of the land and premises bearing Door No.294, Waltax Road,
Chennai – 600003 comprised in S.No.1275/3(part) of Vepery Village,
Corporation Division No.5, Chennai District.

For Petitioner : Mr.Mohan for Mr.V.K.Sethukumar

For Respondents : Mr.S.Silambanan,
Additional Advocate General
assisted by Mrs.K.Aswin Devi,
Standing Counsel (for R1)

Mr. K.V.Sundararajan (for R2)

ORDER

This Civil Revision Petition has been filed as against the fair and decretal order dated 02.03.2019 made in C.M.A.No.56 of 2018 on the file of the Principal Judge, City Civil Court, Chennai, thereby confirming the order passed by the first respondent in his proceedings in Ni.Ma.Oo.Thu.Na.Ka.No.LE-4/5002/2000 dated 09.08.2018, thereby ordered for eviction and directed the petitioner to hand over the vacant possession of the subject property.



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2. The petitioner has been in possession and occupation of the superstructure, ad-measuring an extent of 1000 sq.ft, situated at Door No.294, Waltax Road, Chennai, comprised in S.No.1275/3(part), Vepery Village, Zone-5, Chennai. The land in which the superstructure stands, belongs to the first respondent and the lease was granted to the original owner and the land in question was leased out and subsequently, it was not renewed. Therefore, the petitioner is in unauthorised occupation without having any valid right over the superstructure. Thereafter, the first respondent issued notice dated 10.07.2009 as contemplated under Section 4(1) of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (hereinafter referred to as 'the Act' for short), thereby calling upon the petitioner to show cause within 10 days from the date of receipt of notice, as to why an order of eviction should not be passed. However, on receipt of the same, he did not reply and as such, the first respondent herein passed order of eviction dated 21.10.2009 under Section 5(1) of the Act to vacate and handover the vacant possession of the property. Aggrieved by the same, the petitioner filed an appeal in C.M.A.No.24 of 2010 before the learned Principal Judge, City Civil Court, Chennai and the same was allowed and the matter was remitted back to the appropriate



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Authority for proceeding afresh on condition that the petitioner shall deposit a sum of Rs.2,11,520/-. On remittance, the first respondent issued notice to the petitioner for his appearance on three occasions. On receipt of the same, the petitioner appeared before the first respondent on 05.12.2017 and a detailed enquiry was conducted. During the enquiry, it reveals that the subject land was leased out to one Jayalakshmi Ammal and her son T.A.Balasubramanian. He was running Rice Mandy and subsequently, he rented out the said premises in favour of the petitioner herein from 01.09.1993 on a monthly rent of Rs.750/- and thereafter, the rent was increased at Rs.1500/-. In the meanwhile, the person who originally leased out the superstructure, initiated proceedings before the learned Rent Controller. On a perusal of the statement given by the petitioner herein and the documents furnished by him, the first respondent concluded that the petitioner is in unauthorised occupation without having any valid licence and he also is in arrears of damage fees. That apart, the subject property is required for public use and order of eviction was also passed by order dated 09.08.2018 under Section 5(1) of the Act. Aggrieved by the same, the petitioner preferred an appeal in C.M.A.No.56 of 2019 before the learned Principal Judge, City Civil Court, Chennai and the same was dismissed by



order dated 02.03.2019. Aggrieved by the same, the present Civil Revision

Petition is filed.

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3. The learned counsel for the petitioner submitted that the petitioner was not served with the mandatory notice as contemplated under Section 4(1) of the Act. In fact, the first respondent passed the eviction order by proceedings dated 21.10.2009 and it was challenged in C.M.A.No.24 of 2010, in which the Appellate Court had categorically concluded that from the impugned order and also from the records, the Court could not find as to whether such notice under Section 4(1) of the Act was properly served on the petitioner or not. In any event, having admitted that they are in enjoyment of 450 sq.ft of land owned by the first respondent herein, their possession can be disturbed only in accordance with law and not otherwise. Therefore, the order of eviction passed by the first respondent was set aside the matter was remitted back to the first respondent for further proceedings, subject to the condition that the petitioner shall deposit a sum of Rs.2,11,520/-. Even then, the first respondent failed to serve any notice under Section 4(1) of the Act and it is required to be issued to all persons concerned, that is to say, all persons who are, or may be, in occupation of, or



claim interest in, the public premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof. However, the first respondent issued notice only under Section 5(1) of the Act to conduct enquiry. The petitioner was not given an opportunity to defend the eviction proceedings in a proper manner. The petitioner does not know as to on what ground the first respondent initiated the eviction proceedings under the Act.

4. The learned Additional Advocate General appearing for the first respondent by filing counter affidavit, submitted that the petitioner was duly served with notice under Section 4(1) of the Act as early as on 10.07.2009. While remitting the matter to the first respondent by the First Appellate Court, it was recorded that from the impugned order or from the records, the Appellate Court could not find out as to whether such notice under Section 4(1) of the Act was properly served on the petitioner. He also produced original records before this Court and also produced the notice which was already sent to the petitioner and also to the original lease right holder viz., the second respondent and another. Thereafter, the petitioner was served with notice under Section 5(1) of the Act on three occasions viz., on



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13.10.2017, 25.10.2017 and 13.11.2017. Finally, he appeared only on 05.12.2017 and after recording his statement and on a perusal of the records produced by the petitioner, the first respondent passed detailed order on compliance of the order passed by this Court and ordered eviction. Therefore, on hyper-technical ground, the petitioner was keeping on challenging the order of eviction for the past two decades, without vacating the premises. The petition premises is very much required for public purpose, since it is located adjacent to Waltax Road, Chennai.

5. The learned counsel for the second respondent submitted that, originally the land was leased out in favour of the predecessor of the second respondent and subsequently, he was permitted to put up the superstructure and thereafter, the superstructure was leased out in favour of the petitioner herein. They filed a petition for eviction on the willful default in payment of rent and also filed a petition for fixation of fair rent as against the petitioner before the learned Rent Controller. It was allowed and aggrieved by the same, the petitioner preferred an appeal and the same was dismissed by the learned Rent Control Appellate Authority. Aggrieved by the same, the petitioner has also preferred Civil Revision Petitions before this Court in



CRP (NPD) Nos.4587, 4588 of 2011 and 1206 and 1207 of 2012. This Court, by common order dated 02.07.2019, dismissed all the Civil Revision Petitions and confirmed the order passed by the learned Rent Control Appellate Authority. Further, he pointed out that the mandatory provisions of Section 4(1) of the Act was not complied with by the first respondent, even after remittance for fresh consideration. Even according to the first respondent, the second respondent was not served with any notice

6. The provisions are very clear that all persons who are, or may be, in occupation of, or claim interest in, are entitled for show cause notice before passing order of eviction. The second respondent was never served with any notice and in fact, the second respondent was not served with notice as contemplated under Section 5(1) of the Act. Though the second respondent had initiated proceedings for eviction and also for fixation of fair rent as against the petitioner, now, the second respondent is also challenging the order of eviction passed by the first respondent and sailing with the petitioner herein.



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7. Heard the learned counsel for the petitioner, the learned Additional Advocate General appearing for the first respondent and the learned counsel for the second respondent and perused the materials placed on record.

8. Admittedly, the petition premises, owned by the first respondent, was leased out in favour of the lessor of the petitioner herein, viz., the second respondent and he was permitted to put up the superstructure and after putting up the superstructure, it was leased out in favour of the petitioner herein. There is dispute in respect of the payment of rent and also in respect of fixation of fair rent and the petitioner is facing eviction proceedings initiated by the second respondent herein. However, the lease granted to the original owner was not extended/renewed and as such, the petitioner is in unauthorised occupation, without having any valid right. Therefore, the first respondent caused notice as contemplated under Section 4(1) of the Act. Thereafter, he conducted enquiry and passed eviction order under Section 5(1) of the Act as against the petitioner herein, by proceedings dated 21.10.2009. It was challenged by the petitioner herein before the First Appellate Court in C.M.A.No.24 of 2010, which was allowed on the ground that no records were produced and that the Appellate Court could not find as



to whether notice under Section 4(1) of the Act was properly served on the petitioner herein or not and remitted the matter for fresh consideration.

Thereafter, the petitioner and the second respondent and another were issued with notice under Section 5 (1) of the Act on three occasions, viz., on 13.10.2017, 25.10.2017 and 13.11.2017, thereby directed them to appear for enquiry to be held on 05.12.2017. On 05.12.2017, the petitioner had appeared before the first respondent and his statement was also recorded. Thereafter, the first respondent passed the order of eviction dated 09.08.2018 and it was challenged by the petitioner herein before the First Appellate Court and the appeal was also dismissed. Aggrieved by the same, the present Civil Revision Petition is filed.

9. The only contention raised by the petitioner is that when the First Appellate Court in C.M.A.No.24 of 2010 set aside the earlier order of eviction and remitted the matter for issuance of fresh notice under Section 4(1) of the Act for further proceedings, the first respondent ought to have issued notice under Section 4(1) of the Act. The first respondent has produced the original file and found that the petitioner and the second respondent and another were issued with notice under Section 4(1) of the



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Act on 10.07.2009. However, all the notices returned with an endorsement that “left and closed”. Therefore, it was treated as sufficient service of notice and the Court proceeded with the issuance of notice under Section 5(1) of the Act for conducting enquiry. It is also pertinent to note here that the First Appellate Court while remitting the matter for further proceedings did not issue any direction to issue fresh notice under Section 4(1) of the Act. Even assuming that it is construed for issuance of fresh notice under Section 4(1) of the Act, the petitioner was duly served with notice under Section 5(1) of the Act for enquiry, that too on three occasions.

10. It is relevant to extract the provisions under Section 4(1) of the Act, which reads as follows:-

“4. Issue of notice to show cause against order of eviction.-*(1) If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue, in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.”*



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11. The said notice has to be issued for the purpose that the eviction order should not be passed behind their back, whereas, the petitioner and the second respondent had knowledge of the eviction proceedings initiated by the first respondent as early as in the year 2009 itself. It is also evident from the eviction proceedings initiated by the first respondent as against the petitioner before the learned Rent Controller and it was challenged before this Court in CRP (NPD) Nos. 4587, 4588 of 2011 and 1206 and 1207 of 2012, in which the petitioner produced all the records before this Court including the show cause notice issued by the first respondent under Section 4(1) of the Act and also produced the eviction order passed under Section 5(1) of the Act and they have also produced the order passed in C.M.A.No.24 of 2010 dated 02.07.2016. Therefore, the purpose of show cause notice, was duly served on the petitioner. Hence, no question of issuance of fresh notice would arise under Section 4(1) of the Act to the petitioner. The petitioner has managed to drag on the proceedings for the past 15 years without vacating the premises which is barely required by the first respondent for the public purpose. Therefore, there is substantial compliance of the principles of natural justice as contemplated under the



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Act. Merely because the notices were not issued under the Act, the action of the first respondent in taking over the possession cannot be termed as arbitrary or in violation of the principles of natural justice. The public necessity always prevails over the private necessities. Hence, this Court finds no infirmity or illegality in the impugned orders passed by the Courts below.

12. In the result, this Civil Revision Petition is dismissed. However, the second respondent is at liberty to proceed against the petitioner herein respect of the arrears of rent as fixed by the learned Rent Controller, which is a fair rent for the petition premises. Consequently, the connected Miscellaneous Petitions are closed. No costs.

10.01.2023

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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C.R.P.No.2591 of 20 --

G.K.ILANTHIRAIYAN,J.

Kv

1. The Commissioner and Estate Officer,
Greater Corporation of Chennai,
Rippon Buildings,
Chennai – 600003.
2. The Principal Judge, City Civil Court,
Chennai.

C.R.P.No.2591 of 2019

10.01.2023