



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Contempt Petition.No.2536 of 2023

Mr.V.Kishorekumar

...Petitioner

Vs.

1.Mr.Apoorva, IAS,
Chairman,
Tamil Nadu Urban Habitat Development Board,
No.5, Kamarajar Salai,
Chepauk, Chennai – 600 005.

2.Mrs.R.Revathi,
Executive Engineer,
Division – IV,
Tamil Nadu Urban Habitat Development Board,
Venkata Narayana Shopping Complex,
Chennai – 600 017.

3.Mr.Raja Perumal,
Assistant Executive Engineer,



Division – IV,
Tamil Nadu Urban Habitat Development Board,
Venkata Narayana Shopping Complex,
Chennai – 600 017.

...Respondents

PRAYER: The Contempt Petition is filed under Section 10 of Contempt of Courts Act, 1971 to punish the respondents for the willful and wanton act of disobeying the Final Order and Decree of the Hon'ble City Civil Court in O.S.No.9011 of 1981 dated 28.01.1985 in and O.S.No.9604 of 1984 dated 16.10.1987.

For Petitioner : M/s.Vijay Anand Associates,
Mr.S.Ganesh

For Respondents : R1 – Mr. M.Babu Muthumeeran
R2 and R3 – Mr.S.Karthikeyan

ORDER

(ORDER of the Court was delivered by **S.S.SUNDAR.,J.**)

This Contempt Petition is filed by the grandson of the plaintiff in the suit in O.S.No.9011 of 1981 on the file of the City Civil Court at Madras.

2. The case of the petitioner/Mr.V.Kishorekumar, is that his grandfather, namely Mr.N.Mahalingam, was in the enjoyment of the property and obtained a decree as against the respondents in O.S.No.9011 of 1981 by a Judgment and decree dated 28.01.1985. The contempt petition is filed alleging wilful disobedience of the final order and decree passed in O.S.No.9011



of 1981 dated 28.01.1985 in O.S.No.9604 of 1984 dated 16.10.1987.

The decree obtained by the petitioner's grandfather in the suit in O.S.No.9011 of 1981, read as follows:-

"1) that the plaintiff is declared entitled to the rights and benefits under Act XI of 1971;

2) that the 1st defendant be and is hereby restrained by a permanent injunction from interfering with the possession of the suit building by the plaintiff except by due process of law;

3) that the suit be and the same is hereby dismissed as against the 2nd defendant;"

2.1. In the plaint, it is the case of plaintiff that he is in occupation of a part of land in T.S.No.4828/3 for many years and that the land is a Government Poramboke land. It is his further case that the area comprised in T.S.No.4828/3 is declared as a slum area under Act X1 of 1971 and that the plaintiff had registered himself under Section 4 (1) of the Act. It is contended that in violation of the provisions of Act, the officers of Slum Clearance Board pulled down some homes belonging to the residents of the locality and that no notice was issued to the plaintiff under Section 9 of the Act. It is contended that the plaintiff cannot be evicted under Section 29 of the Act and he is entitled to the protection of the Act. The suit was laid for a declaration that the plaintiff is



entitled to the benefits of Act XI of 1971, (Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971) and for an injunction against defendants 1 and 2.

3. The petitioner states that he is the grandson of the plaintiff in this suit and that despite the Decree granted by the City Civil Court at Madras in O.S.No.9011 of 1981, the respondents are trying to disturb and interfere with the possession of the plaintiff. The allegation against the respondents is that they have issued an eviction notice under the pretext that they are going to demolish the existing construction and prefer to put up a new construction. By notice, the present occupiers of the building are asked to vacate the building on or before 31.08.2023.

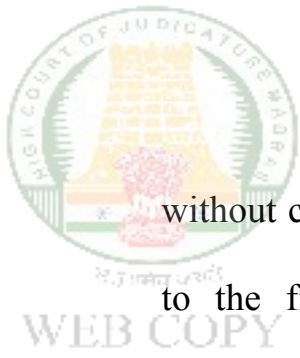
4. From the Judgment passed by the City Civil Court at Madras, it is seen that nowhere in the plaint, the plaintiff's grandfather claimed exclusive title over the property. The case of the plaintiff is that he had been in occupation on the part of the land and that it is a Government Poramboke land. Stating that the plaintiff had incurred expenses for raising the superstructure on the land and that he had also been paying a fair competitive rent to the Government,



the plaintiff appears to have filed a suit. The Trial Court framed the following issues:

- “1. Whether the suit is not maintainable?*
- 2. Whether the land belongs to the Corporation of Madras or is Puramboke land belonging to the Govt?*
- 3. Whether the plaintiff is entitled to the rights under Sec.11 of the Act 1971?*
- 4. Was there was compliance with the provisions of Sec.9 and 11 of Act 1971?*
- 5) Is the provision of Sec.9 of the Act not applicable to a hut?*
- 6. Is the plaintiff only a trespasser not entitled to any relief?*
- 7. Is the plaintiff entitled to a registration certificate under the provisions of Act 11/71?*
- 8. Is the plaintiff protected under Sec.29 of Act?*
- 9. Whether the plaintiff is residing in the area at the time of enumerations?*
- 10. To what relief to the plaintiff entitled to?”*

5. The Trial Court held that the suit is maintainable and found that the property belongs to the Government. On Issue Nos.3 and 4, the Trial Court held that the defendants should not indulge in removal of huts and other buildings



without compliance with the provisions of the Act. However, liberty was given to the first defendant in the suit in O.S.No.9011 of 1981, namely the Tamil Nadu Slum Clearance Board, to take necessary action under relevant provisions. Till such time, the plaintiff's right as a resident of a slum area was protected. The Trial Court further held that the plaintiff is entitled to the rights and benefits of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971. The trial Court gave a finding that the plaintiff was a trespasser but held that he is entitled to the benefits of Act XI of 1971. The first defendant was restrained by a permanent injunction from interfering with the possession of the plaintiff otherwise than by due process of law.

6. This is not a case where the plaintiff established his title against the Tamil Nadu Slum Clearance Board. This Court, having regard to the findings of the Trial Court, need not examine further the privileges, the plaintiff in the suit is entitled to as an encroacher under the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971. The notice for eviction cannot be an act interfering with the rights of the plaintiff who is an encroacher or any other claim of the plaintiff in the suit. It is true that the Slum Clearance Board has to initiate action in terms of the provisions in the Act for evicting a person, even if he is an encroacher. Having regard to the nature of the decree that the plaintiff



has obtained, this Court is unable to find any reason to initiate contempt against the respondents for issuing a notice for eviction. Even if such notice is not in compliance with the provisions of the Act, it is open to the petitioner to challenge the same in the manner known to the law. The other suit in O.S.No.9604 of 1984 is only in respect of a common right of way in respect of a stretch of land and it does not deal with the exclusive right of plaintiff.

7. The learned counsel appearing for the petitioner, however, stated that the injunction granted in favour of his grandfather in O.S.No.9011 of 1981 is perpetual in nature. This Court has already extracted the portion of the Judgment and Decree of the Trial Court which only says that the possession of the petitioner's grandfather should not be interfered with otherwise than due process of law. Hence, the Contempt Petition deserves to be dismissed.

8. Accordingly, the Contempt Petition No.2536 of 2023 is dismissed. However, liberty is given to the petitioner to challenge the alleged notice in the manner known to law.

(S.S.S.R.,J)

(S.M.,J)

01.11.2023



Index: yes/no

Internet: yes

Neutral Citation Case : yes/no
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Contempt Petition.No.2536 of 2



**S.S.SUNDAR,J.
and
SUNDER MOHAN,J.**

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