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W.P. No.28083/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
17.04.2023	21.04.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.28083 OF 2022
AND
W.M.P. NO.27364 OF 2022**

Hotel Airway Drive-in
Rep. by its Managing
Partner, K.R.Indrajit
No.7, Officers Line, Pallavaram
Chennai 600 043.

.. Petitioner

- Vs -

1. The Estate Officer
No.306, Anna Salai
Teynampet, Chennai 600 018.

2. The Defense Estate Officer
Madras Circle
No.306, Anna Salai
Teynampet, Chennai 600 018.

3. Mr. Michael D.S.Dowie
4. D.T.S. Gabriel
5. Dr. (Mrs.) Christobel D.P.Rendall

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent in his proceedings No.EO/N/329/42/MC quash the order dated 3.10.2002.

For Petitioner : Mr. V.Ayyadurai, SC
For M/s. V.Asokan

For Respondents : Mr. AR.L.Sundaresan, ASG
Assisted by Mr.C.Kulanthaivel, SPC

ORDER

The order of the 1st respondent, holding the petitioner as an unauthorised occupant and directing to vacate the premises, which falls under the control of the respondents has resulted in the filing of the present writ petition.

2. It is the case of the petitioner that the subject land, measuring an extent of 22,300 sq.ft., in GLRS No.388/274 and 388/264/8A was leased to one Kandasamy Chettiar vide lease deed dated 15.11.1929 for an initial period of thirty years which was thereafter renewed for another 30 years upto 31.03.1989 and further renewed for a period of 30 years on 31.12.1991. It is

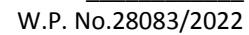


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the further averment of the petitioner that as per the lease agreement, the lessee was permitted to put up construction in the vacant land and was also permitted to transfer leasehold rights of the land. In consequence of the aforesaid clause in the agreement, the said Kandasamy Chettiar transferred the leasehold rights to one Srinivasa Iyengar, who constructed a building in the land with the permission of the Cantonment Executive Officer. After several transfers of the leasehold rights, ultimately the rights enured on one Paul Gnanaprakasam Dowie and his wife Margaret Paramie, who jointly purchased the leasehold rights of the land with the superstructure in the year 1963. The said transfer was recognized by the 2nd respondent and the said individuals were recorded as lessee in respect of the demised land.

3. It is the further averment of the petitioner that pursuant to the agreement entered into by Paul Gnanaprakasam Dowie and Margaret Paramie, with the petitioner by lease agreement dated 26.10.1991, the petitioner became the sub-lessee/tenant of the premises under the said Paul Gnanaprakasam Dowie and the rent towards the said premises was paid to the son of the said Gnanaprakasam Dowie upon his demise. Though the



4. It is the further case of the petitioner that by their letter dated 13.12.1992 followed up by letter dated 21.09.1995, the petitioner requested permission to convert the usage of land from residential to commercial and also his willingness to pay enhanced lease amount. The Director of Defense Estate, by letter dated 22.9.200 addressed to the 2nd respondent directed inspection of the premises along with the Cantonment Board to assess the additional constructions made in the premises.

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the petitioner filed suit for permanent injunction in O.S. No.663 of 2007 on the file of the District Munsif Court, Alandur, against the legal heirs of the deceased lessee/1st respondent. The 1st respondent, thereafter, issued notice dated 11.08.2009 u/s 5-B (1) of the Public Premises Act, 1971, directing the 4th respondent, the legal heir of the deceased lessee, to demolish the unauthorised additional constructions in the premises failing which action would be taken for demolition. Apprehending demolition, the petitioner, being in possession of the premises, preferred appeal in P.P.C.M.A. No.14/2009 before the Principal District Judge, Chengalpet, u/s 9 of the Act against the aforesaid order, which appeal was dismissed against which the petitioner preferred revision petition in C.R.P. No.3481 of 2016 in which this Court had granted an order of stay of all the proceedings pursuant to notice dated 11.8.2009 in C.M.P. No.17738/2016.

6. It is the further averment of the petitioner that once again, the 1st respondent issued notice dated 10.6.2016 calling upon the petitioner to pay damages for unauthorised occupation of the premises to which the petitioner contended that they are only sub-lessee under the original lessee paying rent



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and, therefore, they cannot be called upon to pay damages as unauthorised occupant and further submitted that the 1st respondent has no jurisdiction to issue notice under the Public Premises (Eviction of Unauthorised Occupation) Act, 1971 (for short 'the Act') as the said Act is not applicable to the lease.

7. It is the further case of the petitioner that in response to public notice dated 22.2.2021, the petitioner submitted their application dated 22.3.2021 for extension/renewal of the expired lease. Pending the same, once again public notice dated 27.5.2022 for extension/renewal of expired lease was issued to which also the petitioner submitted letter dated 26.6.2022. Pending orders on the same, the 1st respondent issued notice to the petitioner dated 13.9.22 and also the original lessee u/s 4 of the Act to show cause as to why they should not be evicted from the leased premises.

8. The petitioner participated in the enquiry on 20.9.2022 and submitted that they are sub-lessee under the original lessee and had submitted application for extension/renewal of expired lease, which is pending and, therefore, the present notice u/s 4 is contrary to the public



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notice. It is the further stand of the petitioner that they are in lawful possession of the premises pursuant to the lease agreement with the original lessee and, therefore, their occupation cannot be termed to be unauthorised.

9. It is the further case of the petitioner that pursuant to the enquiry, vide an order ante-dated the 1st respondent rejected the application of the petitioner in response to the public notice dated 28.5.2022, which order was sent by registered post on 29.9.2022, which is only for overcoming the objection raised by the petitioner. The 1st respondent, on erroneous consideration of the materials, passed the order dated 3.10.2022 ordering eviction of the petitioner as an unauthorized occupant of the premises and directed vacation and handing over of the premises within 15 days from the receipt of the order, failing which the petitioner would be forcibly evicted from the premises. Aggrieved by the said order and due to threat posed by the 1st respondent, the present writ petition has been filed.

10. Learned senior counsel appearing for the petitioner submitted that the lease was initially granted in favour of Kandasamy Chettiar prior to 1958



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and, therefore, the Act has no application insofar as the leases granted prior to 1958 and the 1st respondent has no authority to pass any order under the Act, as the present lease initially dates back to the year 1929.

11. It is the further submission of the learned senior counsel that once the petitioner is shown to be the person in occupation of the building, which fact is even admitted by the legal heirs of Paul Gnanaprakasam Dowie, no action could be taken by the 1st respondent without issuing a show cause notice u/s 4 (1) calling upon the petitioner to give his explanation for his alleged unauthorised occupation. It is the further submission of the learned senior counsel that upon issuance of notice u/s 4 (1), it is the duty of the respondents to conduct enquiry u/s 4 (3) of the Act. In the case on hand, it is the submission of the learned senior counsel that no show cause notice was issued and the case was proceeded with simultaneously by the issuance of notice and conduct of enquiry, which cannot be sustained.

12. In support of his submissions, learned senior counsel appearing for the petitioner placed reliance on the following decisions :-



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- I) *Band Box Pvt. Ltd. – Vs – Estate Officer, Punjab & Sind Bank & Anr. (2014 (16) SCC 321); and*
- II) *Suhas H.Pophale – Vs – Oriental Insurance Co. Ltd. & its Estate Officer (2014 (4) SCC 657)*

13. Per contra, learned Addl. Solicitor General appearing for the respondents submits that the original lease, which was granted to Kandasamy Chettiar is a conditional lease in and by which sub-leasing or sub-letting of the premises leased to the lessee was not permitted. When the lease deed in and by which Kandasamy Chettiar had come into possession of the property itself imposed such restriction, the said lessee had no power to alienate the property without written consent of the Controlling Authority in terms of the lease deed.

14. It is the further submission of the learned Addl. Solicitor General that even Paul Gnanaprakasam Dowie and his legal heirs did not have any objection to the evicting the petitioner from the petitioner and the letter of the 3rd respondent in this regard clearly show that the premises have been taken over by the petitioner by fraud and coercion and Paul Gnanaprakasam Dowie was forced to enter into the lease agreement. It is the submission of



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the learned Addl. Solicitor General that when the original lessee, viz., Kandasamy Chettiar did not have any right of alienation, even the alienation in favour of Paul Gnanaprakasam Dowie or the other alienations prior in point of time is bad. Further, it is submitted that the lease stood expired in the year 1989 and no extension had been granted and such being the case, the petitioner cannot, on the strength of the alleged lease agreement with Paul Gnanaprakasam Dowie, continue in occupation of the premises.

15. It is the further submission of the learned Addl. Solicitor General that the petitioner cannot force the respondents to extend/renew the lease and once the lease stood expired, the respondents are entitled to evict the petitioner in the manner known to law, as the occupation of the petitioner would partake the character of an unauthorised occupant. It is the further submission of the learned Addl. Solicitor General that even according to the petitioner, he is a tenant under Paul Gnanaprakasam Dowie, who is the lessee of the premises and the relationship between the lessee, viz., Paul Gnanaprakasam Dowie and the respondents 1 and 2 has since expired, the petitioner would only be an unauthorised occupant and eviction of the



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petitioner is permissible and to that extent the Act is applicable for evicting the petitioner from occupation. In this context, learned Addl. Solicitor General relied on the decision of the Apex Court in ***Central Bank of India – Vs – National Rayon Corporation Ltd. (2014 (3) SCC 291)***. Even according to the petitioner, he was paying rent to the lessee and in fact, by his very own representation, he undertakes to pay rent. That being the case, the Act would be very much applicable for evicting the petitioner from possession. Accordingly, he prays for dismissal of the present writ petition.

16. This Court gave its careful consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record as also the decisions relied on behalf of the parties.

17. It is the admitted case of the petitioner that initially in the year 1929, the land in question was leased out to one Kandasamy Chettiar for a period of 30 years, which was subject to further renewal upto a period of 90 years. It is alleged on behalf of the petitioner that the said Kandasamy



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Chettiar had, thereafter, parted with his leasehold rights, which was ultimately purchased by Paul Gnanaprakasam Dowie and his wife in the year 1963.

18. Initially the subject lands were leased out for a period of 30 years starting from 15.11.1929 and the 30 year period would have come to an end on 14.11.1959. The petitioner claims to be a sub-lessee/tenant under Paul Gnanaprakasam Dowie, who was the holder of the leasehold rights. Even the averments of the petitioner in the affidavit filed in support of the petition reveals that the lease was renewed upto 31.03.1989 and, thereafter, for a further period of 30 years from 31.12.1991. However, there is no material placed before this Court by the petitioner to show that after 31.03.1989 the lease was renewed. It is the further averment of the petitioner that the petitioner became a sub-lessee/tenand under the said Paul Gnanaprakasam Dowie only on 26.10.1991 by entering into a lease agreement. However, it is to be pointed out that on the date when the petitioner entered into the alleged lease agreement with Paul Gnanaprakasam Dowie, the said Paul Gnanaprakasam Dowie was not holding any valid leasehold rights in respect of the lands, which are the subject matter of this writ petition. When the said



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Paul Gnanaprakasam Dowie had no valid leasehold rights in respect of the subject lands, the alleged lease agreement, claimed to have been entered into between the petitioner and the said Paul Gnanaprakasam Dowie has no legal sanctity or validity on which the petitioner could base his claim seeking continuance of tenancy.

19. The respondents have placed a copy of the original lease deed dated 15.11.1929, which has been entered into with Kandasamy Chettiar. Relying upon the said lease deed, it was the contention of the learned Addl. Solicitor General that the lease did not permit transfer of lease or underletting of the premises, without the written consent in writing of the Cantonment Authority, which has been given on lease and, therefore, the transfer of lease entered into by Kandasamy Chettiar is wholly impermissible. For better appreciation, the relevant portion of the lease deed is quoted hereunder :-

“(8) Not to assign transfer or underlet the premises hereby demised or any part thereof without the consent in writing of the Cantonment Authority and) upon every assignment transfer or sub-lease of the premises hereby demised or any part thereof or within one calendar month thereafter to deliver a notice of such assignment transfer or sub-lease to the



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Military Estates Officer setting forth the names and descriptions of the parties to every such assignment transfer or sub-lease and the particulars and effect thereof.”

(Emphasis Supplied)

20. A careful perusal of the above clause in the deed reveal that without consent of the Cantonment Authority, no transfer, assignment or under-letting is permitted and if any such act had taken place, then the lessee is bound to put the Military Estate Officer on notice giving the description of the parties. In the case on hand, there is no material placed to show that Kandasamy Chettiar had obtained any written consent of the Cantonment Authority to transfer the leasehold rights. However, the fact remains that the lease has been renewed in favour of Paul Gnanaprakasam Dowie till 31.03.1989 and, thereafter, the lease has not been renewed. When there is no written consent placed before this Court of the Cantonment Authority consenting the transfer of leasehold rights by Kandasamy Chettiar, the transfer of the leasehold rights is against the terms of the lease deed and it is impermissible.



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21. Be that as it may. The petitioner claims that Paul Gnanaprakasam Dowie was granted lease by renewal by the respondents 1 and 2 and in pursuance of the said leasehold rights, Paul Gnanaprakasam Dowie has created the sub-lease/tenancy in favour of the petitioner. However, what is relevant to note here is the fact that even according to the petitioner, the 30 year term stood expired on 31.03.1989. There is no material to show that the lease stood renewed beyond 31.03.1989. In this regard, a letter of the Cantonment Board reveals that the lease stood expired even in the year 1989 and that the application for change of purpose of utilisation of land and premises was rejected by the Cantonment Board, which is evident from the letter dated 28.3.2008. Such being the case, in the absence of any material to show the renewal of lease, the only inference that could be drawn from the above is that the occupation of the petitioner and for that matter his lessor, viz., Paul Gnanaprakasam Dowie itself is illegal and they are liable for eviction.

22. Further one other fact which requires to be pointed out is that, as aforesaid, the lease stood expired even as on 31.03.1989. However, even according to the petitioner, the lease agreement has been entered into with



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Paul Gnanaprakasam Dowie only on 26.10.1991. When the said Paul Gnanaprakasam Dowie had no right over the subject lands, the lease agreement entered into for sub-leasing/tenancy of the property would not have any validity and the said agreement would in no way bind respondents 1 and 2.

23. The last of the point raised by the petitioner borders on the application of the Public Premises (Eviction of Unauthorised Occupants) Act to the present case, as according to the petitioner, in respect of any lease, which is prior to 1958, provisions of the said Act is not applicable. In this regard, the learned senior counsel for the petitioner relies on the decision of the Apex Court in *Band Box case*. For better appreciation, the relevant portion of the said decision is quoted hereunder :-

“10. As seen from paragraph 40, quoted above, the judgment clearly says that the Bombay Rent Act would not prevail qua the repugnancy between it and the Public Premises Eviction Act. That aspect has not been contradicted in Dr. Suhas H. Pophale's case (supra). It also relies upon the judgment in Ashoka Marketing Limited (supra) which says that the Public Premises Act as well as the State Rent Control Laws are both referable to entries in concurrent list and they



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operate in their own field. It is only in the area of its own that the State Rent Control Act applies and in its own time frame. The judgment in Dr. Suhas Pophale's case accepts that the Public Premises Act will prevail over the Bombay Rent Act to the extent of repugnancy i.e. for eviction of unauthorised tenants and for collection of arrear of rent, but, not prior to 16.9.1958 when the Public Premises Act became applicable. Paragraphs 42 and 65 which are relied upon also do not deal with the aspect of retrospectivity and being protected under the welfare legislation. That being so, it is not possible to accept this submission of Mr. Vikas Singh.

(Emphasis Supplied)

24. A careful perusal of the aforesaid decision reveals that the said decision is more in favour of the stand of the respondents 1 and 2 rather than the petitioner. In the aforesaid decision, the Apex Court has clearly held that insofar as eviction of unauthorised tenants and for collection of rental arrears, the Public Premises Act will prevail.

25. In the case on hand, it is evident from the materials available on record that on the date when the petitioner is alleged to have entered into a lease agreement with Paul Gnanaprakasam Dowie, the said individual was not



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holding any leasehold rights over the subject property. Therefore, the lease agreement, alleged to have been entered into will not have any legal sanctity and that being the case, on the said date, the subject land belonged to respondents 1 and 2 and the petitioner, having entered into the land and using the same for his business purposes to feather his nest, would squarely fall within the ambit of an unauthorised occupant, who has been holding the said property unauthorisedly and, therefore, the petitioner is not only liable to eviction, but equally for the period of occupation of the property, the petitioner is bound to pay the rent due to the respondents 1 and 2. The contention of the petitioner that Public Premises Act cannot be enforced by the respondents 1 and 2 against the petitioner is wholly misconceived and cannot be the basis to grant any relief to the petitioner. The abovesaid view has been reiterated by this Court in *National Rayon case*. Further, it is also to be pointed out that C.R.P. No.3481/2016 in which initially stay was granted has since been dismissed and the petitioner does not have the benefit of any order passed by this Court to his armoury.



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26. The last straw on which the petitioner tries to hold its case is on Section 4 (1) and 4 (3) of the Act, which contemplates issue of notice before passing an order of eviction. It is the case of the petitioner that notice was issued and simultaneously proceeding was conducted renders the notice bad and violates principles of natural justice. Though such a submission is advanced, however, the same lacks merit for the simple reason that what is contemplated u/s 4 (1) is issuance of notice and grant of seven days time before conduct of enquiry. In the case on hand, notice had been issued on 13.9.2022 and enquiry was conducted on 20.09.2022, which clearly shows that the mandatory period of seven days has been provided to the petitioner when enquiry was conducted. There being compliance of the provisions of the Act, the submission on behalf of the petitioner that there is violation is wholly erroneous and the same does not merit acceptance.

27. The impugned order has been passed invoking the power u/s 5 of the Act, which is proper, as even in *Band Box case* the Apex Court has categorically held that for eviction and collection of arrears of rent, the Public Premises Act can be pressed into service. Therefore, rightly, the 1st



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respondent has passed the impugned order, after proper application of mind to the materials available before him and the said order does not suffer the vice of any illegality, arbitrariness or perversity and the same does not warrant any interference at the hands of this Court.

28. For the reasons aforesaid, this writ petition fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes / No

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To

1. The Estate Officer
No.306, Anna Salai
Teynampet, Chennai 600 018.

2. The Defense Estate Officer
Madras Circle
No.306, Anna Salai
Teynampet, Chennai 600 018.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.28083 OF 2022**

**Pronounced on
21.04.2023**