



CRP No.3710 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.3710 of 2019
and
C.M.P.No.24369 of 2019

1.M.V.Nakkeeran
2.V.Manimegalai

... Petitioners

Versus

1.The Secretary
Managing Committee
Majjid E Ayesha Muslim Committee,
Pillaiyar Koil Street, Redhills, Chennai-52.

2.The Estate Officer,
(Appointed under Section 3 of the Tamil Nadu Public Premises
Eviction of unauthorized occupants Act, 1975)
Having Office at "WAKF HOUSE"
No.1, Jaffer Syrang Street,
Vallal Seethapathi Nagar,
Chennai-600 001.

...Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 30.08.2019, made in P.P.CMA.No.1 of 2018 on the file of the Principal District Court, Thiruvallur, Tiruvallur District, confirmed the order dated 11.01.2018 passed by the 2nd respondent in P.P.4/TVLR/2017.



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For Petitioners : Mr. T. Mohan
for Mrs.G.Daisy John
For R1 : Mr. Nissar Ahmed
For R2 : Mrs. Mithra Nisha

ORDER

The petitioners have filed this revision petition praying to set aside the fair and decreetal order dated 30.08.2019, made in P.P. CMA. No. 1 of 2018 on the file of the Principal District Court, Thiruvallur, Tiruvallur District, confirming the order dated 11.01.2018 passed by the 2nd respondent in P.P.4/TVLR/2017.

2. Heard, Mr. T. Mohan, learned counsel for Mrs.G.Daisy John, learned counsel for the petitioners, Mr. Nissar Ahmed, learned counsel appearing for the first respondent and Mrs. Mithra Nisha, learned Counsel for the second respondent and perused the materials available on record.

3. The petitioners herein are the appellants in P.P.C.M.A.No.1 of 2018 on the file of the Principal District Court, Tiruvallur. They have filed the said appeal challenging the order passed by the 2nd respondent in PP.No. 4/TVLR/2017, under Sub-Section (1) of Section 4 of the Tamil Nadu Public



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Premises (Eviction of Unauthorized Occupants) Act, 1975 (Tamil Nadu Act, 1 of 1976) in respect of the property comprised in Sr.No.158/3C measuring an extent of 11495 sq.ft. situated at No.118, Padianallur Village, Ponneri Taluk, Tiruvallur District.

4. According to the petitioners, the 1st respondent/the Secretary, Managing committee, Masjid E Ayesha Muslim Committee, filed an application under Section 4 of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 (Tamil Nadu Act, 1 of 1976) before the second respondent, praying for eviction of the revision petitioners from the premises in question. It was contended by the first respondent that the Schedule property belong to the WAQF board. The erstwhile Managing Committee of Wakf executed 3 lease agreements dated 09.02.1996 in favour of the revision petitioners for a period of 30 years, in respect of the vacant site on a meagre rent of Rs.5 per month. Thereafter, they have started to put up illegal and unauthorised construction and therefore, the Managing Committee of the Waqf has filed suit in O.S.No.187 of 2002 before the Waqf Tribunal against the revision petitioners and others for declaration and injunction. Ultimately, the suit was decreed, declaring the title of the Waqf and injunction was against restraining the respondents from putting up any construction other than the



leased land. In the mean time, on 15.10.2005, the lease itself was terminated by way of notice, granting 15 days time to the revision petitioners for vacating and handing over the vacant possession. As they refused to vacate, the first respondent filed the petition under Section 4 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, seeking an order of eviction of the revision petitioners from the schedule premises on the ground that they are unauthorised occupants of the public premises and for other consequential reliefs.

5. The said application was resisted by the tenants / revision petitioners herein and submitted that the entire extent of 11592 sq.ft was enjoyed by his father ever since 1965. Considering his long possession and enjoyment, the Muslim committee have leased out the property to the revision petitioners under separate lease agreement, which was executed on 09.02.1996. The Managing Committee also given no objection to construct building in the scheduled property and the rent was fixed at Rs.50, Rs.5 & Rs.250 per month for Schedule A,B & C respectively, subject to modification and or enhancement as and when required. The revision petitioners are running a Saw Mill and a timber shop jointly and paying the land rent of Rs.175 per month to the said Waqf without any default. After the death of their father, the revision



petitioners are enjoying 'C'-Schedule property jointly by paying the land rent without any default. The revision petitioners were permitted to put up construction on the land wherein the existing sheds are available thereby accepted them as lease holders. While so, during the pendency of the said suit, the Management Committee refused to receive the land rent. Subsequently, in the year 2005 they demanded payment of arrears of land rent and accordingly, a total sum of Rs.8,225/- was paid as arrears of rent for the schedule properties. While so, on 14.11.2015 all of us a sudden, the Management Committee asked them to vacate the premises after receipt of the rent through demand draft and as on that date there was no arrears of land rent. Furthermore, as per the understanding, the lease period is 30 years even though, in the lease agreement dated 09.02.1996 no time limit was fixed. The revision petitioners were permitted to occupy the land in question subject to condition that the land rent can be revised as and when it required. So as a statutory lease holder, as per the lease agreement dated 09.02.1996 they are entitled to enjoy the properties and they are ready to pay the enhancement rent as per the terms of the agreement. Instead of fixing the fair rent, they have filed a petition by invoking the Public Premises Act and as such it is not maintainable. The dispute between the parties are outside the scope of the public premises and hence, they prayed to dismiss the petition.



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6. On considering both sides submission, the second respondent came to the conclusion that the Managing Committee of the Wakf has filed the suit in O.S. No. 187 of 2017 before the Wakf Tribunal in which a decree was passed against the revision petitioners and their father *inter alia* declaring the title of the Wakf and also injunction granted restraining the revision petitioners from putting up any construction other than the portions marked in the advocate commissioners plan. Thereafter, the Wakf has not accepted the rent and terminated the lease by a notice dated 15.10.2005. Therefore, from 15.10.2005, the revision petitioners are deemed to be in unauthorised possession and occupation of the property in question. Further, Section 56 (1) of the Wakf Act prohibits a lease of wakf property for more than three years. However, the erstwhile Managing Committee granted lease for 30 years on 09.02.1996 and it is against the provisions of Section 56 of the Wakf Act. Therefore also, the second respondent concluded that the revision petitioners are in unauthorised occupation of the property. Accordingly, the petition filed by the first respondent was allowed directing the revision petitioners to vacate the premises within a period of 15 days from the date of the order.



7. Aggrieved by the said order dated 11.01.2018, the revision petitioners have preferred the appeal in C.M.A. No.1 of 18, before the learned Principal District Judge, Tiruvallur contending that the invocation of Section (4) of Tamil Nadu Public Public Premises Act without considering the terms of the lease agreement is illegal. The mother of the revision petitioners was earlier permitted to have a leasehold right in the property for a life time and after her death, the revision petitioners continued to remain in possession of the said property. In the lease agreement, there was no period mentioned, however, the second respondent erroneously concluded that the lease was only for 30 years. Furthermore, the second respondent erroneously considered Section 56 of the Wakf Act. As per the Wakf Act, 1995, which came into force from 01.01.1996, lease for 30 years is permissible and there is no bar for leasing out the property of Wakf for more than three years. However, as per the amendment which came into effect in the year 2013, lease period was restricted to three years and it will not be applicable to the case of the revision petitioners. In this case, the lease was granted on 01.01.1996 and therefore, the amendments made to the Wakf Act in the year 2013 cannot be applied retrospectively. Therefore, it was contended by the revision petitioners in the Civil Miscellaneous Appeal that the findings of the second respondent is against law. The second respondent also did not consider that there is no clause



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contained in the lease agreement for termination by merely issuing a notice and prayed for allowing the appeal.

8. Considering both sides submissions and on a perusal of the records, the learned District Judge held that the property compraised in Sr.No.158/3C an extent of 11592 sq.ft belongs to Masjid-e-Ayisha Muslim Committee which is registered and notified Wakf falls within the supervisory Control of Tamil Nadu Wakf board. As its Secretary, the petition for eviction was filed before the second respondent against the revision petitioners. The lease granted to the revision petitioners was duly cancelled through a notice dated 15.10.2005 and even thereafter, the revision petitioners refused to handover the vacant premises. As the property is a Waqf property, it come under the definition of Public Premises. As per the TNPPA act, the application filed to evict the revision petitioners, who are in unauthorised occupation of the public premises by the first respondent is maintainable. The erstwhile Managing Committee has no power to execute lease agreement for more than three years as per the amendments in the year 2013. Therefore, the notice issued by the present Committee as such is valid and the procedures adopted in the rent control proceedings cannot be made applicable to the facts of the case. When the lease was duly terminated, the occupation of the revision petitioners can be



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construed as unauthorised and the order of eviction passed by the Estate Officer is valid. Accordingly, the Civil Miscellaneous Appeal was dismissed.

9. The learned counsel for the revision petitioners submitted that the learned District Judge failed to take note of the fact that prior to Amendments made to the Wakf Act in the year 2013, the first respondent terminated the statutory lease by simply issuing a notice dated 15.10.2005. The termination notice was issued on 15.10.2005 as if the revision petitioners are in occupation of a public premises and therefore, the notice itself is illegal and eviction order cannot be passed on the basis of such termination notice. Further, he submitted that the learned District Judge failed to observe that the lease agreements were entered on 09.02.1996 without time limit and the same can remain in force till 08.02.2026. So the alleged notice of termination would not bind the revision petitioners but it was not properly appreciated by the Court below. It was also contended that the second respondent herein could not have invoked the provisions of TNPPA against the revision petitioners as if they are in occupation of a public premises. When the property belongs to Wakf, it cannot partake the character of a public premises. The revision petitioners are statutory tenants and such a lease holder could not be deemed as unauthorised occupation warranting their eviction by invoking the Tamil Nadu Public



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Premises Act. Furthermore, the mother of the petitioners has been in possession of the leased land from the year 1965 onwards. Considering the continuous possession, the lease agreement was executed in the year 1996 at that time, the amendments to Wakf Act has not been brought out. While so, reference made to the amendments brought in the year 2013 for evicting the revision petitioners is legally not sustainable. When the termination notice was issued by invoking of the Wakf Act, the second respondent has no jurisdiction to entertain the application for eviction. Accordingly, the learned counsel prayed for allowing the Civil Revision Petition.

10. By way of reply the learned counsel for the respondents submitted that the erstwhile Managing committee has no power for executing the agreement for unlimited period and therefore, the lease was terminated by issuing notice a notice dated 15.10.2015 granting two weeks time for surrendering the vacant possession but they failed to do so. Thereafter, their possession itself has to be deemed as an unauthorised occupation and hence, the second respondent is right in directing eviction of the revision petitioners and it was also rightly confirmed by the learned District Judge in C.M.A. No. 1 of 2018.



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WEB COPY 11. The learned counsel for the revision petitioners submits that the revision petitioners, as tenants, have paid the rent regularly to the Wakf board and they have also received the rent. In such circumstances, the occupation of the premises cannot be termed as unauthorised for the reason that they have not committed any default in payment of rent as per the terms of agreement. The first respondent is entitled to enhance the rent but they have not taken any steps to do so. Instead the first respondent has issued notice for termination of the lease without any valid reasons and as such it is in gross-violation of the terms of the agreement. Since, they admitted the agreement, they are bound by the terms of the agreement. This was not properly appreciated by the learned Principal District Judge while dismissing C.M.A. No. 1 of 2018 and prayed for allowing the Civil Revision Petition.

12. It was an admitted fact that a lease agreement was executed in favour of the revision petitioners and another on 01.01.1996. In the lease agreement, there was no time fixed for terminating the lease. However, there is a clause for enhancement of the rent periodically. Admittedly, the first respondent did not take any steps for enhancing the rent, instead, received the prevailing rent even with arrears from the revision petitioners. Thus, the revision petitioners



are paying the rent and the same was received by the first respondent. In such circumstances, without assigning any valid reasons, the lease was terminated by issuing a notice dated 15.10.2015. When the revision petitioners are admittedly in occupation of the property in question atleast from 1996 as per the lease agreement, the first respondent ought to have assigned the reason for sudden termination of the lease. This is more so that the first respondent has received the rent periodically from the revision petitioners. According to the revision petitioners, the lease is for 30 years and it will be in force upto 2026. While so, the termination of the lease without any valid reason is not proper.

13. Another objection raised by the revision petitioners is that the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act 1975, as amended in Tamil Nadu Act 33 of 2010 with effect from 07.11.2011 cannot be pressed into service in this case. Admittedly, the property in question belongs to Wakf Board. The predecessors of the petitioners are under occupation of the premises ever since from 1965 onwards and thereafter lease was extended by executing the lease agreement in the year of 1996 in favour of the revision petitioners. The revision petitioners are in occupation of the premises as per the lease agreement dated 09.02.1996. When the lease agreement between the revision petitioners and the first respondent is subsisting, it cannot be said that



the premises in question will come under the purview of Tamil Nadu Public Premises Act. Therefore, the invocation of the said Act by filing an application before the second respondent itself is not proper. The second respondent has no jurisdiction to entertain the application and directed the eviction of the revision petitioners. Even though the applicability of the Tamil Nadu Public Premises Act to this case has not been raised by the revision petitioners and it was raised only in this Civil Revision Petition for the first time, since it is a question of law the same can be raised before this Court in this revision. Therefore also, the objection raised by the petitioners with respect to applicability of the Tamil Nadu Public Premises Act to the facts of this case is sustainable.

14. To support his contention the learned counsel for the revision petitioners relied on the decision **reported in 2014 (1) T.N.C.J. 709 (SC), Dr.Suhas H.Pophale Vs. Oriental Insurance Co.Ltd, and another (Civil Appeal No.1970 of 2014 (Arising out of SLP (C) No.20625 of 2010), decided on 11th February, 2014)**, in which it was held as follows:



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Occupants) Act, 1971 - Section 15 -Eviction Order - By Estate Officer -Upheld by High Court - Appeal against - Held, appellant's status was accepted under State enactment - Therefore, he could not be said in "unauthorised occupation' - Act was meant to evict totally unauthorised occupants of public premises - Hence, order of High Court set aside - If respondents intend to take any steps they have remedy available under Maharashtra Rent control Act, 1999."

In the above referred case the provision of the Public Premises Act as well as the Maharashtra Rent Control act was the subject in issue. The Honourable Supreme Court dealt with various issues in the above referred case and one such issue is whether amendment to the Public Premises Act will have retrospective effect. In that decision, it was observed as follows:-

32....that a legislation is not be given a retrospective effect unless specifically provided for, and not beyond the period that is provided therein. Thus a Constitution Bench held in Garkiapati Veeraya v.N.Subbiah Choudhry reported in AIR 1957 SC 540 that in the absence of anything in the enactment to show that it is to be retrospective, it cannot be so constructed, as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. In that matter, the Court was concerned with the issue as to whether the appellant's right to file an appeal continued to be available to him for filing an appeal to the Andhra Pradesh High Court after it was created from the erstwhile Madras High Court./ The Constitution Bench held that the right very much survived, and the vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

39. ...,it is very clear that in the facts of the present case, the appellant's status as a deemed tenant was accepted under



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the state enactment, and therefore he could not be said to be in "unauthorised occupation". His right granted by the state enactment cannot be destroyed by giving any retrospective application to the provisions of Public Premises Act, since there is no such express provision in the status, nor is it warranted by any implication. In fact his premises would not come within the ambit of the Public Premises Act, until they belonged to the respondent No.1, i.e, until 01.01.1974. The corollary is that if the respondent No.1 wanted to evict the appellant, the remedy was to resort to the procedure available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, by approaching the forum thereunder, and not by resorting to the provisions of the Public Premises Act."

51.Since the issue of retrospective application of the Public Premises Act, to tenancies entered into before 16.09.1958, or before the property in question becoming a public premises, was neither canvassed nor considered by the bench in Ashoka Marketing (supra), the decision does not, in any way, prevent this Bench from clarifying the law regarding the same..."

15. By relying the said provisions, the learned counsel for the revision petitioners submit that in the case in hand the premises belongs to Wakf and therefore, the amendments made to Tamil Nadu Public Premises Act will have no application. Even otherwise, the amendments made in the year 2013 cannot be given retrospective effect to direct eviction of the revision petitioners herein. The ratio laid down in the referred case is squarely applicable to the present case. Therefore the second respondent has no jurisdiction to entertain the application filed by the first respondent invoking section 4 of Tamil Nadu Public Premises Act, 1975. It is admitted that the tenancy commenced from the



year 1965 onwards. The revision petitioners are family members and the first respondent / Managing committee, even as per the admitted agreement in 1996 permitted them to occupy the premises without specifying any time limit. Therefore the application filed by the first respondent before the second respondent by invoking under section 4 of the TNPPA, 1975 as such is totally invalid under law and the orders passed by the District Judge, confirming the order of the second respondent, are liable to be set aside, as they are without jurisdiction to entertain the application of the first respondent for eviction of the revision petitioners.

16. It is brought to the notice of this Court that on earlier occasion the revision petitioners filed a suit before the Wakf Tribunal, Chennai, in O.S.No.103 of 2018, by raising various issues with regard to the tenancy lease and fixation of the rent. But the same was rejected by the Tribunal in I.A.229/18. As discussed above the revision petitioners are entitled to approach the Wakf Tribunal and the earlier findings given by the Tribunal is totally erroneous. The Tribunal also failed to appreciate the provision of law pertaining to the TNPPA . Therefore the opportunity is given to the revision petitioners to approach the Wakf Tribunal, with regard to the claim of fixation of the rent as well as entitlement of the lease period.



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17. Accordingly, the Civil Revision petition is allowed and the findings of the learned Principal District Judge, Thiruvallur, Tiruvallur District, dated 30.08.2019, made in P.P.CMA.No.1 of 2018 is hereby set aside. Consequently, connected miscellaneous petition is closed. No costs.

31.10.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation:Yes/No
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To
1.The Principal District Judge,
Tiruvallur.

2.The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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