



W.A.No.3420 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.03.2023

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI
AND
THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

W.A.No.3420 of 2019

The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai-600 003.

.. Appellant

Vs.

1.Besant Nagar Club
New No.21, Old No.12
3rd Avenue, Besant Nagar
Chennai-600 091
Represented by its President
Mr.V.Karuppan

2.The Secretary
Municipal Administration
Water Supply Department
Fort St. George
Chennai-600 009.

.. Respondents

Prayer:Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 26.08.2010 made in W.P.No.11885 of 2010 on the file of this Court.



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For Appellant : Ms.K.Aswini Devi
Standing Counsel for Greater Chennai Corporation
For R1 : Mr.R.Ragavendran
For R2 : Mrs.R.L.Karthika
Government Advocate

J U D G M E N T

(Judgment of the Court delivered by V.LAKSHMINARAYANAN, J.)

The present Writ Appeal is filed against the order dated 26.08.2010 passed by this Court in W.P.No.11885 of 2010, whereunder the learned Single Judge was pleased to allow the Writ Petition quashing the proceedings of the appellant seeking eviction of the 1st respondent under the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (hereinafter referred to as “TNPP Act, 1975”).

2. The undisputed case is that an extent of 4 grounds 2230 sq.ft. in Block No.41, S.No.1 (part) in Oorur Village, 3rd Avenue, Besant Nagar, Chennai - 90 belongs to the appellant. The 1st respondent had taken possession of the premises in the year 1978 for the purpose of running a



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playground. The lease had expired on 21.07.1981. No records have been produced either side to show that the lease has been extended subsequently.

In the year 1994, the appellant sought to take possession of the premises and the Writ Petition came to be filed in W.P.No.3536 of 1994. In the said Writ Petition, the relief sought for was for a Writ of Mandamus to forbear the Corporation from interfering with the peaceful possession and enjoyment of aforesaid property. On a statement made by the learned counsel for the Corporation in those proceedings that the lease had been extended, the Writ Petition came to be allowed. On 23.09.2009, the appellant issued a show cause notice to the 1st respondent under the provisions of the TNPP Act, 1975. A reply was sent by the 1st respondent on 29.09.2009. Final orders were passed on 19.03.2010 holding that the 1st respondent is in unauthorised occupation and it was directed to hand over possession of the premises within ten days from the date of receipt of a copy of that order. In default of handing over possession, it was ordered that further proceedings would be taken under the TNPP Act, 1975.



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3. Challenging this order, a Writ Petition was filed by the 1st

respondent in W.P.No.11885 of 2010.

4. This Writ Petition was allowed by the learned Single Judge on the following grounds:

(i) The stand taken by the Corporation in the previous Writ Petition that the lease had been extended runs contrary to the view that the lease had expired on 21.07.1981.

(ii) Reasons given in the show cause notice and the reasons given in the impugned order are different.

(iii) Reply given by the 1st respondent on 29.09.2009 was not considered.

5. Learned counsel appearing for the appellant and the learned counsel appearing for the respondents reiterated the submissions before they made before the learned Single Judge. We have carefully considered the arguments of both sides and gone through the records produced by the appellant.



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6. It is necessary to refer the provisions of the TNPP Act, 1975. This

Act was brought into force for eviction of unauthorised persons from public premises, which were being delayed by presentation of suits. It is a summary remedy. If the premises is “public premises” and the person is in “unauthorised occupation”, after conducting an enquiry, an order has to be passed. The relevant provisions are Section 2(e)(2), Section 2(g) and Sections 3, 4 & 5. The nature of proceedings is summary proceedings which has to be preceded by a show cause notice, a reply and a final order of eviction. In the present case, that the premises is “public premises” cannot be disputed because as per Section 2(e)(2), any premises belonging to or vested in a local authority or any Board constituted under any law is “public premises”. The Act also defines “unauthorised occupation” in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.



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7. In the present case, it is admitted that the lease had been granted in 1978 expired on 21.07.1981. Though the learned counsel for the respondents would submit that in the previous Writ Petitions, it had been stated by the learned counsel for the respondent/Corporation that lease has been extended, he is unable to produce a copy of the lease. The files reveal that post the order of eviction, amounts were received by the 1st respondent is “damages for use and occupation” and not as rental amounts. Learned counsel for the 1st respondent would further submit that 1st respondent has been paying rental amounts without any default. Paying of amounts to the landlord is not a charity, but a duty. When the categorical stand of the appellant is that lease has not been extended, a statement made by the counsel in the Writ proceedings would not bind it. It is a factual error and the files do not reveal extension of the lease. Furthermore, even in the reply that was issued to the show cause notice, the 1st respondent/Writ Petitioner wanted regularisation of lease. It has stated that the office bearers of the club had approached the appellant to renew the lease. This implies that the lease was not renewed as early as 2003. Therefore, from the year 1981 till date, the 1st respondent/Writ Petitioner has been in unauthorised occupation, as it



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had continued in occupation of the public premises, after the authority under which he was allowed to occupy the premises had expired. This is simple application of the aforesaid provisions to the facts of the case and we do not want to burden this judgment, but for the authorities.

8. The finding of the learned Single Judge is that reason given in the show cause notice differs from the reason given in the impugned order, does not appeal to us. It is admitted that the show cause notice was issued by the Commissioner/Estate Officer, Corporation of Chennai on 23.09.2009. It was received and a reply was given on 29.09.2009. Final orders were passed on 19.03.2010. Therefore, it satisfies the requirement of Sections 3 and 4 of the TNPP Act, 1975. As per Section 5(1) of the Act, the Estate Officer has to record a reason for ordering eviction. The reason that has been recorded in the impugned order is that lease has expired as early as 1981 and therefore, the 1st respondent is in unauthorised occupation. The Act does not require any further requirement. Even under the Transfer of Property Act, 1882, notice under Section 106 need not state any reasons. It should only have a demand that the possession must be handed over. When that is the



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requirement for a Civil Suit, a higher requirement cannot be read into in a summary proceedings. This is more so when the application of the statute is straight forward in the present case. This has not been done by the learned Single Judge and therefore, it needs to be corrected by us.

9. We satisfied that the lease has been expired and 1st respondent is an “unauthorised occupant” and the reason given by the Commissioner/Estate Officer, Corporation of Chennai, in the impugned order is correct. It is valid and legal and the order of the learned Single Judge dated 26.08.2010 made in W.P.No.11885 of 2010 is set aside and W.P.No.11885 of 2010 stands dismissed and the impugned order in the Writ Petition is restored. The 1st respondent is granted three months time from today to hand over possession of the premises to the appellant. In default, the appellant may proceed as per Section 5(2) of the TNPP Act, 1975. The learned counsel for the 1st respondent made a request that the petitioner may be permitted to approach the appellant for grant of fresh lease. It is always open to the 1st respondent to approach the appellant for grant of lease on fresh terms and conditions. It



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is for the appellant to decide if it wants to enter into a fresh lease or if it wants to take possession of the property.

10. With the above directions, the Writ Appeal stands allowed. No costs.

(V.M.V.,J.) (V.L.N.,J.)
03.03.2023

Index : Yes/No
Neutral Citation : Yes / No
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To

The Secretary
Municipal Administration
Water Supply Department
Fort St. George
Chennai-600 009.



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