



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-02-2024

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

WP No.1947 of 2021

And

WMP Nos.2209, 2212 and 8339 of 2021

Sri Bala Nanda Educational Trust,
Represented by its Founder Trustee,
Mr.M.Balakrishnan,
80 years, S/o.G.Muthu,
No.32, State Bank Colony,
Perambur,
Chennai-600 011.

.. Petitioner

-VS-

1.Union of India,
Represented by its Joint Secretary,
Ministry of Home Affairs,
CUSTODIAN OF ENEMY PROPERTY FOR INDIA,
'B', 2nd Floor, NDCC-II Building,
Palika Kendra, Jai Singh Road,
New Delhi-110 001.



2.The Assistant Custodian of Enemy Property for India
Kaiser-I Hind Building, 1st Floor,
Kaiseri, Currimbhoy Road,
Ballard Estate, Fort,
Mumbai-400 001.

3.The District Collector,
O/o.The District Collector,
No.62, North Beach Road,
4th Floor, Singaravelar Maligai,
Chennai-600 001.

4.The Tahsildar,
Purasawalkam,
No.3, Raja Mutahiah Salai,
(Old Fort – Tondiarpet Taluk Office),
Purasawalkam,
Chennai-600 003.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the first and second respondents to sell the property measuring to an extent of (i) 18 Grounds and 0422 sq.ft., and (ii) 2 Grounds and 1174 sq.ft., totally measuring 20 grounds and 1596 sq.ft., comprised in T.S.No.32/1, Block No.11, situated at No.125, Shanthi Nagar, Sembiam Village, Purasawalkam-Perambur Taluk, Chennai, considering the representations dated 03.01.2021 and 25.01.2021 for sale of the abovementioned property made under Section 8-A of the Enemy Property (Amendment and Validation) Act, 2017, as per Clauses 7(3) and 9(2) of the Guidelines for the Disposal of the Enemy Property Order, 2018.



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For Petitioner : Mr.K.Sivasubramanian

For Respondents-1 and 2: Mr.K.Srinivasamurthy,
Senior Panel Counsel for Central
Government.For Respondents-3 and 4: Mr.G.Ameedius,
Government Advocate.**ORDER**

The relief sought for in the present writ petition is to direct the first and second respondents to sell the property measuring to an extent of (i) 18 Grounds and 0422 sq.ft., and (ii) 2 Grounds and 1174 sq.ft., totally measuring 20 grounds and 1596 sq.ft., comprised in T.S.No.32/1, Block No.11, situated at No.125, Shanthi Nagar, Sembiam Village, Purasawalkam-Perambur Taluk, Chennai, considering the representations dated 03.01.2021 and 25.01.2021 for sale of the abovementioned property made under Section 8-A of the Enemy Property (Amendment and Validation) Act, 2017, as per Clauses 7(3) and 9(2) of the Guidelines for the Disposal of the Enemy Property Order, 2018.



2. The issues raised with reference to the subject property is falling under the provisions of Enemy Property (Amendment and Validation) Act, 2017. The said issues are settled by this Court and no more *res integra*. An order dated 26.02.2021 passed by this Court in WP Nos.797 and 3592 of 2021, dealing with the issues raised in the present writ petition was dismissed and the appeal filed by the writ petitioner in WA Nos.1142 and 1146 of 2021 was dismissed by the Hon'ble Division Bench of this Court on 23.07.2021. The respective portions of the order of Hon'ble Division Bench of this Court, read as under:-

“9. The subject property being the enemy property got vested with the second respondent and he is the custodian of the same. It is up to the second respondent in particular and respondents in general to take a policy decision with regard to the manner in which any enemy property is to be managed. Since a policy decision has been taken that the possession of the property should be taken back, the lease was not renewed.

10. The respondents do not have any legal obligation to renew the lease and hence no direction to that effect can be issued. Further due



to Pandemic, all schools are closed and classes are being conducted through Online only. So the contention of the appellant that the sealing of the premises had affected the students cannot be taken as correct. Even if it is so, there is no duty bestowed on the respondents to consider it for renewing the lease. Instead, the Appellant who knew about the impending expiry of lease, ought to have been ready to shift the school somewhere or close the school by limiting the admission.

11. The appellant has claimed that his continued possession beyond the expiry of lease period should be considered as that of the occupation of an -unauthorized occupant? and hence the provisions of Public Premises (Eviction and Unauthorized Occupants) Act, 1958 is applicable to him. By so stating he claimed that he is entitled to remain in possession of the property until he is evicted in accordance with the procedure prescribed under the Public Premises Eviction Act. Such an unlawful bargain made by the appellant cannot be appreciated for the reason that no wrong doer can be allowed to get advantage of his own wrongs. It is trite law that a wrongdoer cannot take advantage of his own



wrong. The latin maxim ?nullus commodum capers potest de injuria sua propria? would mean that no wrongdoer can take advantage of his own wrongs. And neither can be enabled by law to take advantage of his own wrong. (Commodum ex injuria sua non habere debet).

12. The appellant has not come into contact with the subject property by way of encroachment or through any other unlawful means. The appellant has been an authenticated lease holder and only in that capacity he was inducted into the possession of the property. Even according to Rule 14 of the Enemy Property Rules, 2015 (as amended by the Amendment Rules 2018), the unauthorised occupant is defined as under:

“14. Unauthorized occupant: If any occupant of the enemy property repeatedly defaults in paying rent or refuse in pay rent, the District authority in consultation with the Custodian, may take steps to terminate the lease or evict the occupant forthwith in accordance with the Public Premises (Eviction of Unauthorised Occupants) Act 1971(40 of 1971).

Provided that before evicting a person or terminating the lease under this Rule, a notice



shall be issued to the occupant.

Provided further that it may be open to the Custodian to initiate criminal proceedings against such occupation under the relevant laws for the time being in force.“

13. The above Rule is applicable to cases where the lease has not been expired and during its subsistence, the occupant commits default in payment of rents. Anyone commits default in paying the rent can be evicted even before the expiry of the lease period by adopting the procedure contemplated under the Public Premises (Eviction and Unauthorized Occupants) Act, 1958. It does not apply to the present case, where admittedly, the lease is determined by the efflux of three years time, which got expired on 08.09.2020 itself. The act of the appellant that he allowed himself to continue in possession would no doubt make his possession unlawful. That will not entitle him to get a notice meant for the purpose of evicting an unauthorized occupant under the Public Premises (Eviction and Unauthorized Occupants) Act, 1958 and thereby extend his possession.

14. As it is stated already, the respondents



have no statutory obligation to extend the lease whenever the lease period expires and it is upto the policy makers to decide about the better usage of the property. When an authority is not bestowed with the duty to do a certain act, it is right for the learned Single Judge to deny the relief of Writ of Mandamus as prayed by the appellant.

15. Since there was a reluctance on the part of the appellant to handover the possession after expiry of the lease period, the 2nd respondent, who is the custodian of the enemy property, has sealed the property by giving a sealing order. If the appellant is aggrieved that his belongings still lie inside the premises, the respondents may permit him to take them away in their presence.

16. So far as the sale of the property is concerned, as per Clause (2) Rule 9 of the Guidelines of the Disposal of Enemy Property Order, 2018, the Custodian can sell the property to the existing occupier or otherwise, as may be decided by the Central Government and at the rate as determined by the Enemy Property Disposal Committee. A representation dated 09.11.2020 has been made by the appellant



indicating his offer to purchase the property and the same would be considered by the Disposal Committee under Section 8(A) of the E.P.Act and the learned Single Judge has also issued a direction in this regard. However, it is at the discretion of the respondents to accept the offer of the appellant or not. If the respondents incline to take a decision to sell the property to the appellant, the process may be expedited. However, it is made clear that the above suggestion is only an observation and not a direction. In view of the above discussions, we do not find any factual or legal infirmity in the order of the learned single Judge.

17. In the result, the Writ Appeals in W.A. 1146/2021 and 1142/2021 are dismissed and the orders of the learned Single Judge passed in W.P. 797/2021 and 3592/2021 are confirmed. The respondents shall allow the appellant to take away his belongings lying in the subject premises. While doing so, the respondents shall take an inventory of the articles lying inside the premises and get the acknowledgement from the appellant after he has taken them away. No costs. Consequently, connected CMP is closed.”



3. In view of the orders of the Hon'ble Division Bench of this Court, the petitioner is not entitled for the relief as such sought for in the present writ petition. Consequently, the present writ petition stands dismissed. However, there shall be no order as to costs. The connected miscellaneous petitions are also dismissed.

02-02-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

1. The Joint Secretary,
Union of India,
Ministry of Home Affairs,
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