



W.P.No.14120 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14120 of 2020

and

W.M.P.Nos.17528, 21642, 21644 and 21645 of 2020

N.Muralikumaran

... Petitioner

Vs.

1. Union of India,
Rep. by its Joint Secretary,
Ministry of Home Affairs,
Custodian of Enemy Property of 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.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India,
to issue a Writ of Mandamus, directing the respondents to sell the property



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measuring an extent of 12 grounds and 6 sq.ft comprised in T.S.No.31/1 Part, Block No.11, situated at Sembiam Village, Purasawalkam, perambur Taluk, Chennai by considering the representation dated 21.09.2018 of the petitioner, made under Section 8A of the Enemy Property (Amendment and Validation) Act, 2017 (hereinafter referred to as 'the Act' for short).

For Petitioner : Mr. R.Gopinath

For Respondents : Mr. B.Rabu Manohar,
Central Government Standing Counsel

ORDER

The Writ of Mandamus has been instituted to direct the respondents to sell the property measuring an extent of 12 grounds and 6 sq.ft., comprised in T.S.No.32/1 part, Block No.11, situated at Sembiam Village, Purasawalkam, perambur Taluk, Chennai by considering the petitioner's representation dated 21.09.2018 of the petitioner made under Section 8A of the Enemy Property (Amendment and Validation) Act, 2017 (hereinafter referred to as 'the Act' for short).

2. The property situated at T.S.No.30,32 and 32/1 part, Block No.11,



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situated at Sembiam Village, Purasawalkam, Perambur Taluk, Chennai measuring a total extent of 60 acres approx., which were the estate of one Mr. M.Nazir Hussain. The said property was declared as enemy property under the provisions of the Act. The encroachments in the said properties were removed and the custodian of the enemy property for India has leased out the property in favour of the writ petitioner. The petitioner was paying the lease rent. Admittedly, the lease expired on 27.10.2020 and the lease was not extended. Meanwhile the petitioner submitted a representation to sell the enemy property in his favour. Since the application was not considered the petitioner has chosen to file the writ proceedings.

3. The learned counsel for the petitioner states that the representation submitted by the petitioner to sell the enemy property is under consideration and therefore, a direction is to be issued to dispose of the said representation. Since lease period has expired, the petitioner has no locus to continue to be in possession of the subject property. Regarding the said submission to consider the representation, this Court is of the considered opinion that the petitioner necessarily has to establish a right.



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4. On expiry of the Defence of India Act, 1962, the parliament enacted Enemy Property Act, 1968 to provide for reservation and management and continued vesting of the enemy properties. The Act came into force on 10.07.1968. The petitioner was granted lease with effect from 27.11.2008 and the ultimately, the lease had expired on 27.10.2020. Therefore, the lease which is expired would not provide any cause for filing the present Writ Petition seeking a direction to the respondents to sell the property in favour of the writ petitioner. Regarding sale of the enemy property, a decision is to be taken by the competent authority in consonance with the provisions of the Act.

5. High Court cannot exercise the powers of judicial review directing the Government of India to take a policy decision to sell the enemy property vest with the custodian. Such a decision is to be taken by considering various facts and circumstances and by following the procedures as contemplated under the Act and the regulations.



6. The learned counsel for the petitioner drew the attention of this

Court with reference to the guidelines issued for the disposal of the enemy property. Enemy Property Order 2018 clause VIII provides the sale of immovable enemy property. The custodian or any authorized body may sell the property, in one or more lots to secure maximum sale price, with the prior approval of the Central Government by following the methods contemplated under the said Clause VIII. For invoking the said Clause VIII to sell the immovable enemy property, a decision is to be taken and due approval is to be obtained from the Central Government by the authorities.

7. Mere submission of an application seeking sale of the enemy property by the petitioner would provide no cause to file the present Writ Petition. Sale of an enemy property cannot be claimed as an absolute right by the writ petitioner. It is a mere application submitted, which may or may not be considered by the custodian, since the approval from the Central Government is mandatory. Therefore, a mere direction to consider the representation would do no service to the cause of justice. Even for issuing such a direction, the petitioner has to establish his legal right. In the absence



of any such legal right, the direction, if issued would cause prejudice to the Department in dealing with the enemy properties. Further, such a direction would lead to multiplicity of proceedings, which would result in depriving them from dealing with the enemy properties in the manner contemplated under the Act and the rules.

8. Therefore, mere direction would create obligations in the matter of dealing with the enemy property in accordance with the Act. It is for the petitioner to pursue the application only in the manner contemplated under the Act and certainly, not by obtaining an order of direction from the High Court. It is beyond the scope of the judicial review and therefore, such a direction sought for by the petitioner in this Writ Petition cannot be granted.

9. In the present case, admittedly the lease period expired in the year 2020. Therefore, the petitioner is not entitled to continue in the enemy property, since the lease has not been extended. As of now, the petitioner is an unauthorized occupant. Therefore, the authorities are empowered to deal



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with the properties in the manner known to law.

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10. In view of the facts and circumstances, the petitioner has not established any right for the purpose of seeking relief, as such, sought for in the present Writ Petition.

11. Accordingly, this Writ Petition stands dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index : Yes

Speaking order

To

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



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S.M.SUBRAMANIAM, J.

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