



W.P.Nos.20936, 20940, 20953, 21017 and 21193 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.04.2024

DELIVERED ON : 03.06.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.20936, 20940, 20953, 21017 and 21193 of 2021
and

W.M.P.Nos.22208, 22209, 22211, 22212, 22220, 22221, 22268, 22270,
22271, 22472, 22473 of 2021, 34051, 34054, 34057 and 34058 of 2023

W.P.Nos.20936, 20940, 20953, 21017 of 2021:-

- | | |
|------------------|---|
| 1. K.Kavitha | ... Petitioner in W.P.No.20936 of 2021 |
| 2. M.Syed Subair | ... Petitioner in W.P.No.20940 of 2021 |
| 3. R.Kannan | ... Petitioner in W.P.No.20953 of 2021 |
| 4. V.Hemalatha | ... Petitioner in W.P.No.21017 of 2021 |

-Vs-

1. Estate Officer,
Station Headquarters,
Saint George Fort,
Chennai – 600 009.

2. The Station Commander,
Station Head Quarters,
Saint George Fort,
Chennai – 600 009.

... Respondents in **W.P.Nos.20936,**
20940, 20953, 21017 of 2021

Common Prayer in W.P.Nos.20936, 20940, 20953, 21017 of 2021 : Writ
Petitions filed under Article 226 of Constitution of India praying for the
issuance of a Writ of Certiorari, to call for the records of the first respondent in



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proceedings No.4022/ Kings Bk/Q3L and quash the order dated 17.09.2021 passed therein.

W.P.No.21193 of 2021:-

I.Vijay Kumar

... Petitioner

-Vs-

1. The Station Commander-cum-Estate Officer,
Station Headquarters,
Fort St.George,
Chennai – 600 009.

2. The Administrative Commandant,
Station Head Quarters,
Fort St.George,
Chennai – 600 009.

... Respondents

Prayer: Writ Petitions filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records to relating to the order 4022/ Kings BK / Q3L dated 11.08.2021 (Ex-A) issued by the 1st respondent and consequential order bearing Ref No. 4022 / Kings BK / Q3L dated 17.09.2021 (Ex-B) passed by the 1st respondent and to quash the same as being illegal, arbitraray and contrary to the Sec. 4 and 5 (1) and (2) of the PP Act and for a consequential direction to the respondents to permit petitioner to run the shop No. Nil in Building No. XXV, Kings Barrack, Fort St George, Chennai-600 009 and to renew the rental agreement periodically with reasonable conditions.



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In W.P.Nos.20936, 20940, 20953, 21017 of 2021

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For Petitioners : Mr.S.R.Rajagopal, Senior Counsel
for Mr.L.Muralikrishnan

For Respondents : Mr.A.R.Sakthivel
SPC

In W.P.No.21193 of 2021

For Petitioner : Mr.V.Govardhanan
for M/s Row and Reddy

For Respondents : Mr.A.R.Sakthivel
SPC

COMMON ORDER

These writ petitions have been filed challenging the order of eviction dated 17.09.2021.

2. The issue involved in these writ petitions are common and as such, this Court is inclined to pass common order.

3. The petitioner in W.P.No.21193 of 2021 is an Ex-servicemen. He had entered into a rental agreement with the respondents for the shop ad-measuring 300 sq.ft in Building XXV, Kings Barrack, Fort St.George. While being so, the petitioner in W.P.No.21193 of 2021 was issued with a notice dated 11.08.2021 to vacate the shop by 20.08.2021 under the Public Premises (Eviction of



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Unauthorized Occupants) Act, 1971 (herein after called as “PP Act”).

Originally, the father of the petitioner in W.P.No.21193 of 2021 was allotted with an open space ad-measuring 200 sq.ft, on 25.07.1993 for running Xerox Shop, PCO and other allied services and he had entered into a license deed with the respondents, on 01.09.1993. Thereafter, he died on 07.04.1994. Therefore, the mother of the petitioner in W.P.No.21193 of 2021 submitted an application for allotting the shop in her favour and the said request was considered and she was allotted with the shop by an allotment order dated 19.02.1995. However, after three years, she was directed to vacate the shop, on the ground that the building was in a dilapidated condition. Therefore, the mother of the petitioner in W.P.No.21193 of 2021 filed a suit in O.S.No.4609 of 1998 before the City Civil Court, Chennai for interim injunction. The interim application for interim injunction was allowed and aggrieved by the same, the respondents filed an appeal and the same was allowed and the mother of the petitioner in W.P.No.21193 of 2021 was evicted from the premises.

4. Aggrieved by the same, the mother of the petitioner in W.P.No.21193 of 2021 preferred a Civil Revision Petition before this Court and the same was allowed and once again, she was directed to be put in possession of the said shop premises. Once again, she was served with a notice to vacate the premises



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on the very same ground. However, other shops are very much running and they were not given any notice for eviction on the ground that the building was in a dilapidated condition. However, the respondents did not pursue with the said notice thereafter. Once again, on 07.06.2011, the mother of the petitioner in W.P.No.21193 of 2021 was issued with a notice under the PP Act, on the ground that the space was required for the troops of the Indian Army. The said notice was challenged before this Court by way of writ petition and finally, the writ petition was disposed of with a direction to approach the competent legal forum. Therefore, the eviction notice was challenged by way of an appeal under the PP Act and in spite of the interim order granted in favour of the mother of the petitioner in W.P.No.21193 of 2021, she was evicted from the said shop and the respondents sealed the shop.

5. Subsequently, the said appeal was withdrawn, on condition that she will be allotted with the same shop once again. Thereafter, the shop was allotted in favour of the petitioner in W.P.No.21193 of 2021. On 11.01.2020, a rental agreement was also entered between them. Once again, the petitioner in W.P.No.21193 of 2021 was directed to vacate the premises and the petitioner was served with a notice under the PP Act. Thereafter, an order has been passed by the respondents and directed to petitioner in W.P.No.21193 of 2021 to



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vacate the premises.

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6. Insofar as other writ petitions in W.P.Nos.20936, 20940, 20953, 21017 of 2021 are concerned, the petitioners' relations were granted license for their respective shops to run fast food and xerox shop in Building Nos.XXXIII/3, XXXIII/5, Fort Inside, Fort St.George, Chennai and Building No.XXV (Part), Kings Barrack, Fort St.George, Chennai owned by the Indian Army. The petitioners were issued with a notice dated 27.05.2011 under Section 4 of the PP Act. The petitioners challenged the show cause notice by way of writ petitions and finally, the writ petitions were disposed with liberty to approach the appellate Court. The petitioners preferred appeals as against the show cause notice and the same were also dismissed. Aggrieved by the same, they preferred Civil Revision Petitions and the same were allowed by this Court and directed the first respondent to conduct a fresh enquiry. Therefore, the petitioners made request to change the license in their names respectively. There were arrears and the petitioners were directed to pay arrears of rent as per the enhanced rate. Thereafter, a new lease agreement were entered between the petitioners and the respondents, till March 2020. Thereafter, the lease deeds were not renewed or extended. While being so, the petitioners were issued with a notice, calling upon the petitioners to vacate the premises, on the ground that



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as per direction by Headquarters Southern Command, the petitioners' premises are to be allotted to Ex-servicemen and war widows. On receipt of the same, the petitioners had replied with explanations. However, it was not considered and by an order dated 17.09.2021, the petitioners were directed to vacate from their respective premises.

7. Mr.S.R.Rajagopal, learned Senior Counsel appearing for the petitioner in W.P.Nos.20936, 20940, 20953, 21017 of 2021 and Mr.V.Govardhanan, learned counsel appearing for the petitioner in W.P.No.21193 of 2021 submitted that the petitioners were not given opportunity and no notice was served on them as contemplated under Section 4 of PP Act. The petitioner in W.P.No.21193 of 2021 is the son of Ex-servicemen. Therefore, he is eligible to continue as license holder to run his xerox shop. The requirement of the respondents is not feasible one, since the first notice stated that the building itself was in a dilapidated condition. Now, they were issued eviction order, on the ground that the premises is required for allotment in favour of Indian Army. The petitioners are running their respective business for a long period and their business is their livelihood. They have no arrears of rent so far and they are paying the rent regularly to the respondents. Though the period of lease was expired one year before, the respondents permitted the petitioners to occupy



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their respective shops and also received rents from the petitioners for their respective shops. They further submitted that these writ petitions are very much maintainable, since the order impugned in these writ petitions are in violation of principles of natural justice.

8. In support of the said contentions, they relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2023 LiveLaw SC 70** in the case of ***M/s Godrej Sara Lee Ltd., Vs The Excise and Taxation Officer-cum-Assessing Authority and others***, wherein it was held that Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court in a given case, has not pursued the alternative remedy available to him. It cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts have a discretion whether to entertain a writ petition or not.

9. Insofar as non issuance of show cause notice is concerned, the learned



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Senior Counsel appearing for the petitioners in W.P.Nos.20936, 20940, 20953, 21017 of 2021 relied upon the Judgment reported in **2008 3 SCC 279** in the case of *New India Assurance Company Ltd Vs Nusli Neville Wadia and another*, in which the Hon'ble Supreme Court of India held that the Section 5 of the Act, on a plain reading, would place the entire onus upon a notice. It, in no uncertain terms, states that once a notice under Section 4 is issued by the Estate Officer on formation of his opinion as envisaged therein it is for the noticee not only to show cause in respect thereof but also adduce evidence and make oral submissions in support of his case. Therefore, they must be given opportunity of hearing.

10. A perusal of the counter filed by the respondents and the submissions made by the learned counsel for the respondents revealed that the petitioners were served with notices. However, by the reply, they refused to vacate the premises. Subsequently, an order dated 17.09.2021 was passed under Sections 5(1) and (2) of the PP Act, thereby ordered the petitioners to vacate the premises, within a period of 15 days. As against the said order, there is an appeal remedy under the statute viz., Section 9 of the PP Act. Therefore, the petitioners ought to have filed appeal as against the order of eviction as



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contemplated under Section 9 of the PP Act.

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11. On the request made by the petitioner in W.P.No.21193 of 2021, the shop was allotted in favour of him, on 10.01.2020 for the purpose of running STD/PCO, Xerox and typewriting business and agreement was also entered between the petitioner in W.P.No.21193 of 2021 and the respondents for specific period, till 31.01.2021. The petitioner in W.P.No.21193 of 2021 signed the agreement as if he is an Ex-servicemen. However, his father is an Ex-servicemen and subsequently, his mother was allotted with the said shop. At present, the petitioner in W.P.No.21193 of 2021 was allotted with the said shop.

12. Though other reasons were stated in the earlier notices, at present, there is an Office Memorandum dated 16.06.2021 and per the minutes of the meeting, the building is not being used by the Army and has started to deteriorate. The ceilings have started collapsing and deterioration of wooden beams have set in; lack of maintenance, growth of trees and natural causes are leading this building towards eventual collapse. Therefore, if it is not conserved immediately, it will collapse soon like other heritage buildings in the Fort St. George, Chennai. Accordingly, it was suggested that the building may be



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handed over to ASI for conservation. It was further ordered that the said building is not fit for occupation and recommended for demolition by Structural Audit Board. Therefore, the petitioners were served with notices and thereafter, passed an order to vacate their respective shops and to handover before any untoward incident occurs.

13. As stated supra, all the petitioners were served with notices long back namely, in the year 2011 and they had challenged the said notices by way of writ petitions. After direction issued by this Court, the petitioners approached the District Court by way of appeal under Section 9 of the PP Act and all the notices were set aside. Thereafter, the request made by the petitioners were considered and in fact, lease agreement were executed in their favour for their respective shops. Now, due to dilapidated condition, they were served with notices and passed an order to vacate the premises for demolition of entire building. Therefore, all the petitioners were sent notices and they were given enough opportunity. That apart, they know about the notices very well, even from the year 2011. Somewhat they managed to prolong the issue till today. In fact, they were in huge arrears. Only after the payment of entire amount, they were given shops once again that too for limited period. Therefore, it cannot be said that they were not given an opportunity of hearing as contemplated under



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Section 5 of the PP Act.

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14. In view of the above, the Judgments cited by the learned counsel for the petitioners are not helpful to the case on hand. Hence, this Court finds no infirmity or illegality in the order passed by the first respondent in proceedings No.4022/Kings Bk/Q3L dated 11.08.2021 and 17.09.2021 and these writ petitions are devoid of merits and are liable to be dismissed.

15. Accordingly, these writ petitions are dismissed. However there is an order of *status quo* granted for a period of two weeks. The petitioner can approach the authority concerned to work out their appeal remedy. It is made clear that after a period of two weeks, the respondents are at liberty to take appropriate action as against the petitioners as per the proceedings dated 11.08.2021 and 17.09.2021. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

03.06.2024

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

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1. Estate Officer,
Station Headquarters,
Saint George Fort,
Chennai – 600 009.
2. The Station Commander-cum-Estate Officer,
Station Headquarters,
Fort St.George,
Chennai – 600 009.
3. The Administrative Commandant,
Station Head Quarters,
Fort St.George,
Chennai – 600 009.
4. The Station Commander,
Station Head Quarters,
Saint George Fort,
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G.K.ILANTHIRAIYAN. J.

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Pre-Delivery Order made in

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