



A.No.4809 of 2024
and
C.S.DR.No.124968 of 2024

Judgment reserved on 24.09.2024	Judgment pronounced on 26.09.2024
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RMT.TEEKAA RAMAN, J.

This application is filed by the petitioner/plaintiff seeking leave of this Court to institute the present suit without serving a pre-suit notice upon the respondents 1 & 2 / defendants 1 & 2, as required under Section 80 (1) of CPC.

2. The suit was filed on 18.09.2024, first hearing of this application was on 19.09.2024. The suit has been filed challenging the order of determination of the lease in favour of the plaintiff. Pending suit, they filed the above application.

3. Heard Mr.P.H.Aravind Pandian, learned Senior Counsel for the petitioner/plaintiff and he has stated that an urgency is to be considered according to him, since the last date for handing over possession of the property falls on 24.09.2024 and hence, this petition to dispense with notice under Section 80 (2) of C.P.C., may be ordered.



4. Heard Mr.P.Wilson, learned Senior Counsel appearing for the first defendant/The Principal Secretary to Government, Revenue and Disaster Management Department, Fort St.George, Chennai.

5(a). According to Mr.P.Wilson, learned Senior Counsel, there is no urgency and possession has already been taken. Based upon the instructions given by the first defendant in the suit, he has made it clear that possession was already taken by the Government on 09.09.2024 itself.

(b) However, I find that by an order dated 09.09.2024, made in W.A.Nos.890, 897 & 898 of 2023, the observation made by the Hon'ble Division Bench at Paragraph Nos.5 & 6., is as follows:

5. Learned Advocate General appearing on behalf of the respondents, on instructions, submitted that G.O.343 is only for the purpose of communicating the decision to terminate the lease and it need not be read that they have also directed resumption of land by taking possession in the said Government Order.

6. Learned Advocate General also submitted that the Government will pass separate proceedings to terminate the lease and will thereafter, initiate proceedings to take possession of the land in the manner known to law.



6. On 23.09.2024, when the case was posted and taken up for hearing, Mr.J.Ravindran, learned Additional Advocate General made a representation that, on instructions from the State, he would state that the STATE is standing by the submissions made by the learned Advocate General before the Division Bench on 09.09.2024 and sought pass-over since learned Senior Counsel appearing for the 1st defendant is already held up before the other Court. Though Mr.A.L.Somayaji, learned Senior Counsel appearing for the petitioner/plaintiff asked for recording of the said submission, the learned Additional Advocate General has sought for pass-over and to make submissions in the afternoon.

7. In the afternoon, when the matter was taken up at around 2.30 p.m., Mr.Dushyant Dave, learned Senior Counsel appeared through video conferencing for the 1st respondent/defendant, Mr.P.Wilson, learned Senior Counsel appeared in physical mode for the 1st respondent/defendant and Mr.J.Ravindran, learned Additional Advocate General would submit that he is representing the 2nd respondent/defendant.



8. As directed by this Court on 19.09.2024, on 23.09.2024 afternoon session, the 1st defendant filed counter affidavit and additional typed set. The salient features of the counter affidavit in connection with the present application to dispense statutory notice are as under.

9(a) At para 29 of the counter affidavit, the first defendant has stated that the applicant has breached conditions (iv) and (iii) of the Lease Agreement dated 08.03.1946. Consequently, the 2nd respondent/District Collector, Chennai, vide letter No.Na.Ka.03/21359/2017 dated 16.04.2018, issued a Show Cause Notice initiating proceedings for the termination of the said lease agreement.

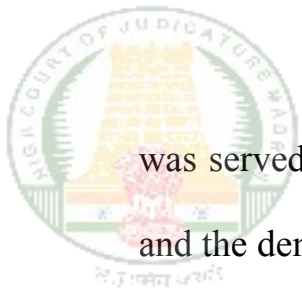
9(b) At para 30 of the said counter affidavit, it is stated that the applicant/plaintiff, vide letter dated 21.05.2018 replied to the Show Cause Notice which was considered, and the 2nd respondent/District Collector, Chennai vide letter No.J6/21359/2017 dated 15.06.2021 submitted a report to the Government with recommendations for appropriate action against the Applicant/Plaintiff for violating the lease conditions.



9(c) Para 33, 34 & 35 of the counter affidavit are to the effect of the earlier Writ Petitions in WP Nos.29644 to 29646 of 2017 and final orders passed on 29.03.2023 and Writ Appeal filed by the Plaintiff Club in W.A.Nos.890, 897 & 898 of 2023 and various interim orders passed therein.

9(d) At Para 39 of the counter affidavit, termination of lease was effected. At Para 37, it is averred that by G.O.Ms.No.343, Revenue and Disaster Management Department, Land Disposal Wing [LD.2(1) Section], dated 06.09.2024 decided to terminate lease agreement and accordingly, lease agreement has been terminated through separate proceedings by the 1st respondent. Thus, apart from G.O 343 dated 06.09.2024, through separate proceedings, the lease agreement was terminated and action for resumption was ordered by the 1st respondent.

9(e) As per Para 38 of the counter affidavit filed before this Court, it is averred by the 1st respondent/defendant that the District Collector vide letter dated J6/21359/2017 dated 09.09.2024 has informed to the 1st respondent/Principal Secretary to the Government, Revenue and Disaster Management Department, that the Government Order for termination of lease



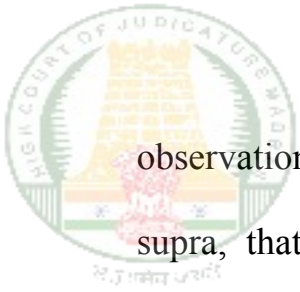
was served on the Secretary, MRC and accordingly the premises was sealed and the demised land was resumed.

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9(f) At Para 39 of the counter, it is stated that the 2nd respondent/District Collector, Chennai, vide Letter Rc.Lr.No. J6/21359/2017 dated 09.09.2024, addressed to the Principal Secretary to the Government, Revenue and Disaster Management Department, regarding the resumption of the land, stated that the demised land has been resumed by the Tahsildar of Guindy and Velachery Taluk on 09.09.2024 at 08:00 a.m. after serving a copy of the G.O on the Secretary of MRC on 09.09.2024 and also raised preliminary objections as to the maintainability of this case.

9(g) At Para 45, the 1st defendant has specifically stated that as per G.O.Ms.343 dated 06.09.2024, the lease agreement with the applicant/plaintiff was terminated on 06.09.2024 and possession was taken on 09.09.2024 at 8.00 p.m. itself and the communication was sent by the 2nd respondent/District Collector, Chennai.

10. This position was disputed by the learned Senior Counsel appearing for the applicant/plaintiff by placing reliance upon the



observations made by the Hon'ble Division Bench of this Court, as extracted supra, that before the Division Bench of this Court, on 09.09.2024, the learned Advocate General, on behalf of the State submitted that the Government will pass separate order of possession and after terminating the lease and the G.O.Ms.No.343 Revenue and Disaster Management Department, Land Disposal Wing [LD.2(1) Section], dated 06.09.2024 is only for the purpose of communicating the decision to terminate the lease and as stated supra. For the sake of continuity and clarity, the same is reproduced hereunder -

5. Learned Advocate General appearing on behalf of the respondents, on instructions, submitted that G.O.343 is only for the purpose of communicating the decision to terminate the lease and it need not be read that they have also directed resumption of land by taking possession in the said Government Order.

11(a) On 19.09.2024, the learned Senior Counsel Mr.P.Wilson appearing for the 1st respondent/defendant would state that no such instruction was given to the Advocate General, in essence, submitted that the 1st defendant / 1st respondent has not given any such instructions to the learned Advocate General.



11(b) Today, a counter affidavit has been filed and salient features of the counter touching upon the present petition filed under Section 80(2) of CPC are extracted supra.

12(a) Learned Senior Counsel Mr.Dushyant Dave appearing through video conferencing draw my attention to various terms of the lease agreement entered between the parties on 07.05.1923 and also draw my attention to clause and condition in the lease that parties to the agreement have agreed upon that in the event of termination of lease, the Government can resume the lease-land and therefore a “legal fiction” was incorporated in the lease agreement itself and by virtue of the same, coupled with provisions of the Transfer of Property Act.

12(b) In short, in the registered lease agreement dated 08.03.1946 there is a proviso clause in the preamble portion, that the lessee has covenant with the lessor, wherein ten conditions are mentioned and also stated that provided always and these presents are upon the express condition that if and whenever there shall be a breach of any of the covenants by the lessee herein contained, it shall be lawful for the lessor at any time thereafter to re-enter



upon any part of the demised premises in the name of the whole and thereupon this demise shall absolutely determine and the lessee shall not in

such event be entitled to any compensation whatsoever.

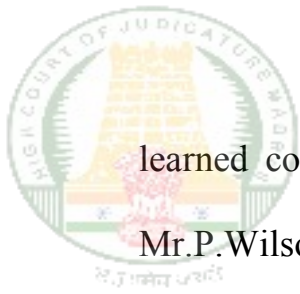
13. The learned Senior Counsel also draw my attention to Provision 108(A) of the Transfer of Property Act and further submitted that the proviso clause in the lease deed, as extracted supra, is a “legal fiction” whereby the lessor is entitled to re-enter upon the premises and coupled with provision of Section 108(a) of the Transfer of Property Act, he has power to enter upon the land and also relied upon Section 108(q) of the Transfer of Property Act.

14. Mr.A.L.Somayaji, learned Senior Counsel appearing for the applicant/plaintiff would draw my attention to the fact that in view of the interim order passed in above stated writ appeals, the possession is with the applicant/plaintiff and possession is now trying to be interfered with by the respondents/defendants in an unlawful manner and hence there is an urgency to hear the suit and prayed for dispensing of the pre-suit notice, as contemplated under Section 80(2) of CPC.



15. Mr.P.Wilson, learned Senior Counsel appearing for the 1st defendant, on instructions would state that by virtue of the counter affidavit filed by the 1st defendant, at Para 39, as extracted supra, would contend that possession has already been taken on 09.09.2024 at 8.00 a.m.

16. Mr.P.Wilson, learned Senior Counsel appearing for the 1st defendant would further state that possession has already been taken and hence there is “no urgency” and also filed typedset of papers and contended that after issuing Show Cause Notice on 16.04.2018, after clarification of the Division Bench of this Court on 04.09.2024, the lease in favour of the plaintiff was terminated vide G.O.Ms.No.343 Revenue and Disaster Management Department, Land Disposal Wing [LD.2(1) Section], dated 06.09.2024 and the termination of the lease agreement was addressed by the Secretary, Revenue to Government and a copy was served to the Secretary MRC on 09.09.2024 and also letter addressed by the Government to the Collector in turn Collector to the Secretary of the plaintiff and placed reliance upon communication sent by the Advocate on record for the plaintiff on 09.09.2024 and further would state that various events that has taken place between 19.09.2024 to 22.09.2024, (which is after this Court heard the



learned counsel for the petitioner/plaintiff and respondents/defendants and Mr.P.Wilson, took adjournment for filing the affidavit as to the urgency touching upon the possession on 09.09.2024) and the counter was filed on 23.09.2024 at 2.30 p.m. in the open court. The salient feature of the counter is already extracted supra.

17. According to Mr.P.Wilson, learned Senior Counsel placed reliance upon the counter affidavit filed by the 1st defendant at Para 39, the possession is taken on 09.09.2024 in support thereof communication from the Secretary to the District Collector, District Collector to Tahsildar in turn Tahsildar to Collector in turn Collector to the Revenue Secretary has been filed in the typedset. The learned Senior Counsel would further contend that the plaint and plaint prayer is not maintainable since the defendant claims that they have taken possession. The plaint prayer should be only for recovery of possession under Section 34 of the Specific Relief Act and not the one for declaration of the termination of the lease and hence prayed for rejection of the plaint and the averment therein.



18. In support of his contention, Mr.P.Wilson, learned Senior Counsel

relied upon the following judgments -

(i) State of Kerala v. Sudhir Kumar Sharma reported in 2013 (10) SCC 178

(ii) State of Andhra Pradesh v. Pioneer Builders reported in 2006 (12) SCC 119

(iii) Union of India v. Natwerlal M. Badiani reported in 2001 250 ITR 641

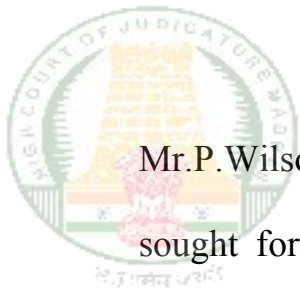
(iv) Veekey Footcare (India) Pvt. Ltd. v. Jawahar reported in 2021 SCC Online Mad 15295

(v) Prem Lala Nahata v. Chandi Prasad Sikaria reported in 2007 (2) SCC 551

(vi) Bajaj Hindustan Sugar & Industries Ltd. v. Balrampur Chini Mills Ltd. reported in 2007 (9) SCC 43

(vii) Beohar Rajendra Sinha v. State of M.P., reported in 1969 (1) SCC 796

19. Mr.J.Ravindran, learned Additional Advocate General appearing for the 2nd respondent/defendant in the morning prayed for pass-over since



Mr.P.Wilson, learned Senior Counsel was engaged in some other court and sought for taking up the matter in the afternoon and “on instruction” he submitted that the State stand by the submission made before the Division Bench on 09.09.2024, however, when the matter was again called and argued in the afternoon, after filing of the counter affidavit by the 1st respondent/defendant, after hearing Mr.Dushyant Dave, learned Senior Counsel through video conferencing and after hearing Mr.P.Wilson, learned Senior Counsel on 23.09.2024 afternoon, for want of time, the case was posted to 24.09.2024 at 12.30 p.m.

20. Mr.Dushyant Dave, learned Senior Counsel has assumed his argument for the day and relied upon the judgment of the Hon'ble Supreme Court in **1982 (3) SCC 262 [Union of India and others v. Mario Cabral E SA]** as to the assurance given by the Government Advocate in the writ proceedings and **1982 (2) SCC 463 [State of Maharashtra v. Ramdas Shrinivas Nayak and another]**. Both these cases are touching upon the undertaking given by the Government Advocate in the court and the consequences thereof. The learned Senior Counsel also relied upon the judgment reported in **2013 (10) SCC 178** regarding Government Grant Act 1895 and **1997 (3) SCC 466 [Hajee S.V.M. Mohamed Jamaludeen Bros &**

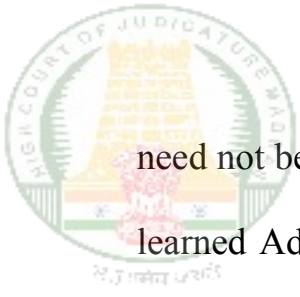


Co. v. Govt. of Tamil Nadu] and 2020 (14) SCC 408 [V.Krishnamurthy and another vs. State of Tamil Nadu and other] and submitted that these cases

fall under Government Grants Act which was repealed now and hence I am not advertng to the same considering the scope of the enquiry that has to be conducted by this Court in determining the case in respect of petition filed under Section 80(2) of CPC.

21. Mr.A.L.Somayaji, learned Senior Counsel appearing for the applicant/plaintiff relied upon a judgment of the Hon'ble Supreme Court in ***State of Maharastra vs. Ramdas Shrinivas Nayak and another*** reported in ***1982 (2) SCC 463 and 1991 (4) SCC 195, Full Bench Judgment in 1994 (1) SCC 184 and another Full Bench Judgment in 2010 (1) Maharashtra LJ 765.***

22. All these judgments are with regard to the undertaking given by the learned Advocate General. Mr.Dushyant Dave, learned Senior Counsel would state that the submissions made by the Advocate General before the Division Bench in batch of Writ Appeal cases are relating to fixation of increase in rent and the challenge thereto and hence what was recorded therein is “incorrect on fact” and “no question of law is involved” and it



need not be gone into and further submitted that the submissions made by the learned Advocate General before the Division Bench is an “error on factual position?”.

23. On 24.09.2023, arguments of Mr.Dushyant Dave, learned Senior Counsel and followed by arguments of Mr.P.Wilson, learned Senior Counsel for the 1st respondent/defendant and argument of Mr.J.Ravindran, learned Additional Advocate General for the 2nd respondent was also heard. The learned Additional Advocate General, at around 4.00 p.m., during the course of the argument would state that the submission made by the learned Advocate General before the Division Bench on 09.09.2024 needs the explanation that it was a “factual error” and the same is not a question of law. On the factual position of this case and trying to explain the submission given by the learned Advocate General before the Division Bench in the above stated W.A.Nos.890, 897 & 898 of 2023.

24. Mr.P.Wilson, learned Senior Counsel would contend that there is no urgency. The plaint averment has to be taken into consideration. The plaint is filed for the relief of declaration to declare the termination of lease by the 1st defendant as null and void and for permanent injunction.



According to the first defendant, they have taken possession and pursuant to the G.O.Ms.No.343 dated 06.09.2024, the lease was terminated and the communication was received by the plaintiff on 09.09.2024 and copy of the served copy alongwith signature of the plaintiff is filed and report of the Tahsildar dated 09.09.2024 addressed to the District Collector and certificate of Tahsildar has also been produced and also stated that the District Collector, Chennai Tmt.Rashmi Siddharth Zagade has sent a communication to the Revenue Secretary stating that possession has been taken over on 09.09.2024 at around 7.30 a.m. and also stated that presence of horses has also been mentioned in the said letter. The learned Senior Counsel also filed copies of the letter of the Principal Secretary to Government dated 09.09.2024 which seems to have been served upon the plaintiff on 09.09.2024 at 10.00 p.m. as per the endorsement therein and another letter dated 09.09.2024 said to have been addressed by the District Collector, Chennai to the Secretary, Madras Race Club, Chennai (hereinafter referred to as Plaintiff Club) which was served upon the plaintiff Club on 10.09.2024 at 10.00 p.m. as could be seen from the endorsement contained therein. Further, there is another communication that the premises was de-sealed and opened to the Secretary on 10.09.2024 at 10.30 p.m. Photographs showing the alleged taking possession has also been filed.



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25(a) The learned Senior Counsel would further contend that on 09.09.2024, the order passed by the Division Bench regarding alleged submission of the learned Advocate General has been misrepresented by the plaintiff and the plaintiff was given only a permissive possession for use of the building and the horses.

25(b) The above submission on factum possession was disputed by Mr.A.L.Somayaji, learned Senior Counsel appearing for the plaintiff club stating that pursuant to the order passed by the Division Bench upon the undertaking, the entire premises was handed over again to the plaintiff club and they have also conducted race on 21.09.2024 and also produced the direct telecast of the Youtube regarding conducting of the race and also certain ceremonies associated therewith and also produced photographs of 21.09.2024 for conducting the horse race.

25(c) Per contra, Mr.P.Wilson, learned Senior Counsel appearing for the 1st defendant/respondent would contend that the permissive possession was misused by the plaintiff club.



26. Now, the point for consideration is whether there is any urgency in dispensing with the statutory notice under Section 80(2) of CPC ?

27. This Court keeps the scope of enquiry of the petition filed under Section 80 (2) of CPC in mind. In this regard, in the judgment of this Court in S.A.No.1249 of 2009 dated 08.09.2020 this Court had relied upon the judgment of the Hon'ble Supreme Court in ***State of Andhra Pradesh v. Pioneer Builders reported in AIR 2007 SC 113*** wherein in paragraph Nos.15 & 16, it is held as follows -

“15. Thus, in conformity therewith, by the Code of Civil Procedure (Amendment Act, 1976) the existing Section 80 was renumbered as Section 80(1) and subsections (2) and (3) were inserted with effect from 1.2.1977. Sub- section (2) carved out an exception to the mandatory rule that no suit can be filed against the Government or a public officer unless two months' notice has been served on such Government or public officer. The provision mitigates the rigours of subsection (1) and empowers the Court to allow a person to institute a suit without serving any notice under subsection (1) in case it finds that the suit is for the purpose of obtaining an urgent and immediate relief against the Government or a public officer. But, the Court cannot grant relief under the sub- section unless a reasonable opportunity is given to the Government or public officer to show cause in respect of the relief



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prayed for. Proviso to the said sub-section enjoins that in case the Court is of the opinion that no urgent and immediate relief should be granted, it shall return the plaint for presentation to it after complying with the requirements of sub-section (1). Sub-section (3), though not relevant for the present case, seeks to bring in the rule of substantial compliance and tends to relax the rigour of sub-section (1).

16. Thus, from a conjoint reading of sub-sections (1) and (2) of Section 80, the legislative intent is clear, namely, service of notice under sub-section (1) is imperative except where urgent and immediate relief is to be granted by the Court, in which case a suit against the Government or a public officer may be instituted, but with the leave of the Court. Leave of the Court is a condition precedent. Such leave must precede the institution of a suit without serving notice. Even though Section 80(2) does not specify how the leave is to be sought for or given yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon. A restriction on the exercise of power by the Court has been imposed, namely, the Court cannot grant relief, whether interim or otherwise, except after giving the Government or a public officer a reasonable opportunity of showing cause in respect of relief prayed for in the suit." (emphasis supplied)



28. Coming to the facts of the present case, the dates and events that are material in this connection are as under -

Dates	Events
08.03.1944	Lease deed entered between the Then Excellency of Madras President with the Plaintiff Club
11.10.1977	Supplementary deed dated 11.10.1977
16.04.2019	Show Cause Notice was issued by the District Collector (Second Defendant herein)
19.04.2023	Writ Appeal Nos.890, 897 & 898 of 2023 wherein status quo was ordered
04.09.2024	Division Bench of this Court made certain clarification
06.09.2024	G.O.Ms.No.343 of termination of lease
09.09.2024	Revenue Secretary (First defendant herein) issued letter to the Plaintiff / Madras Race Club

29(a) Suit was filed on 18.09.2024, case was taken up on 19.09.2024 wherein the 1st defendant/respondent was asked to file a counter affidavit. Between 19.09.2024, [after adjournment at the request of the 1st defendant granted in the above said application] and filing of the counter affidavit by the 1st defendant before this Court on 23.09.2024 @ 2.15 p.m., much water appears to have flown in the river.

29(b) This Court is not expressing any views on the happening of the event after adjournment of the case which was (at the request of the 1st defendant on 19.09.2024) keeping in view the essential ingredients for the



determination of the application filed under Section 80 (2) of CPC.

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30. Mr.P.Wilson, learned Senior Counsel appearing for the 1st defendant relied upon the judgment of the Hon'ble Supreme Court reported in **2013 (10) (SCC 178 [State of Kerala and others v. Sudhir Kumar Sharma and others]** wherein it has categorically held that the Trial Court ought to have heard and decided the application filed under Section 80 (2) of CPC before hearing the application filed under Order VII Rule 11 CPC to reject the plaint. At Para 23, the Hon'ble Supreme Court has categorically observed that the Trial Court shall first of all decide the application filed under Section 80(2) of CPC and only after final disposal of the said application, the applications filed under Order VII Rule 11 CPC to reject the plaint shall be decided.

31(a) This Court, in **Janaki's case**, cited supra, has categorically explained the position after relying upon the judgment of the Hon'ble Supreme Court that leave of the Court is a condition precedent. Even though Section 80(2) does not specify how the leave is to be sought for or given, yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon. As held in **Pioneer Builders's case**, cited supra, keeping



on the law on point in connection with Section 80(2) of CPC, as cited supra, I find that the learned Advocate General appears to have made certain undertaking before the Division Bench of this Court in W.A.Nos.890, 897 & 898 of 2023 on 09.09.2024 which was disowned by the 1st defendant during the hearing on 19.09.2024. However, again on 23.09.2024, the learned Additional Advocate General made submissions before the Open Court that the State stand by the statement made by the learned Advocate General before the Division Bench. However, the 1st defendant State represented by the Revenue Secretary who is represented by Mr.P.Wilson, learned Senior Counsel disowned the statement of the learned Advocate General.

31(b) The flow of events as narrated in Para 25 goes to show that there is an order of status quo as on 19.04.2023 made in W.A.Nos.890, 897 & 898 of 2023. The order of status quo has been clarified on 04.09.2024 and G.O.Ms.No.343 was issued on 06.09.2024 and it was now projected by the 1st defendant/respondent that he has taken possession. Admittedly, both the parties have not produced any other judicial order indicating modification of the order as on 04.09.2024.



32. Mr.Gopal Sankara Narayanan, learned Senior Counsel appearing for the defendants 3 & 4 heard through video conferencing. Objections raised by Mr.J.Ravindran, learned Additional Advocate General and Mr.P.Wilson, learned Senior Counsel for the defendants 1 & 3 is noted and though they have entered as caveator, since the plaint was not numbered and the suit was not taken up, they were not allowed to argue upon the disputed point and whether there is urgency to determine this petition. However, Mr.Gopal Sankara Narayanan, learned Senior Counsel was permitted to make submissions on flow of dates and events alone.

33. Mr.P.Wilson, learned Senior Counsel would state that in view of the specific affidavit filed by the 1st defendant that possession has been taken, there is no urgency. Mr.A.L.Somayaji, learned Senior Counsel would contend that the possession is with them and pursuant to the undertaking given by the learned Advocate General before the Division Bench, it has been clarified in the order on 09.09.2024, as extracted supra. Since it is a petition for dispense with, the statutory notice and also the limitation imposed upon this Court in determining the application filed under Section 80(2) CPC of this nature is stated by the Hon'ble Supreme Court in ***Pioneer Builders' case*** and ***Sudhir Kumar Sharma's case*** cited supra. This Court



is not venturing into rendering its finding as to the possession.

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34(a) Mr.Dushyant Dave, learned Senior Counsel would state that the statement made by the learned Advocate General on 09.09.2024 before the Division Bench is a mistake happened and the Court shall not pounder over it and this is a mistake of fact and misreading of the G.O.

34(b) The learned Senior Counsel has brought to my notice that the applicant/plaintiff also filed SLP in respect of land in Ooty before the Hon'ble Supreme Court and the same was dismissed and filed a copy of the said order. On perusal of the order, I find that therein the lease period is already over and for renewal of the lease, writ petition has been filed in W.P.No.500 of 2006 which was disposed by this Court on 21.06.2024 wherein the Division Bench of this Court has categorically found that the lease agreement has expired and the petitioner is not entitled for any relief. And further held that renewal of lease cannot be claimed as a right. However, in the instant case on facts, the lease period is not over and hence the citation referred to by the learned Senior Counsel does not apply to the facts and circumstances of the present case.

35(a) Per contra, Mr.A.L.Somayaji, learned Senior Counsel for the



applicant / plaintiff would state that as they mentioned the Division Bench about the “status quo” order passed by the earlier Division Bench regarding the “status quo” and the Government officials are trying to take unlawful possession, at this juncture, the above order came to be passed. Now, the statement of the learned Advocate General for the State made before the Division Bench of this Court, as extracted supra, has been disowned by the 1st defendant through Mr.P.Wilson, learned Senior counsel and hence I am not expressing any opinion on the point of possession keeping in mind that whether there is any urgency to number the plaint and to hear the applicant/plaintiff to hear his grievance.

35(b) One set of document is filed by the applicant/plaintiff and another set of document is filed by the official defendant. Both of them are illuminating that they are in possession of the property. There is disputed fact.

36. This Court is not in a position to appraise of what had happened before the Division Bench on 09.09.2024. Both the parties claim that they are in possession and hence the factum of possession has to be determined only after numbering of the suit. On peculiar facts and circumstances of this



case, the factum of possession has to be determined only after numbering of the suit.

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37(a) Considering the scope under Section 80(2) of CPC, this court cannot venture into the averments made in the plaint since the plaint itself is not yet numbered. The Hon'ble Supreme Court in ***Sudhir Kumar Sharm's case*** has held that before rejection of the plaint averment, the court has to decide the application filed under Section 80(2) of CPC and only thereafter the rejection of the plaint can be taken up.

37(b) In view of the law laid down by the Hon'ble Supreme Court in ***Sudhir Kumar Sharm's case*** and ***Pioneer Builders' case***, this Court imposes self-restriction upon itself in expressing the opinion as to the “status of the possession” and alleged possession vis-a-vis and alleged take over, in this application, except to say that the statement made by the learned Advocate General as recorded and subsequently the said statement of the learned Advocate General disowned by the 1st defendant and the submissions made by the learned Additional Advocate General on the afternoon of 23.09.2024 and in the afternoon of 24.09.2024 are all kept in mind.



38. This Court is not expressing any views or opinion about learned Advocate General's statement made before the Division Bench on 09.09.2024 for the present. In view of the flow of the events and nature and character of the lease between the parties, I find that there is a clear urgency made out by the applicant/plaintiff to number the plaint.

39. Considering the scope of the enquiry under Section 80(2) of CPC, I am not venturing into the statement, above dispute between the State and its Revenue Secretary though they are contradictory with each other. I am confining myself to the scope of the enquiry as explained by the Hon'ble Supreme Court in the above cited decision.

40(a) This Court is conscious of the fact that proceedings in a civil suit and proceedings in a writ petition are marginally different as they are governed by CPC and writ jurisdiction rules. Though this Court is Original jurisdiction, writ petitions are under the special original jurisdiction. They are governed by different set of rules.



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40(b) This Court is also conscious of the fact that the scope of the enquiry in pre-suit proceedings is entirely different from post-plaint numbering proceedings and both these principles are kept in mind.

41. The short point that arises for consideration in the present application in view of the various submissions made by the respective Senior Counsels appearing for the respective sides and various citations enumerated therein is whether “there is an urgency to dispense with notice” under Section 80 (2) of the official defendant or not.

42. The stand of the respective parties and the stand of the Government as a State and the stand of the first defendant as Revenue Secretary are as extracted supra are considered. Hence, on the point of determination that arises for the present application keeping in view the various submissions made by the respective Senior Counsels appearing for the respective sides and various citations enumerated therein, I find that there is an “urgency to hear” the applicant as a plaintiff after numbering the suit by dispensing with the notice contemplated under Section 80(2) of CPC. In



such view of the matter, I am inclined to allow this application. Accordingly, this application is allowed.

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43. Registry is directed to number the suit, if it is otherwise in order.

26.09.2024

rg

Note: Issue order copy by 26.09.2024



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RMT.TEEKAA RAMAN, J.

rgr

A.No.4809 of 2024 and
C.S.DR.No.124968 of 2024

26.09.2024