



A.No.5131 of 2024
in C.S.DR No.132555 of 2024

Judgment reserved on 18.10.2024	Judgment pronounced on 19.10.2024
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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 / defendants, as required under Section 80 (1) of CPC.

2. The suit was filed on 30.09.2024, first hearing of this application was on 03.10.2024. The proposed suit has been filed seeking for a declaration that the plaintiff and its members have a right to the use and enjoy of the suit property, including the right to continue golfing activities, as has been peacefully exercised for the past 147 years; a declaration that the defendant's act of locking Gate No.5 on 09.09.2024, thereby preventing access to the members of the plaintiff club as illegal; a permanent injunction restraining the defendants from interfering with or obstructing the plaintiff and its members from enjoying the suit property for Golfing activity; mandatory injunction directing the defendants to unlock Gate No.5 and permit access to the suit property as it was earlier to the closing and sealing of the Gates of the plaintiff's Golf Club. Pending suit, they filed the present



application.

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3. Mr.P.R.Raman, learned Senior Counsel for the applicant/plaintiff and the proposed applicant/plaintiff would contend that there is an urgency to be considered since the official respondents / defendants are changing the nature and character of the land under the guise of making pond and hence seeks for allowing this application by dispensing with the notice under Section 80 (2) of C.P.C.

4. Mr.J.Ravindran, learned Additional Advocate General appearing for the 1st respondent / 1st defendant filed counter and made submissions that the applicant herein has no *locus standi* before this Court to the present petition and there is no privity of contract between the parties and hence he cannot knock the doors of this Court under Section 80(2) of CPC and also contended that the lease of land given to the Madras Race Club (in short MRC) has been determined and they have moved the application before this Court and after contest, Application No.4809 of 2024 was allowed on 26.09.2024, however, the Madras Race Club, the original lessee has not taken any steps to number the suit since there was no urgency. Such being the case, the applicant/plaintiff is still at lower position and he cannot claim



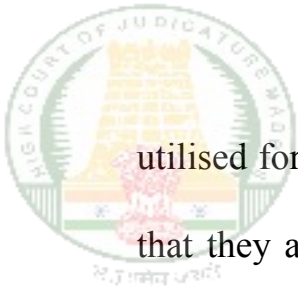
the plea of urgency to dispense with Section 80(2) of CPC.

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5. According to Mr.J.Ravindran, learned Additional Advocate General, the applicant/plaintiff herein has no better right than MRC and prayer for dismissal of the application.

6. Heard the submissions of the learned Senior Counsel for the applicant and learned Additional Advocate General for the 1st respondent and the affidavit and counter affidavit filed by the 1st respondent and typedset of papers filed by both the parties.

7. The applicant / plaintiff claims that it was established in the year 1889 that Registered Office at Island Grounds, Anna Salai and subsequently registered in the Tamil Nadu Society Registration Act and there is no commercial interest in functioning of the applicant and it is not a profit making organisation and also stated various history on the Madras Golf Club and Madras Gymkhana Club which was said to have been amalgamated in the year 1887. As per the affidavit filed by the applicant, the relationship between the applicant, the relationship between the applicant and the MRC has been cordial and in the common endeavour, the schedule land has been



utilised for their activities namely Horse Race and Golfing. It is further case that they are in possession and enjoyment of the same as a golf course for using it for playing golf for over 147 years and the 1st respondent cannot purport to dislodge or dispossess the applicant, in violation of the rights established.

8(a) In the affidavit, it is further stated that the applicant has obtained FL2 licence from the Tamil Nadu Excise Department. It is further averred in para 13 of the affidavit that the applicant has established the following rights by efflux of time over hundred years, viz.,

- (a) To maintain the golf course with 18 holes for the benefit of its members and to non-member golfers on payment of the green fee.
- (b) In furtherance of the above, to assure the golfers to gain entry.
- (c) To maintain a golf club house with club facilities such as bar and restaurant.
- (d) To the unfettered use of the lawn near the golf club house.
- (e) To uninterrupted supply of electricity, water for drinking as well as for irrigating.
- (f) To conduct various golf tournaments and training sessions.

and applicant claims that they established golf course in MRC continues to



be in possession and enjoyment of the same as the golf course for using it for playing golf.

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8(b) The main contention of the applicant, both in the affidavit and proposed plaint are that the applicant / plaintiff and the Madras Rac Club have co-existed on the suit property for over 147 years carrying out their respective activities and maintenance works. They have also co-ordinated on need basis to jointly maintain the suit property for their respective use. The facts remains that golf course is in possession of the applicant/plaintiff and being used by the member of the applicant/plaintiff for playing golf so far.

8(c) It is averred in the affidavit that the lease in favour of the MRC (who is not added as a party so far, in the plaint) was terminated by the 1st respondent/1st defendant vide G.O.Ms.No.343 dated 06.09.2024 and it is further averred that no notice or opportunity was granted prior to the sealing of Gate No.4 and alleged that there is violation of principles of natural justice.



8(d) It is specifically averred in the affidavit that they are not on sub-letting of premises by the Madras Race Club to the applicant / plaintiff's club. The applicant/plaintiff's club and Madras Race Club were co-existing on the same premises carrying out their respective activities for over 150 years now. The applicant has also obtained all the required licenses from the Government including the Fire License from the Tamilnadu Fire Department and catering contractor's license from the Tamilnadu Excise Department and have paid all the statutory fees and maintenance charges thereafter, in good faith.

9. I also find a reference by the representation given by Japanese Golf Association, Chennai to the Chief Secretary of Tamilnadu, vide an email dated 23.09.2024 and personal enquiry by the Revenue Divisional Officer on 27.09.2024 for the hearing on the subject on 07.10.2024.

10. This suit is filed restraining the official defendants from altering the nature of the suit property, pending disposal of the suit and not to alter the nature of the suit property and hence pleaded urgency.



11. The reliefs in the suit are not to alter the nature of the suit property, not to interfere with the applicant's right to use, occupy and enjoy the suit property and interim injunction against the defendant from preventing access to the applicant and its member to the golf course through Gate No.5.

12. On perusal of the Judges Summon, I find “A” schedule property is measured about 160.86 acres, subject matter of the lease between the official defendants (Government) with the lessee MRC, “B” schedule property is shown as total extent of 75 acres approximately. Without any survey number or clear description of the schedule B of the property. The schedule “B” property in the plaint and in this application are without any clear description or any boundaries or any survey number.

13. After perusing the affidavit and counter affidavit, I find that the alleged relationship between the applicant/plaintiff with that of the lessee namely the MRC as averred by the plaintiff is that the plaintiff club and Madras Race Club were co-existing on the same premises carrying out their respective activities.



14(a) Admittedly, the applicant/plaintiff is not a lessee. The admitted factual matrix of the case are as under -

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14(b) “A” schedule property is Government land. As per the lease agreement, it was given to the Madras Race Club namely MRC. The lease agreement was determined by the Government on 06.09.2024 as admitted by both the parties in the respective pleadings. The *situs of lis* namely schedule - B of the property does not give any clear identification in respect of which the relief of the injunction is sought for. It is bereft of details as discussed supra. The *situs of lis* being the Government land and the lessee admittedly being the MRC and the said lease has been terminated and the plea of the applicant/plaintiff that they co-existed with the MRC does not confer any legal right or *locus standi*. Consequently, this Court is unable to find out any jural relationship between the applicant/plaintiff with the respondents/defendants viz. Government Department.

14(c) The applicant/plaintiff, at Para 20 of the affidavit has stated that there was no sub-letting of premises by the MRC to the applicant/plaintiff's Club. Consequently, stand of the applicant is that they are not sub-tenant under the MRC. At the risk of repetition however for the sake of clarity, it is



to be stated that lease in favour of MRC has been determined by the first respondent Government on 06.09.2024 vide G.O.Ms.No.343. In view of the stand taken by the applicant/plaintiff at Para 20 of the affidavit, I find that whether the applicant/plaintiff has *locus standi* to challenge and file the present suit.

14(d) The 'right to sue' and the 'cause of action' in favour of the applicant/plaintiff is under cloud. In the absence of any jural relationship between the applicant and the respondents, the right to sue and cause of action is under cloud. The applicant has no *locus standi*, in view of the stand taken by the applicant at para 20 of the affidavit, as stated supra.

15. Though the learned Additional Advocate General has raised a point that the suit itself is bad for non-joinder of necessary party namely MRC (original lessee), the same is not discussed considering the scope of the application.

16. Another point raised by the learned Additional Advocate General is to the pendency of the writ petition in W.P.No.30294 of 2024 before this Court and hence this Court is not expressing any opinion in this application.



17(a) As rightly contended by the learned Additional Advocate General, when the original lessee in whose favour the lease was granted and subsequently terminated on 06.09.2024 is the MRC and they themselves have has filed A.No.4809 of 2024 in C.S DR.No.124968 of 2024 seeking leave of this Court to institute the suit without serving a pre-suit notice under Section 80 (2) of CPC and the same was allowed on 26.09.2024. Thereafter, the suit was not numbered. It is not for this court to express any opinion upon the applicant/plaintiff therein however, nearly one month have passed after passing of the order by this Court in the above said application in A.No.4809 of 2024 in C.S DR.No.124968 of 2024. Hence, the alleged urgency projected by the applicant / plaintiff cannot be countenanced.

17(b) Thus, I find that in the absence of jural relationship between the applicant and the respondent in one hand, so also no jural relationship between the applicant and MRC. The right to sue and the *locus standi* of the applicant being under the cloud of darkness and the original lessee has already been permitted to institute the suit by dispensing with the pre-suit notice under Section 80 (2) of CPC, he has not even taken any steps to number the suit inspite of passing of orders by this Court, nearly a month



ago, furthermore the applicant has no better right than MRC, I find that the ratio laid down by the Hon'ble Supreme Court in ***State of Andhra Pradesh***

v. Pioneer Builders reported in 2006 (12) SCC 119 wherein it is held that

“the purpose is to give the Government sufficient notice of the suit, which is proposed to be filed against it so that it may reconsider the decision and decide for itself whether the claim made could be accepted or not. It is further held that the service of notice 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 in absence of notice, but with the leave of the court. Such a “leave is a condition precedent” and must precede the institution of a suit without serving notice”.

17(c) In fine, from the averment made in the affidavit as well as in the proposed plaint, it has not demonstrated about the existence of any jural relationship between the applicant and the lessee or with the lessor namely the State. In other words, the stand of the applicant as stated in the affidavit is that they co-existed with the MRC namely the original lessee in the suit property.



17(d) This court is unable to find any jural relationship between the present applicant with the MRC (original lessee) and hence in the absence of any jural relationship being demonstrated either with the MRC (original lessee) or with the State (lessor), this Court finds that they have no *locus standi* to file the present application under Section 80(2) of CPC. Viewing from any angle, there is no privity between the applicant and the respondent. In the above stated circumstances, this Court is of the considered view that the respondent has to be put on notice as to the grievance of the applicant by way of notice under Section 80 (1) of CPC as observed in *Pioneer's case*, cited supra.

18. In view of the discussion regarding the alleged litigative status of the applicant and the necessity for issuance of the notice under Section 80 (1) of CP appears to be mandatory on the facts and circumstances of the case. Hence, I am not inclined to allow the application for the reasons stated supra.

19. It is hereby made clear that it is open to the applicant/proposed plaintiff to issue notice as required under Section 80 (1) of CPC to the



respondents/defendants and after expiry of the time limit stipulated in the CPC or after reply given by the respondents, it is open to them to agitate the matter in the manner known to law.

20. In view of the above, this application is dismissed. Registry is directed to return the plaint to the applicant/plaintiff.

19.10.2024

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RMT.TEEKAA RAMAN, J.

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order in
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in C.S.DR No.132555 of 2024

19.10.2024