



WEB COPY



Crp No.4123 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 25.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRP No.4123 of 2022 and
CMP No.21449 of 2022

Ms.R.Krishnakumari

... Petitioner

Vs.

The Estate Officer and Assistant Commissioner,
Corporation of Chennai, Rippon Building,
Chennai 600 003.

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the impugned judgment dated 13.10.2022 in CMA No.30 of 2018 on the file of the Principal Judge, City Civil Court, Chennai thereby allowing the appeal filed by the revision petitioner.

For Petitioner : Mr.C.T.Mohan, Senior Counsel
for Mr.P.B.Ramanujam

For Respondent : Mr.R.Ramanlan,
Additional Advocate General
Assisted by Ms.K.Aswini Devi
Standing Counsel



Crp No.4123 of 2022

ORDER

WEB COPY

Challenge has been made against the findings of the learned Principal Judge, City Civil Court in CMA No.30 of 2018, dated 13.10.2022, confirming the order of eviction, dated 19.03.2018 passed by the Estate Officer/respondent herein under the Tamil Nadu Public Premises Act.

2. In the order of eviction passed by the Estate Officer, it is interalia contended that originally one Mr. Murali was an occupant and possession of the land in S.No.1272/1, 1275/3 measuring to an extent of 13293 sq.ft., situated at door No.244 and 264, Walltax road, Chennai-3. According to the Estate Officer, the said Murali was an unauthorised occupant of the land and he was in possession without any valid permission. According to them, the land is vested with the Corporation by virtue of the Assignment order issued by the Government, vide G.O.Ms.No.646, Finance, dated 07.04.1876 and the Corporation has leased out the lands for 50 years to various private parties. Since the subject matter of the property to an extent of 13293 sq.ft. was unauthorisedly occupied by the said Murali, the Estate



Crp No.4123 of 2022

WEB COPY

Officer had issued an order of demand on 16.02.2018 and after due enquiry, had issued the eviction order dated 19.03.2018 .

3. The revision petitioner has taken a stand that originally, the ancestors of the petitioner were having title over the property and they were in possession of the property uninterruptedly for very many years and subsequently, the petitioner's brother (M.R.Murali) and the petitioner were also in continuous occupation and possession of the property, as owners, without any interference and objection. According to them, their ancestors, who were in possession of the property as individual right, had constructed a Theatre, after obtaining necessary planning permission from the authorities concerned in the year 1934; and for the property, the Corporation had levied the property tax; and subsequently, it was enhanced and a demand notice was also issued for enhancement of property tax, which was questioned by the predecessors of the revision petitioner.

4. It is contended by the revision petitioner that the Corporation authorities has no right over the property, however, the Estate Officer



Crp No.4123 of 2022

WEB COPY

has passed the impugned eviction order. The said eviction order was challenged before the Appellate Authority/Principal Judge, City Civil Court, Chennai, who confirmed the said eviction order and the same is impugned herein by filing the civil revision petition.

5. Learned Senior Counsel appearing for the revision petitioner mainly would contend that the petitioner never admitted the title of the Corporation at any point of time. He further submitted that, in the earlier round of litigation, a suit in O.S.No.6630/2019 was filed by the Corporation before the IV Additional City Civil Court, Chennai seeking declaration and recovery of possession with regard to the subject matter of the property as against the brother of the petitioner and another. Therefore, when the Corporation itself had filed a suit for declaration and recovery of possession, passing of order of eviction by the Estate Officer cannot be sustained in the eye of law.

6. It is further contended by the learned counsel for the revision petitioner that, in the year 1998 itself, the brother of the petitioner, viz. M.R.Murali had filed O.S.No.1521 of 1998 seeking declaration and



Crp No.4123 of 2022

permanent injunction against the Corporation of Chennai and the same was decreed in favour of him. Though the said decree is an ex parte decree, the same has not been challenged all these years. That apart, when the brother of the petitioner had initiated rent controll proceedings as against the tenants, which was went upto the Supreme Court in Civil Appeal Nos.3429 to 3430 of 1998, the Corporation of Chennai had filed a petition to implead themselves as a party to the appeal before the Supreme Court. The Hon'ble Supreme Court has dismissed the impleading petitions filed by the Corporation as well as one Hemlata Mohan, vide order dated 08.02.2002 and relegated them to establish their title in a competent forum.

7. It is also contended by the learned counsel for the revision petitioner that, despite the appeals were pending before the Supreme Court, during pendency of the appeals itself, the Estate Officer has passed the impugned order on 19.03.2018 under the Tamil Nadu Public Premises Act, which is not sustainable. In support of his contentions, learned counsel has placed a reliance on the judgment of the Apex Court in ***Kaikhosrou (CHICK) Kavasju Framji Vs. Union of India***



Crp No.4123 of 2022

WEB COPY

and another reported in 2019 (2) Supreme Court Cases 705.

8. Mr.Raman Lal, learned Additional Advocate General appearing for the respondent vehemently argued that the Decree passed by the learned III Additional Judge, City Civil Court, Chennai in O.S.No.6630 of 2019, dated 04.11.2019 is not in accordance with Order 20 Rule 4 of CPC and it is only an exparte decree and hence, it will not binding the respondent.

9. It is his further contention that, in the year 1876 itself, the land was vested with the Corporation, as per the assignment order passed by the Government in G.O.Ms.No.646, Financial dated 07.04.1876. According to him, even in the Rent Control proceedings before the Hon'ble Supreme Court, the Apex Court has observed that the land belonging to the Corporation. Only when the third party claimed title over the property, on this context, the Apex Court has dismissed the impleading application filed by the Corporation and relegated both the Corporation as well as the third party to establish their respective claim and title in an independent manner before the



Crp No.4123 of 2022

competent forum.
WEB COPY

10. He also put forth that though the Corporation has filed a suit for declaration of title and recovery of vacant possession from the unlawful encroachers, once the land is vested with the Corporation, the occupation and continuous possession of the property by any person, without any authority, should be evicted only under the Tamil Nadu Public Premises Act, 1975.

11. The categorical stand taken by the learned Additional Advocate General is that, after assignment of the land in favour of the Corporation, the Corporation had leased out the lands to the third parties for 50 years and the appellant herein is an encroacher in the suit premises. According to the respondent, since all the Revenue records are still standing in the name of Corporation; and the impugned order passed by the Estate Officer being confirmed by the appellate authority, it does not warrant any interference by this court.



Crp No.4123 of 2022

WEB COPY

12. To support his contention that the exparte decree is not a decree in the eye of law, learned Additional Advocate General has placed reliance on the order passed by a Division Bench of this Court in W.P.No.21651 of 2019, dated 04.02.2020.

13. Heard the learned Senior Counsel appearing for the revision petitioner and the learned Additional Advocate General appearing for the respondent and I have perused the materials on record.

14. Now, the points for consideration are

i) Whether the impugned order passed by the Estate Officer, under Tamil Nadu Public Premises Act is valid in law, particularly when the title of the land itself is in dispute.

15. The Estate officer had issued a show cause notice for evicting the revision petitioner's brother, namely M.R.Murali (deceased) on the ground that the land in question, viz to an extent of 13293 sq.ft. which is under the occupation of the said Murali is vested with the Corporation, vide G.O.Ms.No.646, Finance dated 07.04.1876



Crp No.4123 of 2022

WEB COPY

and it was unauthorisedly occupied by him; and in furtherance to the said notice, the Estate Officer had issued eviction order on 19.03.2018 and also claimed damages to the tune of Rs.58,06,160/-.

16. Whereas, the said M.R.Murali contested that his forefathers were in possession of the property as individual right and they constructed a Dramatical Theatre, after obtaining planning permission from the authorities concerned. It is also contended by him that, for the said Theatre, property tax was paid and subsequently as against the demand for enhanced property tax by the authorities concerned, challenge was made. Without being considering the above facts, the Corporation Authority has passed the eviction order and the same is confirmed by the appellate authority.

17. It is relevant to note that the Corporation Authorities have claimed ownership of the property, as per the assignment order passed by the Government in G.O.Ms.No.646, Finance dated 1876. Therefore, to comply the Tamil Nadu Public Premises Act, the following conditions are mandatory.



WEB COPY



Crp No.4123 of 2022

- i) Premises should have been belonged to the Corporation or vested with the corporation and
- ii) To claim that any person is in unauthorised occupation, the person should be in occupation of the premises, without any permission from the legal authority.

Therefore, to comply the said provisions of the Tamil Nadu Public Premises Act, it must be established that the land is actually vested with the Corporation.

18. No doubt, as per the said G.O.Ms.No.646, dated 07.04.1976, the land was assigned in favour of the Corporation. However, the fact as to whether the person, who is in occupation is an unauthorised occupant or not, has to be established, particularly when the case of the revision petitioner that her brother and their ancestors were in occupation of the property on their own; constructed the building after obtaining permission from the authorities concerned; paid water tax and property tax and also enhanced property tax to the authorities concerned; and at one point of time, the enhancement of property tax was challenged by the appellant's predecessor. These aspects would be



Crp No.4123 of 2022

WEB COPY

seen from the written statement filed by the brother of the revision petitioner M.R.Murali (deceased), who is the first defendant in O.S.No.6630 of 2019.

19. Yet another fact also cannot be ignored altogether that the Rent Control proceedings was initiated against the tenants for eviction by the said M.R.Murali under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and eviction was ordered. Some of the tenants had challenged the said eviction order before the **Hon'ble Supreme Court in Civil Appeal Nos.3429 to 3432 of 1998 [J.J.Lal Pvt. Ltd. and others vs. M.R.Murali and another reported in (2002) 3 Supreme Court cases 98 : 2002 SCC online SC 202]**. The contentions raised by the tenants in those proceedings were that they disputed title of the landlord; the Corporation demanded vacant possession of the property from the them; and based on that, they also disputed the landlord-tenant relationship between them and the landlord. The Apex court has rejected the above stand of 'denial of title' of the landlord by the tenants.



Crp No.4123 of 2022

WEB COPY

20. It is to be noted that in the said proceedings, the Corporation/ respondent herein had filed an application to implead them in the said proceedings. Similarly one Hemlata Mohan also filed impleading application claiming independent title on the basis of the settlement deed dated 30.01.1935 executed by her grand father. Both the applications were dismissed by the Hon'ble Supreme Court, holding as follows.

28. Both the sets of applications raise such controversies as are beyond the scope of these proceedings. This is a simple landlord-tenant suit. The relationship of the Municipal Corporation with the respondents and their mutual rights and obligations are not germane to the present proceedings. Similarly, the question of title between Hemlata Mohan and the respondents cannot be decided in these proceedings. The impleadment of any of the two applicants would change the complexion of litigation and raise such controversies as are beyond the scope of this litigation. The presence of either of the applicants is neither necessary for the decision of the question involved in these proceedings nor is their presence necessary to enable the Court effectually and completely to adjudicate upon and settle the questions involved in these proceedings. They are neither necessary nor proper parties herein. each of the two applicants is free to establish its own claims and title, whatever it may be, in any independent proceedings before a competent forum. The applications for impleadment are dismissed.



Crp No.4123 of 2022

WEB COPY

21. From the above, it is made clear that the parties, including the respondents herein are relegated to establish their right and title over the property in an independent proceedings before the competent forum. Therefore, this court is of the view that the respondent Corporation has to establish their Title only by way of filing a suit before the civil court, however, the Estate Officer, who is not a deciding authority of title, has issued the impugned eviction order.

22. It is also to be noted that, after filing of the appeals before the Hon'ble Supreme Court in C.A.Nos.3429 to 3431 of 1998, the respondent herein had filed a suit in O.S.No.6630 of 2019 seeking declaration of title and recovery of vacant possession and also consequential injunction restraining the defendants thereon (M.R.Murali and Sudhir) from dealing with the property either by mortgage, lease, sale etc. In the said O.S.No.6630 of 2019, the stand of the defendants was that, they are the absolute owners of the property; infact, they disputed the title of the Corporation over the property. Subsequently, the said suit came to be dismissed for default.



Crp No.4123 of 2022

WEB COPY

23. It is worthwhile to note that the said M.R.Murali (now deceased), against whom encroachment proceedings initiated by the Corporation authorities, had filed O.S.No.1521 of 1998 before the XI Assistant Judge, City Civil Court, Chennai seeking declaration and permanent injunction and the said suit was decreed exparte in his favour, vide judgment dated 15.11.2005. Though the said suit was decreed exparte, the Corporation has not challenged the decree all these days.

24. This court, though is in agreement with the contention of the learned Additional Advocate General that the exparte decree was not passed in terms of Order XX Rule 4 of CPC; and the said decree is not a decree in the eye of law, the conduct of the parties cannot be ignored altogether. Even assuming that the said decree passed in O.S.No.1521/1988 is an exparte decree and it cannot be given effect as proper decree and judgment in the eye of law; since there is no discussion, that will not absolve the Corporation from challenging the said decree. They cannot be a mere spectators particularly, when they appeared before the court of law by engaging a counsel. The very



Crp No.4123 of 2022

WEB COPY

conduct of the respondent in not taking any steps to file appeal is also one of the relevant facts, which would go against the Corporation. Already, when the title of the property is in dispute and cloud has been created over the subject matter of the property, the Estate Officer has decided the issue in summary nature and ordered for eviction. In my view, the impugned eviction order passed by the Estate Officer is not sustainable, particularly, when the Corporation authorities had filed a suit for declaration of title and recovery of possession of the property.

25. In the case of ***Kaikhosrou (CHICK) Kavasji Framji Vs. Union of India and another reported in (2019) 20 Supreme Court Cases 705***, arising out of the dispute under Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the Apex Court held that " if the occupant of the premises raised a bonafide dispute regarding his right to remain in occupation therein, the summary remedy under the Public Premises Act cannot be resorted to. Due process of law in such a case implies filing of a suit by the Government" . The said Central Act, 1971 provides a remedy, which is speedier than the remedy of a suit under the general law, however it does not create any new right of



Crp No.4123 of 2022

WEB COPY

eviction, but it only creates a remedy for a right, which already exists under the general law. Therefore, the ratio laid down in the said decision will apply to the present case also and in such circumstances, this Court is of the view that the impugned eviction order passed by the Estate Officer, cannot be sustained in law and therefore, the order passed by the learned Principal Judge, City Civil Court, Chennai/ appellate authority, confirming the said order is liable to be set aside.

26. Accordingly, this civil revision petition is allowed and the impugned order dated 13.10.2022 in CMA No.30 of 2018 passed by the learned Principal Judge, City Civil Court, Chennai is set aside. It is not too late for the respondent/Corporation authority to file a comprehensive suit for recovery of possession of the property.

27. At this juncture, learned Additional Advocate General appearing for the respondent informed that pursuant to the eviction order dated 19.03.2018, already, possession of the property was taken by the respondent.



Crp No.4123 of 2022

WEB COPY

28. In view of the above, it is for the civil revision petitioner to take steps for restitution, as per law.

29. Learned Senior Counsel appearing for the civil revision petitioner also brought to the notice of this court that though Section 6 of the Public Premises Act permits the Estate Officer permit the Estate Officer to take possession of the property, he has no right to demolish the existing building. However, immediately, within two days from the date of issuing the eviction order, the respondent had demolished the entire building.

30. In such circumstances, it is open to the civil revision petitioner to seek remedy for restoration and damages also.

25.11.2024

Index:Yes/No
Internet:Yes/No
mst

To

The Principal Judge, City Civil Court, Chennai.



WEB COPY



Crp No.4123 of 2022

N.SATHISH KUMAR, J.

mst

CRP No.4123 of 2022

25.11.2024