

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31-01-2002

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

WRIT PETITION No.17644 of 1994

1.Prof. P.G.Dowie

2.Mrs.Margaret Paramaie .. Petitioners.

Versus

1.Union of India,
rep. By its Secretary
Ministry of Defence,
New Delhi.

2.District Judge,
Chengalpattu
Chengai M.G.R.District.

3.Defence Estate Officer,
Madras Circle,
St. Thomas Mount-cum-
Pallavaram Cantonment,
Fort St. George,
Madras-600 079.

4.Sub Area Commander,
Tamil Nadu & Kerala Sub Area,
Fort St. George,
Madras-600 079.

5.Cantonment Executive Officer,
St. Thomas Mount-cum-Pallavaram
Cantonment,
St. Thomas Mount, Madras-16. .. Respondents.

For Petitioners: Mr.G.Subramaniam for
Mr.P.B.Ramanujam

For Respondents: Mr.C.Krishnan
ACGSC

PRAYER: Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to quash the impugned order dated 30.8.94 in C.M.A.No.94 of 1992 on the file of the second respondent and confirm the order dated 17.12.92 in reference No.N/3 29-11/95 on the file of the third respondent.

: O R D E R

The first petitioner is Lessee of the property and the second petitioner is the wife of the first petitioner. The property in dispute belonged to the Central Government and is controlled by the Cantonment Executive Officer namely the 5th respondent herein and the 4th respondent. Originally on 1.4.21 the property to an extent of 0.51 acres bearing No.388/246/BA and 388/247 was leased for a period of 30 years; that the lease was subject to renewal for a period of the option of the lessee; that the said period of renewal was granted in three stages or phases at an interval of 30 years; that the first renewal of lease of the lands and building was granted to the petitioners with effect from 1.4.59 upto 31.3.89; that the petitioners have applied for second renewal for a further period of 30 years with effect from 1.4.89; that the Board passed a resolution recommending the renewal of the lease and forwarded the same to the General Officer, Commanding-in-chief, Pune, who had approved the renewal subject to some modification of treating the lands as both residential and commercial and for enhancement of rent and directed the third resp execute the renewal of the lease deed and in spite of the same, the third respondent had not done so. Meanwhile, the petitioner also submits that minor repairs have been effected by him to mai building and improve its condition. Since a notice under Section 185(i) of the Cantonment Act was issued to the petitioners, the petitioners accordingly had submitted a letter dated 24.6.92 to the Board in response to the notice served under Section.185(i) of the Ca /274 Pallavaram classified as B3 land; that the Cantonment Committee in its meeting held in October 1992 had passed a resolut for regularisation of the unauthorised construction; that the said recommendation, when placed before the General Officer, Commander-in-chief, Southern Command, the same had been rejected and it was also not communicated to them; that the Cantonment Board is empowered to accept by way of Compensation and the petitioners are prepared to pay the compensation to the Board for unauthorised construction namely 10% of the value put up in accordance with the Cantonment Act. respondent passed an order under Section (1) of Section 5(B) of Public Premises (Eviction of unauthorised Occupants) Act 1924 (hereinafter referred to as `the Act'); that against the said order an appeal was filed before the District Judge, Chengelput in C.M.A.No.94 of 1992; that the learned District Judge had dismissed the Civil Miscellaneous appeal. Against the said appeal, the present writ petition has been filed by the petitioners, praying for a Writ of Certiorarified Mandamus to quash the impugned order dated 30.8.94 in C.M.A.No.94 of 1992 on the file of the

second respondent confirming the

in reference No.N/329-11/95 on the file of the third respondent and some other reliefs which are not relevant for the present

2. In the counter filed by the third respondent on behalf of the other respondents, it is stated that the petitioners were given the lands on lease under Schedule VI of CLA Rules 1925 for a period of 30 years for residential purpose, renewable for an aggregate term of 90 years at 30 years interval; that as per the lease terms, the lessee must use the land only for dwelling house, but the petitioner has let out the same to the third party to run a Hotel including boarding and lodging, which amounts to violation of lease conditions and consequently, the lease was not renewed; that further the petitioners become unauthorised occupants; that they are liable to be evicted under the Act and that accordingly, they have issued a notice to the petitioners under Section 5B of the Act, after giving reasonable opportunity. In the counter, it is also stated that on 18.2.92, the petitioners had sent a letter to the third respondent stating that the unauthorised construction has been removed, but even in that letter, it has not been stated that they have not been given reasonable opportunity stated in their affidavit; that the petitioners in their letter dated 24.6.92 have admitted that they have effected unauthorised construction in response to the notice issued by the 5th respondent under Section 18 of the Cantonment Act. This clearly proves that the terms of the lease have been violated.

3. The learned Senior counsel Mr.G.Subramaniam referred to Sub Section (1) of Section 5(B) of the Act which prescribes the procedure for demolition of unauthorised construction. He also referred to the proviso to this section which prescribes that no order under this sub-section shall be made unless the person concerned has been given, by means of a notice of not less than seven days served in the prescribed manner. The learned counsel also took me through Rule 4, which prescribes the manner in which service of notices and orders should be made and that according to this a notice under Section 5(A)..... Section 5B....., shall be served by delivering or tendering a copy of the notice or order, as the case may be, to the person for whom it is intended or to any adult member of his family, or by sending it by registered post acknowledgment due in a letter addressed to that person at his usual or last known place of residence or business. The counsel also pointed out the provisions of Sub Rule (2) to Rule 4, which prescribes that where a copy of the notice of the order as the case may be under Sub Rule (1) is delivered or tendered, the signature of the person to whom the copy is so delivered or tendered should be obtained in token of acknowledgment of the service.

Therefore, the counsel would submit that unless notice under Section 5B has been served in the manner prescribed under Rule 4(1) and 4(2), the service cannot be said to be complete. The contention of the counsel is, that there is no evidence to show that the notice has

been properly served in accordance with the rules. The counsel also submitted that though the District Judge has given a finding to the effect that a perusal of the records shows that a notice was issued on 20.7.92 and only subsequently an order was passed on 17.12.92, there is neither any basis for the conclusion arrived at by the District Judge, nor there is material to show that the notice as conte

4. Per contra, the learned counsel appearing on behalf of the respondents argued that the notice as contemplated under Rule 4(1) has been effected. Though notice dated 20.7.92 does not specifically mention that the notice was sent under Rule 5B, yet the content letter would indicate clearly that it is a notice sent under Section 5B. He added that the Supreme Court in various judgments have referred that only the substance of the notice has to be considered. A mere quoting of the wrong provision or quoting provisions which are not applicable in excess, does not ipso facto makes the notice invalid. Therefore, the counsel argued that a notice dated 20.7.92 is a valid notice given under Rule 5B.

5. In response to the above submission, the learned counsel for the petitioners referred to the contents of the notice dated alleged to have been sent by the respondents, which reads as follows:
On site inspection by this office Technical Staff, it has been found that certain unauthorised constructions have been made on the above premises. In accordance with the provisions of the the construction be made on the leased site without the sanction of the competent Authority. You are, therefore, requested to demolish the unauthorised construction as detailed in the list with be taken for resumption of the site.
Referring to the contents, he said that this is not a mere notice issued under Section 5(B), but the threat that the lease will not be renewed.

6. Further, relying upon the words in the above cited letter, " lease expired on 31.3.89 will not be considered for renewal" he contended that notice may not be taken as a valid notice as prescribed under Rule 4(1) and 4(2). The counsel also took me through passed by the District Judge and stressed that though there is a finding by the learned District Judge that the notice was issued on 20.7.92, there is no record to show that the department has produced the records to prove that the notice were in fact sent on 20.7.92 and that the respondents have not produced the records in Court the notice were in fact sent.

7. Accordingly, this Court has asked the counsel for the respondents to produce the records, who in turn has produced the copies of the same, which reveals that a communication dated 20.7.92 had been sent. The counsel also produced the discharge register kept respondent, to show that the letter has been sent by the Registered Post Acknowledgment Due on 20.7.92. On production of the same, the counsel for the respondents argued that as per the rule 4(1) what is contemplated is when the notice is not delivered or tendered in person, it can be sent by "Registered

Post Acknowledgment Due

residence or business and this has been complied with by sending this notice in the Registered Post Acknowledgment Due, which compliance of Rule 4(1).

8. The learned senior counsel appearing for the petitioners, relying upon Section 4(2) of the Act, argued that if the notices were sent by Registered Post Acknowledgment Due in accordance to Rule 4(1), it should bear the signature of the person to whom the copy is delivered or tendered, in token of acknowledgment of the service and that accordingly, when the acknowledgment is not shown or not in the file, it amounts to non-compliance of Section 4(2) of the Act
acknowledgment that it has been signed by the petitioners herein and therefore, the notices cannot be said to have been sent in accordance with Section 4(2) of the Act.

9. After hearing the rival conditions, it is clear that the only point that is to be decided in this writ petition is that whether a notice has been validly sent and whether a notice is sent in accordance with the rules prescribed therein. As stated already when a demolition of unauthorised construction is ordered, a notice has to be sent. The proviso to Section 5(B) is that no order under this sub-section shall be made unless the person concerned has been communicated, by means of a notice served in the prescribed manner and a reasonable opportunity of showing cause why such order should not be made. Rule 4(1) and 4(2) of the Act reads as follows:

(1) In addition to any mode of service specified in the Act, a notice issued under sub-section (1) of Section 4 of Section 5-A of the Act, shall be served by delivering or tendering a copy of the notice or order, as the case may be to the] to the person for whom it is intended or to any adult member of his family, or by sending it by Registered Post Acknowledgment Due in a letter addressed to that person at his usual or last-known place of residence or business.

(2) Where the copy of [the notice or the order, as the case may be,] under sub-rule 91) is delivered or tendered, the signature of the person to whom the copy is so delivered or tendered should be obtained in token of acknowledgment of the service.

On the face of it, it is clear that the notice may be served by two different methods;

1. By delivering or tendering a copy of the notice to the person to whom it is intended or to the adult member of his family

or

2. By sending it by "Registered Post Acknowledgment Due" in a letter addressed to that person at his usual or last-known place of residence or business.

Therefore, it is not the case of the respondent that the notice was tendered or delivered in person. The case of the petitioner is that it was sent by Registered Post Acknowledgment Due. The records produced would show that the notices have been sent by Registered Post Acknowledgment Due. The main contention is that the signature of the

person should be obtained in token of acknowledgment of service, as provided under Sub Rule 2 of Section 4. A reading of Sub Rule (2) would make it clear that this Section applies only when the notice is either "delivered or tendered in person" and if so, the signature of the person to whom the copy was delivered should be obtained in token of acknowledgment of service. Accordingly, Sub Rule (2) of Rule 4 does not at all come into play, when notice was sent by Registered Post Acknowledgment Due as provided under Sub Rule (1) of Rule 4. Therefore, the non production of the acknowledgment before Court way help the petitioner, when there is ample evidence to show that the notice was sent by "Registered Post Acknowledgment Due" on 20.7.92.

10. The learned counsel for the petitioner has relied on the decision reported in Tamilnadu Small Industries Development Corporation Ltd. By its Manager and others (96 L.W. 50) and t reported in Govindarajulu & others Vs. Assistant Divisional Engineer, H & R. W. Vridachalam, South Arcot District. (100 L.W. 618). Since they are not related to the issue before us, I do not feel it necessary to discuss about the same. The learned counsel for the respondent has relied upon the judgment reported in Ashoka Marketing Ltd and another Vs. Punjab National Bank, Sahu Jain services Ltd and another, Vs. Punjab National Bank and others And Pandit K.B. Parsai, Vs. Union of India and others And M/s. Bennett Coleman & Col. Ltd. And naother Vs. Life Insurance Corporation of India and others (AIR 1991 SC 855). Since this judgment has also no relevance to the issue before us, I am not inclined to deal with the same.

11. From the foregoing discussions, it is clear that notice was in fact sent on 20.7.92 by Registered Post Acknowledgment Due. Though that notice does not specifically mention that the notice was sent under Section 5-B, yet the contents specifically indicate that the unauthorised constructions are directed to be removed and it also specifies that 30 days time is given for such a removal. Therefore, this letter complies with the spirit and contents of Section 5-B. Though this letter also contains that this lease will not be renewed, this does not in any way affect the validity of the notice. Therefore when the subsequent notice of demolition was dated 17.12.92 was sent directing to demolish, it is a valid notice. The notice dated 17.12.92 reads as follows: Now, therefore, in exercise of the powers conferred on me under sub Section (1) of Section 5-B of the Public Premises (Eviction of unauthorised Occupants) Act 1971, I hereby order Shiri P.G.Dowie and Mrs. Margaret Paramaie that the said work shall be demolished within 7 days of the date of publication of this order. In the vent refusal or failure to comply with this order within the period specified above, the said work shall be demolished by the Estate Officer or that Officer authorised by him and the expenses of such demolition shall be recovered from Shir P.G.Dowi and Mrs. Margaret Paramale.

12. Therefore, this is a valid notice issued under Rule 5-B. The learned District Judge, Chengalpet held that there was a valid notice and the powers are exercised in accordance with the law as prescribed

and had rightly dismissed the C.M.A. The order of the learned District Judge does not suffer from any illegality and hence the prayer in the writ petition cannot be granted and the writ petition is dismissed with costs of Rs.1,000/-

31-01-2002

Index:Yes/No

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To

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A.K.RAJAN,J.

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