

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.2.2002

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.7067 of 2000 and W.M.P.Nos.10490 to 10491 of 2000

1.N.Thiruvengadam
2.T.Ashok kumar ... Petitioners

-vs.-

1.Commissioner,
Madavaram Municipality,
Madavaram, Chennai
2.Asst.Divisional Engineer,
Highways & Rural Works,
394/4,Anna salai,
Saidapet, Chennai-15
... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus as stated therein.

! For petitioners ... Mr.T.R.Rajaraman

^ For respondents ...Mr.K.R.Tahmizhmani-R1

Mrs.R.Thenmozhisivaperumal-AGP.-R2

: ORDER

Petitioners praying to issue a writ of mandamus forbearing the respondents from demolishing the building at door No.17 to 25, M.R.H.Road, and door Nos.223,223/1 & 2, 224 of GNT Road, in TS.No.1092/3 Moolakadai village, Ambattur Taluk, Tiruvallur District pursuant to the impugned notice of demolition dated 18.3.2000 issued by the second respondent in Form-C Rule 6 of the Tamilnadu Public Premises (Eviction of unauthorised occupants) Rules 1978.

2.In the affidavit filed in support of the writ petition, the petitioners would submit that the land and building situate in S.No.1092/3 measuring 3 cents was purchased by the father of the first petitioner in the year 1946 and at that time, there were shops on the land and they were enjoying the same by letting out to third parties; that after the death of the father of first petitioner in the year 1955, he became the absolute owner of the property for which patta was also granted to him; that as per the family partition, the shops bearing door Nos.20 to 25 were allotted to his son, who is the second petitioner herein and the balance shops were retained by him; that the petitioners received a notice in Form-A dated 14.10.1999 issued by the second respondent stating that the first petitioner has encroached upon TS.No.1091 Moolakkadai village, Ambattur Taluk, Tiruvellore District and constructed

building bearing door No.27, measuring 52'x17' and to show cause as to why he should not be evicted from the property; that the second respondent without considering the objections raised by him issued another notice dated 18.3.2000 directing him to remove unauthorised construction within 14 days and the petitioners would pray that direction may be issued to the respondents not to demolish the constructed building in their property.

3.At the time of admission, this court has admitted this writ petition on 20.4.2000 and an order of interim injunction had also been granted. No counter has been filed on the part of the respondents. But still the learned Additional Government Pleader appearing on behalf of the second respondent would argue the matter on instructions and therefore, the above writ petition is disposed of in due consideration of the pleadings of the petitioners, having regard to the materials placed on record and upon hearing the learned counsel for both.

4.During arguments, learned counsel appearing on behalf of the petitioners would cite a judgment reported in MESSRS GUINDY MACHINE TOOLS PRIVATE LIMITED v.THE GENERAL MANAGER (P&D), STATE INDUSTRIES PROMOTION CORPORATION OF TAMILNADU LIMITED (1990 WLR 498) wherein single Judge of this court has held as follows:-

"Even assuming that the facts stated by him are true, the order still falls under S.5 of the said Act. The remedy of the petitioner is to file an appeal against the order under the provisions of the Act. It is a statutory remedy and there is nothing on record to show that it is not efficacious or too delatory to grant quick relief to the petitioner. However, in the circumstances pointed out by learned counsel for the petitioner, this is a fit case in which the petitioner should be given sufficient time so that he could prefer the statutory appeal within the time limit prescribed under the Act and also seek an order of stay from the Appellate Authority."

On the other hand, on the part of the learned counsel for the respondents justifying eviction notice served, a judgment reported in SUDHAKARAN,B.N.v. STATE OF TAMILNADU & ANOTHER (1992 WLR 766) of the Division Bench of this court would be cited wherein it is held;

"The contention that the impugned provisions suffer from want of guidelines cannot be accepted as the Objects and Reasons provide sufficient guidance. As held by the Supreme Court, the purpose behind the Act is that the premises belonging to the Corporation and the Government should be subject to speedy procedure in the matter of evicting unauthorised persons occupying them. The Objects and Reasons inter alia state that the machinery provided under the Tamilnadu Act 27 of 1960 does not enable the Government to evict unauthorised occupants from public places effectively. Speedy and effective machinery for eviction of unauthorised occupation of public premises belonging to the Central Government or under the Control of the State was the object to be achieved by the Act."

5.In consideration of the above facts and circumstances brought forth by pleadings and arguments, having regard to the materials placed on record and upon; hearing the learned counsel for both what comes to be known is that it is a case of eviction notice issued to the petitioners, who are admittedly in occupation of the subject matter,

invoking the relevant provisions of the Tamilnadu Public Premises (Eviction of Occupants) Act, 1976. It further comes to be known that a regular appeal lies before the Appellate Authority under Section 9 of the said Act within 30 days from the date of receipt of a copy of the order of eviction passed by the respondent herein. In the above circumstances, the judgment of the Division Bench cited by the learned counsel for the respondents reported in 1992 WLR 766, even though generally justifies the eviction of such occupations initiating such measures in accordance with the provisions of the Act, still preferring the appeal as contemplated under Section 9 of the said Act and in the situation wherein the petitioners have resorted to this court without preferring the regular appeal, the other judgment cited by the learned counsel for the petitioners rendered by Single Judge of this court is direct to the point squarely applying to the facts of this case and therefore, it is just and proper to adhere the said judgment reported in 1990 WLR 498 and issue such directions to the effect of the petitioners preferring an appeal before the

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regular Appellate Authority and hence the following order:-

In result, (i) The petitioners are directed to prefer

regular appeal before the Appellate Authority as contemplated under Section 9 of the Tamilnadu Public Premises (Eviction of Unauthorised Occupants) Act, 1976 within a span of 30 days from the date of receipt of a copy of this order.

(ii) The Appellate Authority shall entertain the said appeal with such opportunities afforded to parties, shall decide the matter on merits and in accordance with law within a period of three months from the date of receipt of the appeal memo, thus disposing the entire appeal itself.

(iii) There shall be no order as to costs.

(iv) Consequently, no order is necessary in W.M.P.Nos.10490 & 10491 of 2000 and the same is closed.

28.2.2002

Index:yes/no

Internet:yes/no

tsv

To

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