
(2013) 02 MAD CK 0030
In the Madras High Court
Case No : Writ Petition No. 12381 of 2009

N. Nagabushanam

APPELLANT

Vs

Estate Officer

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4, 5

Citation : (2013) 3 MLJ 398 : (2013) 2 RCR(Rent) 66

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : A. Jenasenan, for the Appellant; K.V. Goviganesan, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The petitioner prays for issuance of a writ in the nature of certiorari to quash the order No. EO/N/4/19/MC dated

26.05.2009 passed under sub section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (hereinafter

referred to as the "Act") ordering eviction of petitioner from the public premise. The petitioner is the wife of ex-army, who had applied for lease of

land at Pallavaram. The request of husband of petitioner was accepted and he was granted lease of land measuring 1.36 acres in S. No. 388/721

and 388/722 at St. Thomas Mount-cum-Pallavaram Cantonment. The lease was for the period of five years, i.e., 1985-1990.

2. It is the case of petitioner, that some civilians were granted lease adjoining land for 99 years. The petitioner has not either impleaded or named

any such person to whom the lease is said to have been granted for 99 years, nor other particulars like date of lease etc., has been disclosed.

3. The husband of petitioner used the land for agriculture purpose and was also allowed to put up shed. On the expiry of original period of lease,

husband of petitioner sought for renewal of lease, but his request was rejected. In the meantime, the husband of petitioner died in August 1990.

After the death of husband of the petitioner, addressed a letter to the Estate Officer, the respondent herein to transfer the lease in her favour by

renewing the lease. The representation was also made to the Director General of Defence.

4. The case of petitioner is that the respondent directed the petitioner to surrender the land, as the lease for land had expired. The petitioner, being

aggrieved by the order of respondent, filed O.S. No. 2504 of 1990 in the Court of District Munsif Court, Poonamallee, praying for a decree for

permanent injunction, restraining the respondent from dispossessing of petitioner except with due process of law. The suit after transfer was

renumbered as O.S. No. 680 of 1997 and finally decreed on 2.9.2005. It is not disclosed why the relief for renewal of lease was not claimed in

the said suit.

5. The case of petitioner is that representation was filed by petitioner with the Hon"ble Defence Minister of India, who referred the matter to the

Director General of Defence. The Director General of Defence thereafter addressed a letter to the respondent, requesting the respondent to extend

the lease as requested by petitioner if permissible under the rules.

6. It is not the case of petitioner that in pursuance to the direction by the Director General of Defence, lease was extended, nor any order or rule

has been placed under which the Director General of Defence was authorized to extend the lease, nor any rules being placed on record under

which the respondent was under obligation to renew the lease of petitioner.

7. In view of the decree passed by the Civil Court, the proceedings were initiated for eviction of petitioner under the Act. Show cause notice u/s 4

of the Act was issued to the petitioner on 7.1.2009, for hearing on 23.1.2008, when the petitioner sought time to file written submission.

8. It is the case of petitioner, that she was requested to surrender one piece of land and the matter was adjourned to 27.2.2009. The date was

given to the petitioner to produce all documents which the petitioner filed in the Civil Court. The request was made by petitioner to the Civil Court

for return of documents, so as to produce those documents before the respondent.

9. It is further case of petitioner, that inspite of the request by the petitioner, no objection certificate for return of documents was not issued by

respondent. It is not understood, how no objection certificate of respondent was required to get the documents or certified copies from the Civil

Court.

10. It is the case of petitioner, that the respondent directed the representatives of the Defense Estate Office to look into the representation of

petitioner for extension of time and submit report by the next date of hearing, and the petitioner was also given opportunity to submit written

submissions.

11. The case of petitioner is that for want of documents, the petitioner was handicapped to produce the documents before respondent to prove,

that she was not unauthorized occupant. However, after giving opportunity to the petitioner to file written submission, the orders were reserved on

26.5.2009 and thereafter impugned order was passed.

12. Learned counsel for the petitioner vehemently contended, that the impugned order cannot be sustained, as it has been passed in violation of

principle of natural justice, as the petitioner was not given effective opportunity to defend herself by producing necessary documents after getting it

from the Civil Court. Therefore, the impugned order cannot be sustained.

13. It is also the contention of learned counsel for the petitioner, that once the Director General of Defence had directed respondent to consider

the request of petitioner for renewal of lease, she could not be treated to be unauthorized occupant so as to evict the petitioner from the premises,

as she was holding the property under authority of the competent authority.

14. Learned counsel for the petitioner also contended, that reading of impugned order itself shows, that the basis for passing the order was that no

order was passed on the representation, therefore, the impugned order cannot be sustained, specially when it is discriminatory, as others were

given lease for 99 years, whereas petitioner was given lease for only five years.

15. On consideration, I find no force in this writ petition. The reading of impugned order itself shows, that the principles of natural justice have been

duly complied with. It may be noticed here that the petitioner had approached the Civil Court with prayer for a decree for permanent injunction to restrain the respondent from dispossessing the petitioner except by following due process of law. It cannot be disputed, that the proceedings under the Act are proceeding in accordance with law. The proceedings further show, that the notice was issued to the petitioner and she was given full opportunity to represent her case and was even permitted to file written submissions in support of her case.

16. It is admitted case of petitioner herself, that lease was only for a period of five years. On expiry of lease period, the petitioner is deemed to be unauthorized occupant, as admittedly the lease was not extended. Merely because on the representation filed by petitioner, the superior authority, had asked the respondent to consider the case of petitioner for renewal of lease, does not lead to conclusion, that possession is legal. The reading of lease deed shows, that it was renewable only at the sole discretion of the lessor, meaning thereby the petitioner had no right to get the lease renewed as a matter of right. The respondent admittedly did not extend the lease period. The impugned order therefore having been passed in consonance with law in ordering eviction of unauthorized occupant of public premise, does not call for any interference in exercise of writ jurisdiction of this Court. The plea of the petitioner, that she was discriminated also is misconceived, as she has placed no material, nor has pleaded any facts to show, that similarly placed persons have been treated differently. The pleading lacks material particulars to go into this question.

17. No merit. Dismissed. No costs. Connected miscellaneous petition are closed.