
(2016) 12 MAD CK 0009
In the Madras High Court
Case No : W.P. No. 18035 of 2010

T.K. Asraf

APPELLANT

Vs

Commissioner Corporation of Chennai

RESPONDENT

Date of Decision : 01-12-2016

Acts Referred:

Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1976 — Section 4, Section 5

Citation : (2017) AIR(Madras) 15

Hon'ble Judges : Mr. R. Suresh Kumar, J.

Bench : Single Bench

Advocate : Mr. K. Soundara Rajan, Advocate, for the Respondent Nos. 1 and 2;
Mr. V. Raghavachari, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. R. Suresh Kumar, J. - The prayer in the writ petition is for a mandamus directing the respondents to pay a sum of Rs.25 lakhs towards compensation for the loss occurred on account of the illegal act of demolishing the structure at Door No.823/A, Anna Salai, Chennai-2 and further, restore the possession to the petitioner.

2.1. The case of the petitioner is that the land at Door No. 823/A, Anna Salai, Chennai-2 belongs to the respondent corporation and the same had been given in lease to the father of the petitioner in the year 1981 wherein, a structure was put up and the petitioner's father was carrying on business in the name and style of "Classic sweet and tea stall". License also had been obtained from the respondent corporation. After the death of the petitioner's father, his mother was carrying on with the business. The respondent was approached by the petitioner on various occasions and sought for transfer of license in the name of his mother. But the respondents were reluctant in considering the said request. Pending the request of transfer of license, since the respondent corporation exceeded their powers and sealed the premises, the petitioner's mother had approached this

court by way of W.P.No.16158 of 2008.

2.2. This Court by order dated 08.07.2008 disposed the said writ petition and permitted the petitioner's mother to file an undertaking affidavit that she would not carry on any business till the license is renewed in her name or fresh license is issued in her name. The respondents were directed to remove the lock and permitted the petitioner to take possession of the property.

2.3. The further case of the petitioner is that even though orders were passed by this Court on 08.07.2008, the respondents had not acted upon. Therefore, the shop was kept closed from July 2008. While so, on 29.01.2010, the erstwhile petitioner i.e., the mother of the present petitioner died and the petitioner went to his native town at Kerala. Taking advantage of the situation, the respondent corporation officials on 31.7.2010, demolished the shop premises and the same was made known to the petitioner only through his neighbours. After demolishing the same, the respondent corporation displayed a placard stating that the property belongs to Madras Corporation. As against the said alleged action on the part of the respondent corporation, the petitioner claimed that he had given telegram and lodged complaint to the police for taking action against the corporation people for their high-handed act, which all had not yielded any desired result. Hence, the petitioner has approached this Court by way of the present writ petition with the aforesaid prayer seeking for a compensation of Rs.25 lakhs from the respondent and also for restoration of the possession of the petitioner.

3.1. The respondents have filed counter affidavit stating that the land in premises No.823/A Anna Salai, Chennai belongs to Greater Chennai Corporation and this land was leased out on monthly rental basis to one Mr. V.K.K. Abdullah for running the tea stall and sweet and meat stall. The said lessee Abdullah died on 24.9.1996 and thereafter, his wife Tmt. Nafiza and the petitioner herein had run the tea and sweet stall by renewing the license by hiding the fact of the death of the original licensee, namely, V.K.K. Abdullah upto the year 2008 as if Abdullah was alive and continuing the license in the name of the said Abdullah. This fact was found out by the respondent corporation during inspection and noted that the shop was run by the petitioner without a valid license. Therefore, it was sealed on 07.06.2008. As against the action of sealing the shop, the petitioner's mother filed the said writ petition in W.P.No.16158 of 2008 and this Court passed order on 08.7.2008 and directed the respondent to consider the representation of the petitioner's mother dated 06.06.2008 within a period of six weeks. As directed by this Court, the petitioner's mother, who was the petitioner in the earlier writ petition, had submitted an undertaking on 14.8.2008 and thereafter, seal was removed on 16.8.2008. Since the petitioner's mother did not produce the legal heir certificate and proof of address for considering the representation, her plea was rejected and order was sent by RPAD on 22.8.2008 and the same was received by another son Anwar of the said Nafiza and brother of the present petitioner. Only, thereafter, i.e., after the rejection order from the

respondents, the petitioner had furnished legal heir certificate dated 22.1.1996 for the death of his father Abdullah, who died on 24.9.1996. Since the legal heir certificate mentions the date of death of the petitioner's father as 24.9.1996 and the legal heir certificate was issued on 22.1.1996, the respondent doubted the genuineness of the legal heir certificate. Moreover, the said certificate was given by Special Tahsildar, who is not supposed to issue the legal heir certificate as only the regular Tahsildar should issue the same. Since the representation of the petitioner's mother as directed by this Court in the earlier writ petition had been disposed of, the license also was not renewed.

3.2. It is a further case of the respondents through their counter that since the license period expired already, the respondents being the statutory body have legal duty to safe guard the public land and to recover it from the encroacher. Therefore, invoking the provisions of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act 1975 (hereinafter referred to as Act) issued a show cause notice to the petitioner's mother on 07.6.2010 as, who was illegally running the business, seeking to explain why orders of eviction should not be issued against the petitioner's mother. As no reply was received from the petitioner's mother, a further order of eviction was issued on 20.07.2010 intimating her to vacate the premises within ten days and also informed her that if she failed to vacate, the respondent corporation would take over the land. Subsequently, since the petitioner did not vacate the premises and the land was urgently required for storing the electrical street light components for attending street lights on public roads, the eviction order was given effect to and eviction was carried out on 30.10.2010 and the land was taken over by the Corporation. The land taken over by the respondent corporation from the petitioner is about 400 sq.ft in R.S.No.5/1 part Nungambakkam, which was very much required for the extension of the adjacent Greater Chennai Corporation, electrical sub-station office for storing electrical equipments for attending street light faults and the said office have now been installed there and the same office is functioning in the said land.

4. Heard both sides.

5. The learned counsel appearing for the petitioner would contend that the petitioner's father was given lease to run the tea and sweet stall by the respondent corporation in the year 1981. Pursuant to the said lease, the stall was erected there and the petitioner's father originally, was running the business and since the petitioner's father died, the petitioner's mother was running the business and in order to transfer the lease and license in the name of the petitioner's mother, they have already approached this Court in the earlier writ petition in W.P.No.16158 of 2006, wherein orders were issued directing the respondents to remove the lock and seal with the condition that the petitioner herein would not run the business without getting the license renewed from the respondents and further directed the respondents to consider the request of the petitioner's mother, who was the petitioner in that writ petition, regarding

renewal of license and to pass orders within a time frame. But, till today, no such orders were passed.

6. Therefore, pursuant to the orders passed by this Court in the earlier round of litigation, the petitioner or his mother also could not run the business. Therefore, literally the business was stopped and shop was closed without any activities from July 2008. While so, the highhanded action on the part of the respondents had taken place in the absence of the petitioner, who was away from Chennai, when the respondent corporation highhandedly removed the structure and taken position of the land which is totally unjust, arbitrary unlawful and not authorised under any law for the time being in force. Therefore, for such highhanded action of the respondent officials and their men, the petitioner would be entitled to seek higher compensation. However, it was quantified for the purpose of the writ petition only as Rs.25 lakhs and therefore, there is every justification on the part of the petitioner to claim such a compensation.

7. In support of the said claim made by the petitioner, the learned counsel appearing for the petitioner has relied upon the latest decision of this Court reported in 2016-4-LW. 902 in S.Krishnaswamy v. State of Tamil Nadu represented by Secretary to Government, Home Department, Chennai and others. By relying upon the said Judgment, the learned counsel for the petitioner would further contend that there was no notice issued either on the petitioner or his mother invoking the provisions of the Act. When there was no notice issued on the petitioner, the question of invoking further provisions of the Act to evict the petitioner does not arise. Therefore, the very eviction said to have been ordered by the respondents invoking the provisions of the Act is totally unlawful and therefore, the petitioner is very much entitled to claim compensation as their property have been demolished without the authority of law by the respondents.

8. Per contra, the learned standing counsel appearing on behalf of the respondents has invited the attention of this Court that by order dated 11.3.1981, lease was issued by the respondents corporation to the petitioner's father, namely, one V.K.K. Abdullah to run the tea stall and the said lease was for a period of one year with a condition that no permanent structure would be allowed to be erected on the said land where the tea shop license was given for measuring about 400 sq ft in R.S.No.5/1 part of Nungambakkam adjacent to corporation electrical substation at Anna Salai and further, the land should be surrendered to the Corporation of Madras as and when it is required without claiming any compensation whatsoever. After the one year period, the lease/license was not renewed. Therefore, the respondent corporation by letter dated 17.5.1995, directed the petitioner's father, namely, Abdullah to hand over the vacant possession of the land to the Zonal Officer-6 of the respondent corporation immediately, as the lease period was expired on 11.3.1982 itself. Only, thereafter, the petitioner's mother had given a request to the respondent corporation stating that her husband Abdullah, the original lessee/licensee, expired on 24.9.96, hence the lease may be transferred to the name of the said

wife T.K. Nafiza. In support of the said claim, the petitioner's mother had submitted a legal heir certificate issued by the Special Tahsildar, ULT, Purasaiwakkam Taluk, Chennai wherein it was mentioned that the said Abdullah expired on 24.9.96. Since the date of death of said Abdullah, is post-dated than the actual date of the legal heir certificate issued by the Tahsildar, the respondent Corporation doubted it and therefore, the renewal was not given.

9. The learned counsel for the respondent corporation would further contend that in the meanwhile, the petitioner's mother filed a writ petition in W.P.No.16158 of 2008 seeking a direction to issue license in the name of the petitioner therein, who is the mother of the present petitioner and the said writ petition was decided on 08.7.2008 where a direction as discussed above was given directing the petitioner therein to give an undertaking not to run the business and the corporation also was directed to consider the request of the petitioner therein for transfer/renewal of license. Since the petitioner's mother had not given proper documents including the legal heir certificate and the one which was given by the petitioner's mother, was not accepted by the Corporation for the reason that the date of death of the petitioner's father was given wrongly and therefore, the earlier rejection order rejecting the request of the petitioner's mother was in force and the same was not changed.

10. The learned counsel for the respondents would further contend that since no further action was forthcoming from the petitioner either to get license or to get a transfer of license by submitting proper documents, the respondent corporation had no other option but to invoke the provisions of the Act and therefore, invoking Section 4 of the Act, show cause notice was issued on 07.6.2010 as there was no reply from the petitioner, eviction order was passed on 20.7.2010 under Section 5 of the Act and ultimately, the eviction was carried out on 30.10.2010.

11. All these actions on the part of the respondent corporation is strictly in accordance with law, of course, after giving due opportunities to the petitioner and therefore, there is no gain saying that the respondents have acted highhandedly without the authority of law and therefore, the petitioner would not be entitled for compensation. Therefore, the learned standing counsel for the respondents would contend that the writ petition does not have any merits to be considered and hence, he wants the dismissal of the writ petition.

12. This Court has considered the rival submissions made by the learned respective counsel as well as the documents produced before this Court for perusal.

13. No doubt, lease was executed for a period of one year in respect of the subject land of 400 sq.ft at R.S.No.5/1 part of Nungambakkam belonging to the respondent corporation to and in favour of one Abdullah by orders of the respondent dated 11.3.1981. The said lease was for a period of one year with a condition that no permanent structure shall be allowed to be erected. Condition

No.10 of the lease would further state that the land should be surrendered to the Corporation of Madras as and when it is required without claiming any compensation whatsoever. After the said one year period lapsed, the lease was not extended. Since the lease was not extended, the continuance of the petitioner's father, who was the original lessee and license holder was directed to vacate the premises and a notice to that effect was issued by the respondent corporation on 17.5.95. Thereafter, nothing was made either for extension of lease for the land nor renewal of license from the respondent corporation for running the tea stall business in the name of the petitioner's father, namely, Abdullah. While so, the said Abdullah died on 24.9.1996. After that, the petitioner's mother made a request in February 96 only to the respondent corporation for transfer of lease in her name. A legal heir certificate dated 22.1.1996 said to have been issued by the Special Tahsildar, ULT, Purasaiwakkam was also submitted by the petitioner's mother. In the said legal heir certificate, the date of death of the petitioner's father was mentioned as 24.9.1996. Since the petitioner or his mother did not respond to the respondents for giving legal heir certificate, the plea of the respondent's mother was rejected on 22.8.2008 and the said order was communicated to the petitioner's mother by RPAD. Thereafter, the legal heir certificate was produced and even in that certificate, the date of death of the petitioner's father was mentioned wrongly i.e, predating the certificate and therefore, doubting the genuineness of the very legal heir certificate itself, the respondent corporation did not act upon further.

14. Subsequently, since the premises was kept unused from July 2008, as admitted by the petitioner, as neither the lease nor the license was extended or renewed either in favour of the petitioner's mother or in favour of any of the legal heir of the petitioner's father including the petitioner, it is an unauthorised occupation on the part of the petitioner and his family. Therefore, the respondent corporation rightly has invoked the provisions of the Act, namely, Tamil Nadu Public Premises (Eviction of Unauthorised Occupants Act), 1975. Under the Act, the Estate Officer, if he is of the opinion that any persons are in unauthorised occupation of any public premises and they may be evicted and notice shall be issued in writing calling upon the persons concerned to show cause as to why an order of eviction should not be made. Public premises is defined under Section 2 (e) which says that the public premises means any premises belonging to or taken on lease or requisitioned by, or on behalf of, the Government, and includes any premises belonging to, or taken on lease by, or on behalf of any company or any corporation any premises belonging to, or vested in, a local authority or any Board constituted under any law. Therefore, the subject premises is also a public premises within the meaning of the said Act. So the respondent corporation invoking Section 4 of the Act issued a show cause notice dated 07.6.2010.

15. Under Section 4(3) of the Act, the officer shall cause the notice to be served by having it affixed at the outer door or some other conspicuous part of the public premises. Accordingly, the respondents have served a notice by affixing it in the premises. Thereafter, as provided under Section 5 of the Act, since the

petitioner or on his behalf or any family members of the petitioner had not responded to the notice issued under Section 4, the respondent corporation invoked the said provision of Section 5 of the Act and passed an order of eviction on 20.7.2010. In the said eviction order dated 20.7.2010, the respondents has stated that within 10 days, the petitioner should vacate the premises and hand it over to the respondent corporation, failing which, as per rule and provision of law, the land would be taken over by the respondent corporation. Since no one on behalf of the petitioner had responded either to the show cause notice or subsequently to the order passed by the respondents under Section 5 of the Act on 20.7.2010 and the premises was not voluntarily vacated and handed over to the corporation, the respondent corporation proceeded to evict the petitioner on 30.10.2010, including the demolition of the shop and the land was taken over by the respondent corporation. Thereafter, as required for the public purpose, the said land taken over from the petitioner's possession under Section 5 of the land to the extent of 400 sq.ft was utilised for establishing the office for storing the electrical equipments for attending street lights and according to the respondents, the said office is running in the above land.

16. In respect of the aforesaid proceedings of eviction, the legal submissions made by the learned counsel for the petitioner would be that under Section 4 of the Act neither any notice was served on the petitioner nor any of his family members nor any opportunity of being heard was given to the petitioner or any of his family members and assuming that the show cause notice was affixed in terms within the meaning of 4(3) of the Act, the further procedure as contemplated under Section 5 to give time to vacate the premises had not been given and also the further time of at least, 30 days for preferring an appeal against the order of eviction passed by the respondents under Section 5 had to be given to the petitioner to approach the Appellate Authority under Section 9 of the Act. Even that appeal period time also was not given to the petitioner. Without resorting to any of this mandatory requirements, as has been envisaged under Section 4,5,9 of the Act, the respondents highhandedly demolished the premises exactly on the expiry of ten days from the date of eviction order dated 20.7.2010 and the actual demolition took place on 31.7.2010 itself and therefore, it is a clear case of highhandedness on the part of the respondent officials. Therefore, the petitioner would be entitled for compensation.

17. Insofar as the said submission made by the learned counsel for the petitioner the provisions of Sections 4, 5 and 9 of the said Act to be looked into. No doubt a prior notice should be given for eviction under the Act. Under Section 4(3), the services of notice shall be by pasting the same in the premises or some other conspicuous part of the public premises in the manner prescribed and in that case, the notice shall be taken to have been duly given to all persons concerned. The respondents have filed a typed set of papers wherein photographs showing the affixing of notice as well as the order under Section 5 has been taken and produced before this Court. Thereafter, under Section 5, order of eviction was passed as there was no response from the petitioner's side as Section 5(2) of

the said Act authorises the Estate Officer to evict the person from the premises and take possession of the public premises and for that purpose, he may use force as may be necessary. Even after the order passed by the respondents under Section 5 of the Act on 20.7.2010 where ten days time were given, the petitioners had not voluntarily vacated the premises and handed over the same to the respondents. Therefore, according to the respondents only on 30.10.2010, the eviction was carried out and the land was taken over by the corporation by demolishing the structure.

18. Insofar as the actual date of eviction is concerned, the claim of the petitioner is that the eviction order was carried out on 31.7.2010 itself and the respondents claimed that this was carried on 30.10.2010. In respect of the petitioner's claim i.e. the averment in paragraph 4 of the affidavit would state that corporation officials took advantage of the situation on 31.7.2010 and he came to know about the demolition from the neighbours as the petitioner was away from Chennai and was at Kerala for his domestic issues. Therefore, there is no iota of proof on the side of the petitioner to show that the actual demolition and eviction process had taken place on 31.7.2010 itself. Contrary to that, the respondents have claimed that the eviction was carried out on 30.10.2010 as claimed by them in paragraph 5 of the counter affidavit. Assuming that the said eviction was carried out on 31.7.2010, the same is also in consonance with the orders of the eviction passed by the respondents under Section 5 where only ten days time was given in the order passed on 20.7.2010. Therefore, only after ten days, the eviction was carried out on 31.10.2010. Therefore, assuming that the actual eviction was carried out on 31.7.2010 as claimed by the petitioner i.e., beyond the ten days time for voluntary eviction to be carried out by the petitioner, which the petitioner failed, the respondents have acted upon. Therefore, there is no fault on the part of the respondents in evicting the petitioner by invoking the provisions of section 5 of the Act.

19. Insofar as the further contention of the learned counsel for the petitioner about the appeal period of 30 days, the law is well settled that the appeal period is only for preferring the appeal within which if the appeal is preferred, it would be saved from the defect of time bar. Therefore, the respondents need not wait and watch whether the petitioner would approach the Appellate Authority against the order of eviction. Moreover, since according to the respondents, the actual eviction was carried out only on 30.10.2010, even that 30 days period also was over.

20. In respect of the claim of compensation is concerned, this Court finds that first of all, the petitioner has not approached this Court with clean hands for the simple reason that though the lease was given in the name of his father for one year and the same was not extended beyond one year period, unauthorisedly, his father was continuing the business in spite of the categorical direction issued by the respondents on 17.5.95 to hand over the vacant possession. After the said lease holder, namely, Abdullah, i.e., the petitioner's father died on 24.3.1996,

the petitioner and his mother were able to get the license renewed even in the year 2007 in the name of the father of the petitioner, who was no more at that time. Knowing fully well that the petitioner's father was not alive, in the name of the dead person, the petitioner and his family members were able to or managed to get the license renewed at the hands of the respondent corporation probably with the connivance of some of the officials of the respondent corporation. Even in the order dated 08.7.2008, this Court had directed the petitioner's mother to give an undertaking that she would not run the business without the license getting renewed. Since the license was not renewed, the business was closed as admitted by the petitioner, from July 2008 and the same was never conducted till the eviction was effected. It is also the case of the petitioner that after closing the business in July 2008, the petitioner had to be in his native place at Kerala for his domestic issues and it shows that the petitioner had not been in interest in running the business as no further action was taken diligently either by the petitioner or by his family members.

21. Since the lease was not extended, license was not renewed and as no fruitful action on the part of the petitioner or his family members were noticed by the respondent corporation, no prudent man can expect that the Corporation should keep the land that too in a very prime locality of Chennai city, vacant without any usage especially, when the said land is very much required for the public purpose of locating the office related to electrical equipments. Therefore, without any option, the respondents have invoked the provisions of the Act and Section 4, 5 of the said Act had been duly complied with. When that being the position, neither the eviction nor the demolition of the structure made on the part of the respondents against the petitioner can be construed as a highhanded act, instead it can be treated as a lawful action within the meaning of the provisions of the said Act. Therefore, this Court finds that there is no merit in the claim of the petitioner for seeking compensation.

22. Insofar as the decision of this Court, in a recent Judgment reported in 2016-4-LW 902 is concerned, the said Judgment had dealt with a case of a person, who got injury while he was travelling in the bus where pelting of stones took place during the bandh or hartal day. In the result, he lost the eye and therefore, in that context the learned Judge in the said decision after taking into account, the various decision of this Court as well as the Hon'ble Apex Court has held as follows:

"Thus it is the duty of the State to maintain law and order and it is also under obligation to protect the life and property of the citizens and when life and property is taken away under the guise of Hartal/Bandh by any individual/organization, the State is under mandate to compensate the victim by granting adequate and reasonable compensation. A presumption arise on the leader of the State to protect the life and property of the citizens as an when it is taken away."

23. No doubt the maintaining of the law and order is the duty of the State and when there is any failure in maintaining the law and order situation, resultantly,

if any lawful citizen suffered at the hands of the hooligans because of failure and deterioration of law and order, certainly, the citizen would be entitled for compensation from the State and only in that view of the matter, the learned Judge allowed the said writ petition by directing the respondent State to compensate a sum of Rs.10 lakhs to the victim. But, here the facts are entirely different. The petitioner herein is not an unfortunate victim at the hands of the State or its instrumentalities. The eviction process including the demolition of superstructure had taken place strictly in accordance with the law as has been discussed and held by this Court. Therefore, the proposition as laid down in the said Judgment of this Court heavily relied upon by the learned counsel for the petitioner cannot be made applicable to the facts of the present case. Therefore, the said Judgment would be in no way helpful to the present case.

24. In the result, the writ petition is liable to be dismissed and accordingly, is dismissed. No costs.