
(2011) 10 MAD CK 0097

Madras High Court

Case No: CRP. PD (MD) No. 667 of 2009 and M.P. (MD) No. 1 of 2009

M. Athimuthu

APPELLANT

Vs

The Deputy Chairman
cum Estate Officer,
Tuticorin Port Trust

RESPONDENT

Date of Decision: Oct. 12, 2011

Acts Referred:

- Ports Act, 1908 - Section 4, 5, 5A, 5B, 5C
- Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Section 4, 4(2), 5

Hon'ble Judges: M. Jaichandren, J

Bench: Single Bench

Advocate: M.V. Venkateshan, for the Appellant; S. Yashwant, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Judge M. Jaichandren

1. This Civil Revision Petition has been filed challenging the order, dated 9.2.2009, in Civil Miscellaneous Appeal No. 20 of 2008, on the file of the Principal District Court, Thoothukudi.

2. The petitioner had filed the appeal, in C.M.A. No. 20 of 2008, on the file of the Principal District Court, Thoothukudi, challenging the order of eviction passed by the Deputy Chairman-cum-Estate Officer, Thoothukudi Port Trust, Thoothukudi, u/s 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (hereinafter referred to as "the Act").

3. It has been stated that the appellant in the said appeal, who is the petitioner herein, is a dry fish merchant, who has been carrying on his business in the schedule property

belonging to the Thoothukudi Port Trust. The schedule property had been given on lease to the petitioner for the purpose of drying fish. Till the year, 1984, there was no dispute relating to the occupation of the schedule property by the petitioner herein. However, in the year, 1984, the estate manager of the Thoothukudi Port Trust had demanded a rent of Rs.1,42 per sq.ft., per year. On 20.5.1998, the Port Trust had directed the petitioner to remit the licence fee of Rs. 22,050/- for the period, from 1.2.1998 to 31.7.1998. Thereafter, the Port Trust authorities had raised the licence fee arbitrarily, by an order, dated 1.7.1997, without serving any notice on the petitioner, with regard to the enhancement of the rent. Therefore, the petitioner had filed the suit, in O.S. No. 197 of 1998, on the file of the Principal District Munsif Court, Thoothukudi, praying for a declaration, declaring the letter of the port trust authorities, dated 20.5.1998, as null and void. The said suit had been dismissed. The appeal filed by the petitioner, in A.S. No. 35 of 2000, had also been dismissed. Therefore, the petitioner had preferred the second appeal before this Court, in S.A. No. 329 of 2003. The said appeal had been dismissed, as withdrawn, in view of the non-issuance of the mandatory notice, u/s 120 of the Port Trust Act. Thereafter, on 9.10.2007, the Estate Officer had sent a letter to the petitioner demanding the payment of Rs. 5,63,094/- , including the enhanced rent for the month of October, 2007.

4. It has been further stated that the amount claimed by the Estate Officer is not correct and it is a highly exaggerated amount. The Estate Officer has no right to claim the enhanced rent, which had been fixed, arbitrarily. In the month of September, 2007, the port trust authorities had tried to evict the petitioner, forcibly. Therefore, the petitioner had issued a registered notice, on 17.10.2007, and thereafter, the petitioner had filed a suit, in O.S. No. 88 of 2008, against the trustees of the Thoothukudi Port Trust, praying for a declaration to declare that the fixing of the enhanced rent is null and void. After receiving the summons from the Principal District Munsif Court, Thoothukudi, the port trust officer concerned did not appear. Therefore, an ex-parte decree had been passed. While so, the port trust authorities had issued a show cause notice, on 19.5.2008, for evicting the petitioner from the schedule property. Challenging the said show cause notice issued by the authorities of the Thoothukudi Port Trust, the petitioner had filed an appeal, in C.M.A. No. 20 of 2008.

5. On considering the contentions raised on behalf of the petitioner, as well as the authorities of the Thoothukudi port trust, the Principal District Judge, Thoothukudi, had held that there was no dispute with regard to the fact that the petitioner had been using the schedule property for several decades. However, there was no document shown on behalf of the petitioner to substantiate his claim that he had spent a huge amount of money in developing the schedule property. The claim of the petitioner that he has perfected his title, in respect of the schedule property, by way of adverse possession, is improper. The letter issued by the authorities of the port trust, dated 20.5.1998, directing the petitioner to remit the licence fee of Rs.22,050/- for the period, between 1.2.1998 to 31.7.1998, had been challenged by the petitioner. However, he had not succeeded in

his pursuit. Thereafter, the authorities of the port trust had sent a letter, on 9.10.2007, asking the petitioner to pay a sum of Rs. 5,63,094/- . Since, the petitioner had not paid the said amount, the authorities of the Thoothukudi Port Trust had initiated the proceedings for evicting the petitioner from the schedule property. The petitioner had also questioned the authorities of the Thoothukudi Port Trust to enhance the rent, in respect of the schedule property. It had also been found that Sections 4, 5, 5(A), 5(B), 5(C) of the Port Trust Act empower the authorities of the port trust to deal with such a situation. It is an admitted fact that the petitioner had not paid the entire rental arrears of Rs. 5,63,094/- .

6. It had also been noted that sufficient opportunity had been provided to the petitioner. However, the petitioner had not preferred to pay the rental arrears, in respect of the schedule property. Further, the suit filed by the petitioner, in O.S. No. 88 of 2008, on the file of the District Munsif Court, Thoothukudi, for a declaration, to declare the enhancement of the rent as null and void, is still pending disposal. While so, the petitioner has prayed for a similar relief in the present appeal. The possession of the schedule property by the petitioner, without paying the rental arrears, is unlawful .Therefore, the petitioner is liable to be evicted, by the authorities of the Thoothukudi Trust, as per the eviction order, dated 22.8.2008, passed by the Thoothukudi Port Trust, u/s 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

7. Challenging the said order, dated 9.2.2009, made in C.M.A. No. 20 of 2008, the petitioner has preferred the present civil revision petition before this Court.

8. The Learned Counsel appearing on behalf of the petitioner had submitted that the authority concerned had not followed the mandatory provisions prescribed u/s 4 of the Act. It had been submitted that no specific date had been given for the petitioner to show cause against the order of eviction, as per Section 4(2)(b)(i) of the Act. Further, no specific date had been stated in the eviction notice issued by the authority concerned, as per Section 4(2)(b)(ii) of the Act, for the petitioner to appear before the estate officer and to produce the necessary documents to support the claim. Besides, the petitioner had not been given a personal hearing, as required by law.

9. He had also submitted that the order of eviction passed by the authorities of the Thoothukudi Port Trust, dated 22.8.2008, cannot be held to be valid, as it has been passed without following the principles of

10. The Learned Counsel appearing for the petitioner had relied on the decision of this Court, in N. Govindan Vs. The Chief Personnel Officer, I.C.F., (1999 (III) CTC 588) to state that the eviction order passed against the petitioner is bad in law, as the mandatory procedures prescribed u/s 4 of the Act had not been followed.

11. Per contra, the Learned Counsel appearing on behalf of the respondent had submitted that the petitioner has been in unauthorised occupation of the premises in

question since, 1968 and that he had not paid the enhanced lease amount from the year, 1994. Even though the mandatory provisions, as prescribed u/s 4 of the Act had been followed, the petitioner had not availed the opportunity granted to him to submit his explanation to show cause as to why he should not be evicted from the property in question. In the notice issued by the authority concerned, on 19.05.2008, the petitioner had been granted 15 days time from the date of issuing of the said notice to produce the evidence held by him to advance his case. It had also been mentioned in the said notice that he could avail the opportunity of a personal hearing, in case, he exercises the option to do so.

12. In spite of such an opportunity having been given to the petitioner, he had never appeared to put forth his case. Only thereafter, the eviction order, dated 22.08.2008, had been issued by the respondent, asking the petitioner to vacate the property in question. However, he had challenged the order of eviction before the Principal District Munsif Court, Thoothukudi, in Civil Miscellaneous Appeal No. 20 of 2008, without having sufficient cause to do so.

13. The Learned Counsel for the respondent had further submitted that the petitioner had not raised the issue regarding the non-observance of the mandatory provisions of Section 4 of the Act before the authority concerned. It is for the first time that the petitioner is raising the issue before this Court.

14. In support of his claim, the Learned Counsel had relied on the decision, in Nisha Vs. Punjab National Bank reported in AIR 200 Del 439, to show that the Act had been enacted to equip the Government /statutory authority with such machinery for speedy eviction of unauthorised occupants. It is not open to the petitioner to raise the issue with regard to the failure of the authority concerned to follow the mandatory provisions of the Act, without appearing before the authorities concerned and also without exercising his option to have personal hearing, as provided under the notice, dated 19.05.2008. It is only after following the necessary formalities, the eviction order, dated 22.08.2008, had been passed by the authorities concerned.

15. In view of the submissions made by the learned counsel appearing on either side and on a perusal of the records available and on considering the decisions cited supra, this Court is of the considered view that the petitioner has not shown sufficient cause or reason for this Court to interfere with the order of the Principal District Court, dated 09.02.2009, made in the Civil Miscellaneous Appeal No. 20 of 2009.

16. It is seen from the impugned notice, dated 19.05.2008, issued by the authorities concerned, that ample opportunities had been given to the petitioner to represent his case and also to opt for a personal hearing, if he so desires. However, the petitioner had chosen not to appear before the authorities concerned, in spite of sufficient time having been granted to him. Therefore, it is not open to the petitioner, at this stage, to claim that sufficient opportunity had not been given to him to put forth his case before the authorities

concerned. Since, the petitioner had failed to avail the opportunity of explaining his position, with the available documents, and as he had not availed the opportunity of hearing, the relief sought for by the petitioner in the present Civil Revision Petition cannot be granted by this Court, at this stage. Therefore, The Civil Revision Petition filed by the petitioner is devoid of merits and it is liable to be dismissed.

17. At this stage of the hearing of the civil revision petition, the Learned Counsel appearing on behalf of the petitioner had prayed that the petitioner may be granted two months time to vacate the property in question. The Learned Counsel appearing on behalf of the respondent had no objection for this Court granting a time of one month for the petitioner to vacate the premises in question. In view of such submissions made by the Learned Counsel for the petitioner, the petitioner shall vacate the premises in question, within a period of one month from the date of receipt of a copy of this order.

18. In the result, this Civil Revision Petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.