

A. Durai Vs. the Competent Authority and Personnal Assistant to the Collector of Madras

A. Durai Vs. the Competent Authority and Personnal Assistant to the Collector of Madras

SooperKanoon Citation : sooperkanoon.com/828581

Court : Chennai

Decided On : Jun-25-2001

Reported in : (2001)3MLJ311

Appellant : A. Durai

Respondent : The Competent Authority and Personnal Assistant to the Collector of Madras

Judgement :

A. Ramamurthi, J.

1. The unsuccessful, plaintiff in both the Courts below is the appellant.

2. The case in brief is as follows:

The plaintiff filed a suit for declaration that the notice in Form-B proposed to be issued on 22.1.1976 is illegal, unlawful, without jurisdiction and against the provisions of Act 27 of 1960 and other reliefs. The plaintiff was the erstwhile Secretary of S.G.R. Podunala Mandram and put up a semi-permanent structure at No. 29 Madley Road, T. Nagar, Madras-17. By the end of 1978, this Mandram was disbanded and A. Govindasamy Ninaivu Mandram was inaugurated in the same place. The said Mandram is still functioning with the plaintiff as its Secretary. The

plaintiff was also detained under the provisions of the Maintenance of Internal Security Act from January 1976 to January 1977 in the Central Prison, Madras. Now, the plaintiff understands that a Notice in Form-B prescribed under Act 27 of 1960 was served to one Rathnavel Chettiar and another S.K. Shanmugam. At the time of the said notice, the plaintiff was detained in Central Prison and he has not been served. Recently, the plaintiff came to know that such a notice has been issued by the defendant, wherein it is stated that possession of the premises has been taken free from the persons concerned in pursuance of the eviction proceedings taken under Section 3 of the Act. They were requested to remove the property within 7 days from the date of service of notice, failing which, action would be taken to remove and dispose it of in public auction.

3. The plaintiff has not received any copy of the notice from the defendant. He is in possession and occupation of the land measuring one ground and 2002 sq.ft. and constructed a semi-permanent structure to the house and a free reading room for the public. The land in question is in exclusive possession and occupation of the plaintiff. No notice or enquiry as contemplated has been done. The plaintiff already filed a suit in O.S.No. 7818 of 1978 and the defendant also filed the written statement. When the matter came up for final hearing on 23.2.1984, the suit was withdrawn by the plaintiff with liberty to file a fresh suit and the same was discussed by the learned IX Assistant Judge, City Civil Court, Madras. Hence, the suit.

4. The defendant resisted the suit contending that the suit is not maintainable. It is also barred by limitation inasmuch as an appeal against the order of the competent Authority under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act 1976 (hereinafter referred to as the Act) shall lie to any above officer. The suit filed in a representative capacity without obtaining necessary orders is also improper. This property has been encroached upon by the plaintiff stands registered in the revenue accounts as Government Poromboke. The land absolutely belongs to Government. During the pendency of the suit only, he had constructed a pucca building in the land inspite of the warning. The plaintiff has converted the premises into a kalyana mandapam for his personal benefits. Due notices were issued and served on the plaintiff under Section 3 of the Act as

early as 11.10.1971 and the order of eviction was also served on the plaintiff in person on 16.3.1976. The plaintiff has also acknowledged having received the order. The plaintiff had also filed an appeal under Section 6(1) of the Act before the Commissioner, Board of Revenue, Madras. The plaintiff is not in lawful possession of the property, but only an encroacher. The land is required for the bona fide purpose. Being a trespasser forcibly occupying Government land with the political banner and earning money for his personal gain, is not entitled to any relief.

5. The trial Court framed 3 issues and on behalf of the plaintiffs, he was examined as P.W.1 and Exs.A-1 and A-2 were marked. On the side of the defendant, the Deputy Tahsildar was examined as R.W.1 and Exs.B-1 and B-2 were marked. The trial Court as well as the lower appellate Court dismissed the suit and aggrieved against this, the plaintiff has come forward with the present second appeal.

6. At the time of admission, the following substantial question of law was framed by this Court.

Whether the Courts below have properly appreciated the requirement of service of notice on the occupant before proceedings under the concerned statute are taken?

7. Heard the learned Counsel of both sides.

8. The points that arise for consideration are: (1) whether the plaintiff is entitled to the relief of declaration? and (2) To what relief?

9. Points: The plaintiff proclaims himself to be the Secretary of Govindasamy Ninaivu Mandram and they have put up a semi-permanent structure in the said place. The plaintiff was detained under the provisions of Maintenance of Internal Security act, from January 1976 to January 1977 in Central Prison, Madras. The plaintiff was not served a notice in Form-B as prescribed under the Rules and as such, the proceedings dated 22.1.1976 is illegal and without jurisdiction and against the provisions of Act 27 of 1960 and under the circumstance, the plaintiff is entitled to the relief of declaration.

10. Learned senior counsel for the appellant/ plaintiff further contended that the mandatory provisions of Act 27 of 1960 have not been followed by the respondent in ordering eviction. The original plaintiff K. Jayaraman, who was in occupation of the property, had been detained in prison during the relevant period and as such, notice could not have been served to him. Moreover, the respondent had served a notice on a wrong person, not concerned with the suit property and as such the notice is not valid in law. The plaintiffs signature is not available in Ex.B-1 to prove the service of notice. The evidence of D.W.1 has not been supported by any material documents and, as such, it has to be rejected.

11. The defendants mainly contended that the notice contemplated under the Act and Rules have been complied with. Further more, the present suit is not maintainable in view of the bar under the Act. The suit is also barred by limitation. The only remedy available to the plaintiff is to prefer an appeal before the competent authority. Moreover, the plaintiff had already preferred an appeal before the Board of Revenue and it was also dismissed. Under the circumstances, the present suit filed is liable to be dismissed. Moreover, the plaintiff already filed a similar suit as early as 1978 and withdrew the same in 1984 and thereafter filed the present suit only to squat on the property. The plaintiff who had originally put up a semi-permanent structure under the name of Govindasamy Ninaivu Mandram, during the pendency of the suit, constructed a pucca building in 1982 in spite of the warning. Now, he has converted the premises into kalyana mandapam for his personal benefits by using it for remunerative purposes under the guide of a political party.

12. Learned senior counsel for the appellant/ plaintiff mainly contended that the notice contemplated under the Act and Rules has not been properly served and the document filed on the side of the plaintiff did not indicate that there was proper service on the plaintiff. In short, according to him, the plaintiff was detained under MISA during the year 1976-77 and as such, there was no proper service of notice. In support of his contention, he also relied upon the decision reported in Govindarajulu and Ors. v. Assistant Divisional Engineer, H. & R.W., Vridhachalam , but this decision is not applicable to the case on hand. Learned senior counsel for the plaintiff further stated that the notice contemplated under the Rules is

mandatory and as proper notice has not been served, the plaintiff is entitled to the relief of declaration.

13. Learned Government Advocate contended that according to revenue records, it was Government poromboke and the procedure has been duly complied with. When admittedly the Mandram is running in the said place, it is not necessary that there should be actual service of notice to the plaintiff alone. A reading of the procedures under the act and Rules clearly indicates that it is sufficient, if the notice is affixed in a conspicuous place or to other person therein. Apart from that, there is a clear bar for institution of a civil suit before the Court.

14. It is clear from the proceedings that the Estate Officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises and in such other manner as may be prescribed whereupon the notice shall be deemed to have been duly given to all persons concerned. Where the estate officer knows or has reasons to believe that any person is in occupation of the public premises, then, without prejudice to the provisions of Sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed. After considering the cause, if any shown by any person in pursuance of a notice and in any evidence, the estate officer can pass an order for eviction to the unauthorised occupant. The plaintiff has not filed any record to show that he is in lawful possession of the premises. Since the property is belonging to the Government poromboke and the officials have duly complied with the provisions, the plaintiff is not entitled to succeed.

15. The bar of jurisdiction is also mentioned in the Act as follows:

No Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under Sub-section (1) of Section 7 or the damages payable under Sub-section (2) of that section or the costs awarded to the Government or the corporate authority under Sub-section (5) of Section 9 or any portion of such rent, damages or costs.

16. It is therefore clear that the Civil Court has no jurisdiction to entertain any suit. There is also provision to enable the affected party to prefer an appeal. An appeal shall lie from every order of the estate officer made in respect of any public premises under Section 5 or Section 7 to an appellate Officer who shall be the District Judge of the district in which the public premises are situated or such other judicial officer in that district of not less than such number of years standing as may be prescribed and as the District Judge may designate in this behalf. An appeal under Sub-section (1) shall be preferred within such period as may be prescribed.

17. 'Unauthorised occupation', in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. There is no dispute that the plaintiff is in occupation of the Government poromboke land and there is no record to show that they were given any assignment or any right over the same. Originally semi-permanent structure was put up in that building and as early as 1983 during the pendency of the suit, pucca construction was also put up ignoring the warning. Originally the suit was filed in the year 1978 and the defendant filed written statement disputing the claim and when the suit was about to be taken in 1984, the plaintiff withdrew the suit for reasons best known to him. However, he again filed a suit in 1984 and for the last 16 years, the plaintiff is in unauthorised occupation of the property. The only contention raised by the learned senior counsel for the plaintiff is that no proper notice has been served on the plaintiff and as such, the plaintiff is entitled to the relief of declaration. Only when the Civil Court has got jurisdiction to entertain the suit, the only the question whether the notice already issued was proper or not can be considered. Remedy has been provided to the aggrieved parties to file an appeal before the competent authority and it appears that the plaintiff had also exercised the right of appeal and it was also dismissed. Only thereafter, the plaintiff had ventured to file a suit before the Court raising a question that there was not valid notice and in the name of declaration, the plaintiff is staying in the property for the last several years. When once the plaintiff had exhausted the remedy provided under the Act, now it is not

open to the plaintiff to file a suit before the Civil Court and raise the same points. The Courts below have come to the conclusion that the procedure has been duly complied with. It is not necessary that personal notice should be served on the plaintiff because the plaintiff alone was not the person exclusively occupying the Mandram. Naturally there would be number of office bearers in the Mandram and it is quite possible for the defendant to serve the notice on any one of the office bearers or affix the same in a conspicuous place. This being so, the present contention of the plaintiff that he was detained under MISA during January 1976-77 and unless the notice was given to him personally, he is entitled to squat on the property cannot be accepted. Both the Courts below came to the concurrent finding that the Civil Court has no jurisdiction to institute a suit and the finding is based on legal evidence. It cannot be said that the finding is perverse and no interference is called for.

18. For the reasons stated above, the second appeal fails and is dismissed. No costs. Time to vacate two months.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com