

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.3780 and 715 of 2021

and

W.M.P.No.19210 & 770 of 2021

S.R.K.Babu Ismail Shahib & Company,
Represented by its partner,
R.Rahamathullah.

... Petitioner in both W.P's

Vs.

The Custodian of Enemy Property of India,
Office of the Custodian of Enemy Property of India,
1st floor east wing,
Sivaji Stadium (Annex Building),
Connaugh place,
New Delhi – 110 001.

... 1st respondent in
W.P.No.3780 of 2021

The Assistant Custodian of Enemy Property for India,
Office of the Custodian of Enemy Property for India,
Keiser-1-Hind Building, Curimbhoy Road,
Bellard Estate,
Mumbai – 400 001.

... 2nd respondent in
W.P.No.3780 of 2021 and
1st respondent in
W.P.No.715 of 2021

The District Collector,
Chennai District,
62, North Beach Road, 4th Floor,
Chennai – 600 001.



The Tahsildar,
Purasawalkam Taluk,
No.3, Raja Muthaiah Salai,
Purasawalkam,
Chennai – 600 003.

... 2nd and 3rd respondents
in W.P.No.715 of 2021

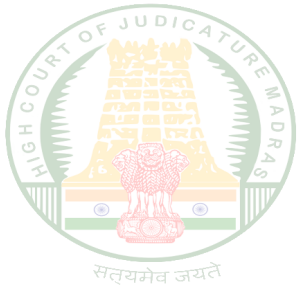
Prayer in W.P.No.3780 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents no.1 and 2 to consider the petitioner's representation dated 18.01.2021.

Prayer in W.P.No.715 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the respondents from evicting the petitioner from the premises at Old No.12, New No.25, Armenian Street, Mannady, Chennai – 600 001 except by due process of law.

For Petitioner : Mr.J.Antony Jesus (in both W.P's)

For Respondents : Mr.K.Srinivasamurthy
SPCCG (for R1 and R2 in W.P.No.
3780 of 2021)
(for R1 in W.P.No.715 of
2021)

: Mr.T.Arunkumar
Additional Government Pleader
(for R2 and R3 in W.P.No.
715 of 2021)



COMMON ORDER

WEB COPY W.P.No.3780 of 2021 has been filed to direct the respondents 1 and 2 to consider the petitioner's representation dated 18.01.2021 and W.P.No.715 of 2021 has been filed to forbear the respondents from evicting the petitioner from the premises situated at Old No.12, New No.25, Armenian Street, Mannady, Chennai – 600 001 except by due process of law.

2. The petitioner/company in their representation has stated that they are the tenant in the property situated at Old No.12, New No.25, Armenian Street, Mannady, Chennai – 1 and they are willing to purchase that property and sent an representation to the respondents on 18.01.2021. Since the said representation was not considered the W.P.No.3780 of 2021 came to be instituted.

2.1. The petitioner/company company also sent a representation dated 06.01.2021 to the respondents not to evict them from the subject property, except by due process of law. Thus, to forbear the respondents from evicting the petitioner/company from the subject property, W.P.No.715 of 2021 came to be instituted.



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3. It is not in dispute between the parties that the subject property is an enemy property governed under the provisions of the Enemy Property Act, 1968. It vest with the Government of India and the Custodian is empowered to deal with the property in the manner know to law. Therefore, non consideration of the representation submitted by the petitioner/company would not provide absolute right to the decision of the petitioner/company to purchase the enemy property from the Custodian under the Enemy Property Act, 1968.

3.1 Mere direction to the respondents to consider the representation, would do no service to the cause of justice, since the petitioner/company has not established any right to sell the enemy property by the Custodian to their favour. It is an administrative decision to be taken by the Government of India under the provisions of the Enemy Property Act, 1968.

3.2 The issues raised in this regard have been dealt with by the Hon'ble Division Bench of this Court in W.A.Nos.1142 and 1146 of 2021 dated 23.07.2021. The relevant portions of the order reads as under:

“Para3: The learned single Judge, under a



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common order, dismissed the writ petition in W.P.No.797 of 2021 and disposed off the other writ petition in W.P.No.3592 of 2021 by directing the respondents to consider the representation of the appellant dated 09.11.2020 to purchase the property after affording a fair hearing to the appellant, within a period of one year.

Para 10: The respondents do not have any legal obligation to renew lease and hence no direction to that effect can be issued. Further due to pandemic, all schools are closed and classes are being conducted through online only. So the contention of the appellant that the sealing of the premises had affected the student cannot be taken as correct. Even if it is so, there is no duty bestowed on the respondents to consider it for renewing the lease. Instead, the Appellant who know about the impending expiry of lease, ought to have been ready to shift the school somewhere or close the school by limiting the admission.

Para 14: As it is stated already, the respondents have no statutory obligation to extend the lease whenever the lease period expires and it is up to the policy makers to decide about the better usage of the property. When an authority is not bestowed with the duty to do a certain act, it is right for the learned Single Judge to deny the relief of Writ of Mandamus as prayed by the appellant.

Para 15: Since there was a reluctance on the part of the appellant to handover the possession after expiry of the lease period, the 2nd respondent, who is the custodian of



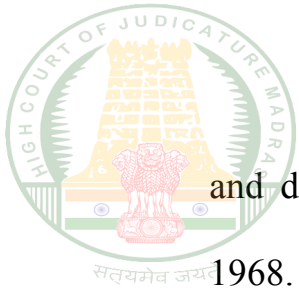
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enemy property, has sealed the property by giving a sealing order. If the appellant is aggrieved that his belongings still lie inside the premises, the respondents may permit him to take them away in their presence.

Para 16: So far as the sale of the property is concerned, as per Clause (2) Rule 9 of the Guidelines of the Disposal of Enemy Property Order, 2018, the Custodian can sell the property to the existing occupier or otherwise, as may be decided by the Central Government and at the rate as determined by the Enemy Property Disposal Committee. A representation dated 09.11.2020 has been made by the appellant indicating his offer to purchase the property and the same would be considered by the Disposal Committee under Section 8(A) of the E.P.Act and the learned Single Judge has also issued a direction in this regard. However, it is at the discretion of the respondents to accept the offer of the appellant or not. If the respondents incline to take a decision to sell the property to the appellant, the process may be expedited. However, it is made clear that above suggestion is only an observation and not a direction. In view of the above discussions, we do not find any factual or legal infirmity in the order of the Single Judge.”

4. In view of the principles laid down by the Hon'ble Division Bench, the relief as such sought for cannot be granted. The respondents are directed to resume the possession of the property by following the procedures



and deal with the same under the provisions of the Enemy Property Act, 1968.

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5. With these directions, the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

07.02.2024

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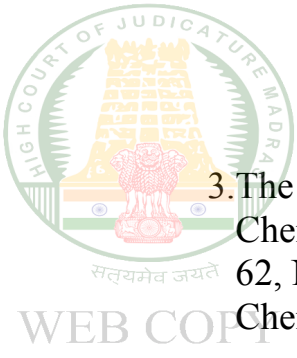
Index : Yes / No

Speaking order / Non-Speaking Order

Neutral Citation : Yes / No

To

1. The Custodian of Enemy Property of India,
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1st floor east wing,
Sivaji Stadium (Annex Building),
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2. The Assistant Custodian of Enemy Property for India,
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3. The District Collector,
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