

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.14677 of 2010

C.Zakkarias

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Petitioner

Versus

1. The Executive Officer,
Vadalur Town Panchayat,
Vadalur,
Kurinjipadi Taluk,
Cuddalore District.

2.G.Chandrasahu

..

Respondents

Prayer: Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Mandamus, directing the first respondent to transfer the tenancy in respect of shop No.29 inside Vallalar Bus Stand Vadalur Kurinjipadi Taluk, Cuddalore District, from the name of 2nd respondent to the name of the petitioner.

For Petitioner: Mr.R.Gururaj

For Respondent: Mr.P.Sanjay Gandhi (R1)
Additional Government Pleader
Mr.P.Mani (R2)

O R D E R

The prayer in this Writ Petition is for a mandamus directing the first respondent to transfer the tenancy in respect of shop No.29 inside Vallalar Bus Stand, Vadalur Kurinjipadi Taluk, Cuddalore District, from the name of the second respondent to the name of the petitioner.

2. The case of the petitioner is that the Shop No.29 at first respondent Town Panchayat, inside Vallar Bus Stand, Vadalur was originally rented out to second respondent and from whom one Manivel got transfer of tenancy on his own on 27.07.1990, who inturn transferred tenancy to one Manimegalai on 26.11.1993, who again transferred the tenancy to one G.Radhakrishnan on 29.09.1994 from whom the petitioner got the tenancy transferred on 27.07.1995. Since then he has been in continuous possession and enjoyment of the shop.

3. Since, the second respondent has already transferred the tenancy of the said shop as early as in the year 1990, he cannot have any lien over the said shop. The second respondent, though undertook to give a letter also attempted to disturb the possession of the petitioner. Therefore, civil cases were filed between the parties i.e. between the petitioner and the second respondent in O.S.Nos.193 of 2010 and 31 of 2011 before the Principal District Munsif, Cuddalore and ultimately A.S.Nos.56 and 59 of 2014 before the Principal Sub Judge, Cuddalore. All these civil disputes were decided by decree and Judgment of the Appellate court, on 02.12.2015.

4. Therefore, on that basis, the petitioner wants tenancy to be confirmed in the name of the petitioner. However, before the civil disputes came to be decided, the Writ Petition was filed in the year 2010 and the petitioner already submitted representation to the first respondent on 14.06.2010, where he had stated all these transfer of tenancy and ultimately the tenancy is with the petitioner. The said representation which was submitted on 14.06.2010 is still pending. Therefore, the petitioner wants to consider the said representation by the first respondent to confirm tenancy in favour of the petitioner.

5. Heard the respective counsels.

6. The learned counsel appearing for the second respondent would contend that he is a original tenant under the first respondent and if at all the petitioner claim any tenancy, he is only the sub tenant. Eventhough, there is no provisions for sub tenancy by the lawful tenant, under the relevant rules, there were transfer of tenancy and the said practice has been followed for years together. But, that will not change the position and ultimately the lawful tenant would be the second respondent and not the petitioner. Therefore, he is not entitled to possession of shop No.29, inside Vallar Bus Stand Vadalur.

7. Per contra, the learned counsel for the petitioner would further submit that when the second respondent has already let

out the tenancy for some third party from whom the petitioner got the transfer of tenancy, therefore, right from the year 1995, the petitioner only is in possession of the said shop. This possession has been confirmed by the Civil Court in the civil proceedings referred to above.

8. Be that as it may, this Court after hearing the parties and without going into rival claim of the petitioner as well as the second respondent, is of the considered view that the first respondent can be directed to decide the tenancy in the light of the above said documents, as well as Civil Court decrees by considering the representation dated 14.06.2010, filed by the petitioner and ultimately final decision can be taken. Accordingly, tenancy can be confirmed in respect of the said shop.

9. With these observations, the Writ Petition is disposed of with a direction to the first respondent to consider the representation of the petitioner dated 14.06.2010, in the light of the above said documents, as well as the civil Court decrees and to do the needful, within a period of three months from the date of receipt of a copy of this order. Till such decision is taken by the first respondent, the status-quo as on today, shall be continued. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

arr
To

The Executive Officer, सत्यमेव जयते
Vadalur Town Panchayat,
Vadalur,
Kurinjipadi Taluk,
Cuddalore District.

+1cc to Mr.P.Mani, Advocate Sr.62592
+1cc to Mr.R.Gururaj, Advocate SR.63042

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sr[co]
srg 02/12/2016