

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2016

CORAM

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN

W.P. Nos. 34460 to 34462 of 2016

&

W.M.P. Nos. 29686 to 29688 of 2016

Mr.Sivakumar

..Petitioner in W.P. No.
34460 of 2016

S. Nagaraj

..Petitioner in W.P. No.
34461 of 2016

Durga

..Petitioner in W.P. No.
34462 of 2016

Vs.

1. The State of Tamil Nadu, rep. by
its Secretary to Government,
Municipal Administration and Water
Supply Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner,
Poonamallee Municipality,
No.1, Kandasamy Nagar,
Poonamallee, Chennai - 600 056.

..Respondents in all
the writ petitions

Prayer: Petitions under Article 226 of the Constitution of India praying for issue of a mandamus forbearing the respondents from dispossessing the respective petitioners from the shops bearing Nos. 3, 1 and 2 respectively comprised in S.Nos. 229/5A and 300/1A situated at Trunk Road, Poonamallee, Chennai - 56, without following due process of law.

For Petitioners :: Mr.S. Sathyaraj

For Respondents :: Mr.P. Srinivas

O R D E R

The petitioners are occupying Shop Nos. 3, 1 & 2 respectively comprised in S.Nos. 229/5A and 300/1A situated at Trunk Road, Poonamallee, Chennai - 56, to an extent of 300 sq.ft, each, allotted by the 2nd respondent. For the past so many years, the petitioners have been paying monthly

rent/licence fee every month, without any arrears. When things stood so, the 1st respondent issued a legal notice on 23.03.2016 calling upon the petitioners to vacate the shops under their occupation for the purpose of construction of a building for locating their office. According to the petitioners, the respondents have to invoke the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, to evict the petitioners. However, without doing so, on 24.09.2016, the 1st respondent, with the help of some third parties, did not allow the petitioners to open their shops and warned them to vacate their respective shops by 28.09.2016. Hence, the petitioners have approached this Court to forbear the respondents from dispossessing them from the respective shops under their occupation.

2. Mr.S. Sathyaraj, learned counsel for the petitioners would submit that with political motive, the petitioners' shops are targetted while the row of shops, belonging to the respondents, which are located in the main road itself, have not been disturbed and only the petitioners' shops, which are just behind the said row of shops, are sought to be vacated. According to the learned counsel, since the petitioners have been carrying on business for years together, the respondents should not disturb their possession.

3. However, Mr.P. Srinivas, learned counsel for the respondents would submit that the building in which the office of Poonamallee Municipality is now functioning is only to an extent 3000 sq.ft and it is impossible to have a full-fledged office in the said place and therefore, for the purpose of construction of Municipal Office of Poonamallee Municipality, the shops under the occupation of the respective petitioners are required. The learned counsel would further submit that the shops, which are under the occupation of the petitioners, have been constructed by the Municipality while the shops, which are located in the main road, have been constructed by Tamil Nadu Harijan Development Corporation (THADCO in short) and there is only a small gap of about 7 or 8 feet available, between the shops constructed by THADCO and the petitioners' shops, to reach the vacant site earmarked for proposed construction. Therefore, according to the learned counsel, it is very difficult to reach the vacant site, measuring about 24000 sq.ft, wherein the new construction is going to come up. Further, the period of lease of the shops under the occupation of the respective petitioners has already come to an end on 30.06.2016 and hence, the petitioners have got no right to continue in possession of their respective shops.

4. Heard the learned counsel on either side and perused the records.

5. It is evident from the records that the petitioners are in occupation of their respective shops as lessees/licensees from 2002 onwards. There is no complaint against the petitioners regarding non-payment of rent or licence fee by the respondents. However, the respondents, now require the shops under the occupation of the respective petitioners only for the purpose of construction of a new building to house the Municipal Office of Poonamallee Municipality as the present building is unable to accommodate the entire Municipal Office. A perusal of the photographs produced would also indicate that adjacent to the petitioner's shops, the earlier building in which the Municipal Office of Poonamallee Municipality was located had already been demolished and it has been kept as a vacant site, to enable the Municipality to put up a new construction. In between the shops constructed by the THADCO and the respective petitioner's shops, there is only a small gap, through which it is impossible for vehicles to bring and unload materials for the proposed construction. That apart, after the demolition of the shops under the occupation of the petitioners, the said place is going to be utilised only for the purpose of construction to be put up by the Municipality.

6. To a query, Mr.P. Srinivas, learned counsel for the respondents would submit that even those who are running the shops constructed by THADCO, located in the main road, have been directed to hand over possession and the said site is also going to be utilised for the intended construction. However, the learned counsel for the petitioners would submit that the occupants of the shops constructed by THADCO have not been disturbed and till date, the said shops are run and that the respondents are bent upon evicting the petitioners alone.

7. To strike a fine balance between the rights of the petitioners and the respondents, it is appropriate to direct the respondents to allow the petitioners to continue in occupation of their respective shops till the shops constructed by THADCO, located in the main road, are vacated. Once the occupants of shops belonging to THADCO vacate, the petitioners are also bound to vacate their respective shops and hand over possession of the same to the Municipality. It is made clear that it is open to the Poonamallee Municipality to take possession of respective petitioner's shops as well as the shops belonging to THADCO simultaneously. The writ petitions are disposed of with the above directions. No costs. Connected W.M.Ps. are closed.

-s/d-

Assistant Registrar

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To

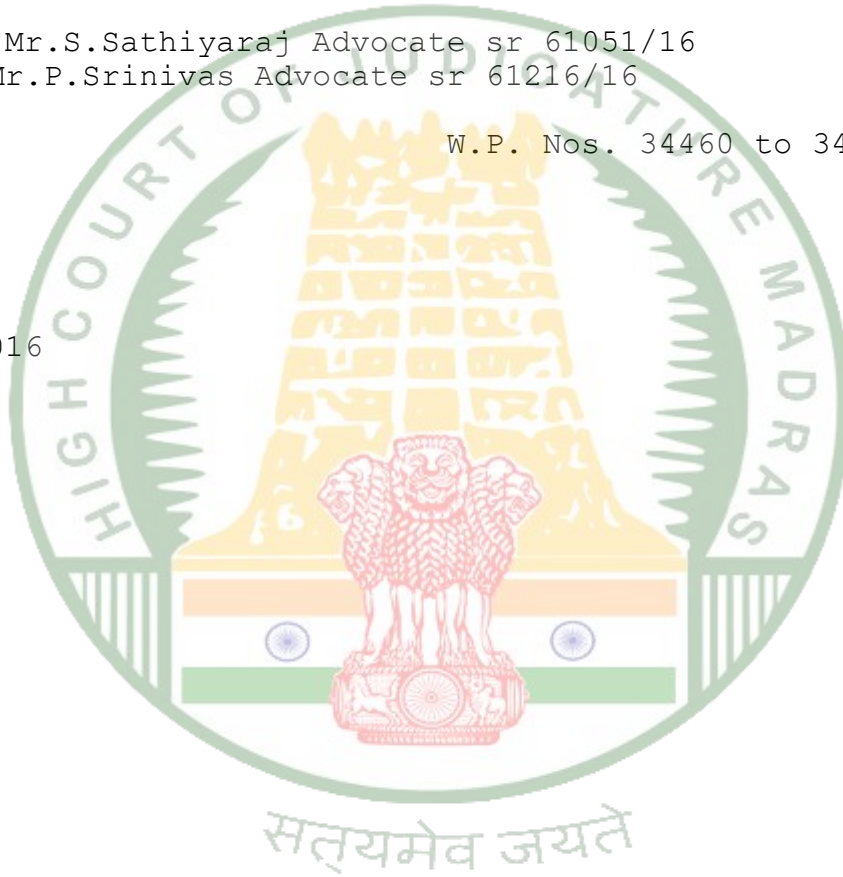
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+2 ccs to Mr.S.Sathiyaraj Advocate sr 61051/16

+1 cc to Mr.P.Srinivas Advocate sr 61216/16

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