

In the High Court of Judicature at Madras

Dated : 15.6.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.36102 of 2002

Krishna Mandiram Trust,
rep.by its Trustees
(1) P.Janakiraman and
(2) Sriramulu

...Petitioner

Vs

1.The District Collector, Karur.
(cause title amended vide WMP.No.
6940 of 2016 dated 9.3.2016

2.The Divisional Excise Officer,
Taluk Office Compound,
Karur.

3.Rajasekar

4.S.Shanmugham

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the proceedings of the first respondent made in Na.Ka.J.1/18497/2001 dated 14.8.2002, quash the same and consequently forbear the respondents in any way from running and continuing a wine shop with bar by respondents 3 and 4 or by anyone either by themselves or through their agents, servants, etc., in S.F.No.825 and T.S.Nos.775 and 776 of an extent of 1 acre in Karur Municipal Town, Second Ward (now Ward No.5), 4th Division, Karur in Rani Mangammal Street and Karupayee Koil Street, Karur, Karur District, which is the property of the trust.

For Petitioner : Mr.Solomon Francis
For Respondents 1 & 2 : Mr.A.Zakkir Hussain, GA
For Respondents 3 & 4 : No appearance

ORDER

The petitioner has filed this writ petition challenging an order passed by the first respondent dated 14.8.2002.

2. The petitioner is a trust and claiming ownership over an immovable property in S.F.No.825, Karur Devasthanam Village, Karur Municipal Town, 2nd Ward, 4th Division, the then Karur District and it appears that there were several tenants in the property and one of the tenants is the third respondent, who, in turn, gave a portion of the leased out premises on sub-lease to the fourth respondent, who attempted to set up a liquor shop.

3. Therefore, the petitioner filed a suit before the Subordinate Court, Karur in O.S.No.207 of 1982 seeking a decree of permanent injunction to restrain the first defendant, his officers and servants from interfering with the petitioner's peaceful possession and enjoyment of the property and to direct the defendants 2 to 25 therein to surrender possession of the suit property indicated in the plaint plan, for recovery of past rents or damages as profits from defendants 2 to 25 in respect of the portions in their respective enjoyment and for recovery of future profits from the date of the suit till the date of delivery of possession and also for costs.

4. In the said suit, the first defendant was the District Collector, Tiruchirapalli and the second defendant was one Samiappa Gounder, who was the father of the third respondent herein.

5. The said suit was contested and the Government Pleader represented the first defendant - District Collector. However, the first defendant did not choose to file a written statement. Further, some of the defendants were represented by counsel except some of whom, who died and some of whom, who were set ex parte. The Court below decreed the suit by judgment and decree dated 1.9.1994. The decree reads as follows :

"1. That the suit be and the same is hereby dismissed as against the defendants 5, 15, 19, 22, 24 and 25 as abated.

2. That the plaintiff's right, title and interest in the suit property be and hereby is declared.

3. That the first defendant, his officers and servants be and hereby are restrained by means of permanent injunction from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

4. That the defendants do surrender possession of the portions of the suit

property in their respective occupation as indicated in the plaint plan to the plaintiff.

5. That the defendants do pay to the plaintiff's past profits as indicated in the annexure.

6. That the plaintiffs are entitled to future profits from the date of suit till the date of delivery of possession and the quantum of the same will be decided under separate proceedings under Order XX Rule 12 CPC.

7. That the defendants do pay to the plaintiffs a sum of Rs.1258.50 towards the cost of the suit.

8. That the plaintiffs do pay to the Government a sum of Rs.3087.50 (Rupees three thousand and eighty seven and paise fifty only) towards the court fee payable in the suit."

6. It is submitted by the learned counsel for the petitioner that as against the said decree, the District Collector did not file any appeal, but the private parties sought to file an appeal before the Lower Appellate Court. But, there was a delay in filing the appeal and against an order passed by the Lower Appellate Court, they had filed a civil revision petition before this Court in C.R.P.No.1653 of 1999, in which, the petitioner trust filed a miscellaneous petition in CMP.No.9819 of 2001 to restrain the third respondent herein from putting up any construction in the property or opening any wine shop. This Court granted an injunction as prayed for restraining the third respondent herein from opening any wine shop pending further orders by order dated 31.7.2001. It is further stated that the said civil revision petition was dismissed on 17.8.2001.

7. Be that as it may, it is seen that the petitioner also approached this Court by filing a writ petition in W.P.No.14481 of 2002 and sought for a Writ of Mandamus to forbear the official respondents from opening the wine shop. The said writ petition was disposed of by an order dated 15.7.2002, in which, the operation portion reads as follows :

"It is not disputed that the licence is to expire on 31.7.2002 i.e to say within a period of about two weeks from today. In such view of the matter, it is unnecessary to deal with the contentions raised in the writ petition. However, it is made clear that before considering any application for grant of licence for the subsequent year in respect of the very same premises, the representation of the petitioner trust should be considered by the respondents 1 and 2 by giving opportunity of hearing to the petitioner trust. It would be open to the petitioner to produce relevant documents and materials in support of the contention raised by it. The representation of the petitioner/trust should be disposed of within four weeks from today. The petitioner is directed to appear before the Collector on 25.7.2002. Respondents 3 and 4 may also appear before the Collector on that date. Further representation may also be made by the petitioner."

8. Pursuant to that, the first respondent took up the petitioner's representation for consideration and from a perusal of the impugned order, it is seen that the District Collector has virtually overruled the decision of the Civil Court and passed an order, which is directly against the decree passed by the Civil Court. The first respondent, having been impleaded as the first defendant in the suit and having suffered a decree, could not have passed the impugned proceedings and also sealed the premises. If the private parties are aggrieved by the decree, it is open to them to file an appeal before the Lower Appellate Court. Likewise, if the first respondent District Collector has any reservation in the findings rendered by the Civil Court, he could have filed an appeal. Therefore, the manner, in which, the impugned order has been passed cannot be countenanced.

9. Though the impugned order is a four page order, the findings are only in paragraphs 8 and 9 of the order and the earlier paragraphs are all about proceedings, which had taken place before the Civil Court, etc. The findings rendered by the first respondent, more particularly in paragraphs 8 and 9 cannot be accepted, as the first respondent cannot exceed the role of the Civil Court.

10. Therefore, the writ petition is allowed, the impugned order is quashed and it is open to the petitioner to work out their other remedies in a manner known to law. Likewise, it is left open to the private parties to work out their rights before the appropriate forum, if they have not already done so. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Karur.

2.The Divisional Excise Officer,
Taluk Office Compound,
Karur.

+lcc to Mr.P.Solomon Francis, Adocate sr.32507
lcc to the Government Pleader sr.32978

WP.No.36102 of 2002

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srg 29/06/2016

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