



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 17.10.2016

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THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P (PD) (MD) No.1587 of 2016

and

C.M.P (MD) No.7755 of 2016

Maniyanchi Village Panchayat,
represented by its President
Nalla Alagarsamy,
Maniyanchi Village Panchayat,
Vadipatti Taluk,
Madurai.

.. Petitioner/Defendant

vs.

C.Boopathy

.. Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying this Court to set aside the fair and decretal order made in I.A.No.416 of 2015 in O.S.No.36 of 2012, dated 6.1.2016, on the file of the District Munsif-cum-Judicial Magistrate Court, Vadipatti.

For Petitioner : Mr.R.Karthikeyan
Addl.Govt.Pleader

For Respondent : M/s.R.Pandi Maharaja

ORDER

This revision has been filed seeking to set aside the fair and decretal order made in I.A.No.416 of 2015 in O.S.No.36 of 2012, dated 06.01.2016, on the file of the District Munsif-cum-Judicial Magistrate Court, Vadipatti.

2. According to the learned counsel for the Petitioner that an agreement was entered between the Petitioner-Panchayat and the father of the respondent, for running a Touring Talkies at Maniyanchi Village at Vadipatti Taluk, Madurai District from 25.05.2001 to 28.02.2012 for a period of 12 years, measuring an extent of 82 cents in R.S.No.38/1 and R.S.No.40/1. The third person was not paid by the respondent's father and the said property was misused for some other illegal purposes by



violating the conditions of agreement. Thereafter, the Petitioner-Panchayat has passed a resolution in Resolution No.39 of 2009 on 24.08.2009 cancelling the rental agreement granted in favour of the respondent's father. Thereafter, a Writ Petition in W.P(MD)No.3750 of 2010 was filed by the then President of Maniyanchi Village Panchayat before this Court for taking possession of the property. By order, dated 11.08.2011, the said Writ Petition was ordered. Thereafter, the respondent herein filed an appeal in W.A(MD)No.825 of 2011 and the same was dismissed, a Review Application was filed by the respondent in Rev.Aplc(MD) No.36 of 2011 against the order made in W.P(MD)No.3750 of 2010 and the same was dismissed on 23.11.2011. After the orders passed in the above said petitions, the Petitioner-Panchayat passed a resolution to take the possession and to remove the structure and to use the land for usage of common public utility on 12.03.2012. Thereafter, the respondent has filed a suit in O.S.No.36 of 2012 for bare injunction before the District Munsif Court, Vadipatti. In the above suit, they have not filed any application for obtaining an interim order. On 22.06.2014, the Panchayat has issued a notice for removal of encroachment against the respondent herein. Thereafter, eviction notice was issued on 03.07.2014. On the basis of that, the suit premises was sealed on 15.07.2014 by the authority concerned. The respondent herein filed W.P(MD)No.12163 of 2014 challenging the eviction notice issued by the Petitioner-Panchayat on 03.07.2014. The aforesaid Writ Petition was disposed of with the following observations:

''4.In view of the above, it is always open to the Petitioner to make his objection to the said notice which is impugned in this Writ Petition and on receipt of such objection, the authority shall pass appropriate orders, on merits and in accordance with law after giving an opportunity of hearing to the Petitioner, as expeditiously as possible.''

3. Thereafter, the Petitioner/Panchayat has issued a reminder notice to file the reply of the respondent as directed by the orders passed in W.P(MD)No.12163 of 2014, dated 05.08.2014. The respondent filed his objections on 01.10.2015. An opportunity of personal hearing was granted to the respondent by notice, dated 01.10.2015 and on 07.10.2015, a notice was issued to the respondent herein to appear for a personal hearing before the Petitioner-Panchayat on 16.10.2015 and thereafter, the final order of eviction was passed on 06.11.2015 by the revision petitioner. In the meantime, the respondent herein filed I.A.No.416 of 2015 in O.S.No.36 of 2012 on 04.11.2015 before the District Munsif Court, Vadipatti Taluk, Madurai District, for ~~injunction~~ restraining the respondents from making by way of unlawful encroachment in the Petitioner mentioned property, till the disposal of the suit. The Petitioner also filed a Writ



Petition in W.P(MD)No.20399 of 2015 challenging the final order passed in a proceedings in Na.Ka.No.1 of 2015/encroachment, dated 06.11.2015 of the fourth respondent and to quash the same and consequently to direct the fourth respondent to pursue the original suit in O.S.No.36 of 2012 pending on the file of the District Munsif, Vadipatti, Madurai District. The said Writ Petition was dismissed as withdrawn. But, however, no liberty was granted to the Petitioner to file a fresh Writ Petition with the same cause of action. Therefore, according to the learned counsel for the Petitioner, the said order has become final. Filing of application in I.A.No.416 of 2015 is not maintainable before the trial Court in the aforesaid suit. The relief prayed for in the suit has become infructuous, since the petitioner has followed the procedures as contemplated under the provisions of the 'Act' and that the eviction order has become final and thereafter, possession was taken by the Petitioner/Panchayat and the premises was sealed by the Petitioner/panchayat. Without considering the above facts, the trial Court has granted an interim order in the aforesaid suit after notice has been issued under the provisions of the 'Act'. Aggrieved by the interim order granted, since the Petitioner has abused the process of Court, the Petitioner has approached this Court under Article 227 of the Constitution of India.

4.Per contra, the learned counsel for the respondent would submit that the Civil Revision Petition itself is not maintainable on law and on facts. Being not satisfied with the order passed by the trial Court, the appellant has to file an appeal before the appropriate Court. The learned counsel for the respondent submitted that after liberty was granted by the Court, he filed an application before the trial Court. Therefore, the application filed by the respondent in the aforesaid suit is maintainable and prays for the dismissal of the Civil Revision Petition.

5.Heard the learned counsel appearing on either side and perused the materials on record.

6.It is an admitted fact that the Petitioner herein passed a resolution in Resolution No.39 of 2009 on 24.08.2009 to cancel the rental agreement entered between the Petitioner/Panchayat and the father of the respondent. Thereafter, the then President of the Petitioner/Panchayat has filed a Writ Petition in W.P(MD)No.3750 of 2010 for issuance of a Writ of Mandamus to direct the second respondent to pass an order cancelling the 'C' Form Licence given to Mr.Meyvazhi Chelliah Ananthar, the father of the fifth respondent to operate Mahalakshmi Touring Theatre and consequently to direct his subordinate revenue authorities to take possession of the land and hand-over the same to the Administration of Panchayat Board for utilizing the same to meet the needs of the students community and the common public and the aforesaid Writ Petition was disposed of with the following observations:



''7. In view of the above fact, the first prayer in the writ Petition to cancel the ''C Form'' licence becomes infructuous in view of the statement made in paragraph 7 of the counter affidavit. Further taking note of the stand taken by the fourth respondent that the Petitioner can pursue the resolution of the panchayat and take action to protect the properties giving liberty to the petitioner to pursue the matter for possession of the property as per law, if not already possessed.''

7. Thereafter, a review application was filed by the respondent and the same was also dismissed on 23.11.2011. After the dismissal of the said review application in Rev.Aplc(MD)No.36 of 2011 in W.P(MD)No.3750 of 2010, the Petitioner/Panchayat has passed a resolution to take possession and to remove the structure and use the land for usage of common public utility, on 12.03.2012. The respondent filed a suit in O.S.No.36 of 2012 praying for restraining the defendant, their men, agents or any persons claiming through the defendant from interfering with the peaceful possession and enjoyment of the plaintiff, except under due process of law and for costs. In the aforesaid suit, written statement has been filed by the Petitioner/Panchayat on 11.10.2012. Thereafter, on 22.06.2014, notice was issued by the Petitioner/Panchayat for removal of the encroachment made by the respondent herein, under the provisions of Section 131 of the Tamil Nadu Panchayat Act. Thereafter, eviction notice was issued on 03.07.2014 by the revision petitioner/Panchayat. The respondent herein filed W.P(MD)No.12163 of 2014 challenging the eviction notice and this Court was pleased to dispose of the writ petition as follows:

''4. In view of the above, it is always open to the Petitioner to make his objection to the said notice which is impugned in this Writ Petition and on receipt of such objection, the authority shall pass appropriate orders, on merits and in accordance with law after giving an opportunity of hearing to the Petitioner, as expeditiously as possible.''

8. Thereafter, the respondent herein filed the objection for the eviction notice issued by the revision petitioner. On receipt of the said objection, the revision petitioner/Panchayat has issued a notice dated 07.10.2015 directing the respondent herein to appear before the revision Petitioner/Panchayat for a personal hearing at Panchayat Union Office. The respondent appeared in person before the Petitioner/Panchayat. Thereafter, on 06.11.2015, final order was passed by the Petitioner-Panchayat. In the meantime, the respondent herein filed I.A.No.416 of 2015 in O.S.No.36 of 2012 on 04.11.2015 praying for an order of interim injunction restraining the respondents from making by way of



unlawful encroachment in the petition mentioned property till the disposal of the suit. On the other hand, the respondent has also filed a Writ Petition in W.P(MD)No.20399 of 2015 praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned proceedings in Na.Ka.No.1 of 2015/encroachment, dated 06.11.2015 of the fourth respondent and to quash the same and consequently to direct the fourth respondent to pursue the original suit in O.S.No.36 of 2012, pending on the file of the District Munsif, Vadipatti, Madurai District. This Court dismissed the above Writ Petition by recording the letter, dated 25.02.2016, which reads as follows:

'2.Placing on record the letter, dated 25.2.2016, which shall be treated as part and parcel of record, the Writ Petition is dismissed as withdrawn. No liberty is granted to file fresh Writ Petition on the same cause of action. No costs. Consequently connected Miscellaneous Petitions are also dismissed.'

9.Therefore, the order challenging the eviction order has become final and the petitioner has not obtained any liberty before this Court, challenging against the eviction order passed by the Petitioner/Panchayat.

10.Now the point for consideration before this Court is whether the order passed by the Trial Court in I.A.No.416 of 2015 in O.S.No.36 of 2012 on 6.11.2016 is the subject-matter of the Civil Revision Petition before this Court?

11.Now it is seen from the above said facts of this case that the Petitioner has not disclosed the order passed in W.P(MD) No.20399 of 2015 before the trial Court. The final eviction notice issued by the Petitioner/Panchayat, dated 06.11.2015 has become final. According to the respondent, he filed an affidavit before this Court dated 17.08.2016,in which, para 11 reads as under:

'11.....After considering the all reply and records final order has been passed, by stating that already the possession of the land was taken over by the authority by following the due process of law on 15.7.2014 before the Police and Revenue Authorities.....'.

12.The learned counsel for the Petitioner placed before this Court a proceedings in Na.Ka.No.1 of 2015, dated 06.11.2015 wherein it has been stated that on 15.11.2014, the suit premises was sealed in the presence of the Police officials after following the provisions of law and as per the directions of this Court, the respondent is engaged in removal of the encroachment made by the respondent herein.



13. Now according to the Petitioner, it is to say that the trial Court has granted an order of status-quo pending disposal of the suit. Further, the suit is pending for disposal and issues has been framed in the above said suit.

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14. According to the learned counsel for the respondent, the revision petition is not maintainable as against the order passed under Order 39 Rule 1 and 2 of C.P.C. Further, it is an appealable order under CPC.

15. Perusal of the records would show that the trial Court directed the parties to continue status-quo. However, when the matter came up for admission, this Court granted interim stay. Taking into consideration of the facts and circumstances of the case, I am inclined to pass the following order:

(1) The trial Court is directed to dispose of the suit in O.S.No.36 of 2012 within a period of three months from the date of receipt of a copy of this order. Till then, status-quo as on date is granted.

(2) On instruction, the Petitioner as well as the respondent undertakes before this Court that they will co-operate with the trial Court for the enquiry, at the time of hearing of the suit.

16. With the above directions and observations, the Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/
Assistant Registrar (C.S-I)

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Sub Assistant Registrar

To

The District Munsif-cum-Judicial Magistrate, Vadipatti.

+1cc to M/s.R.Pandi Maharaja, Advocate, in SR No.61462.

C.R.P (PD) (MD) No.1587 of 2016
and C.M.P (MD) No.7755 of 2016
17.10.2016

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