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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2016

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Petition (MD) Nos.10252 to 10256 of 2016

and Writ Appeal Nos.933 and 934 of 2016

and

connected miscellaneous petitions

Writ Petition (MD) No.10252 of 2016

T.Ramu

... Petitioner

-Vs-

1.The Tahsildar,
Avudaiyar Kovil Taluk,
Puudukottai District.

2.The President,
Mimisal Panchayat,
Mimisal.

3.The Tahsildar,
Chathiram Administration,
Thanjavur.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the impugned notice dated Nil, under proceedings No.Nil, on the file of the 2nd respondent pertaining to classifying the petitioner tenant as encroacher by mandating the petitioner to be evicted from D.No.834, Vannankuttai Road, Meemisal Village, Pudukottai District and to quash the same as illegal and further direct the 2nd respondents to regularize the tenancy of the petitioner in the manner known to Law and thereby render justice.

For Petitioner : Mr.T.Ramu
Party-in-Person

For Respondents : Mr.A.K.Baskara Pandian
1 and 3 Special Government Pleader

For Respondent 2 : Mr.T.S.Mohamed Mohideen
Additional Government Pleader

Writ Petition (MD) No.10253 of 2016

T.V.Sundaram

... Petitioner

-Vs-



2.The President,
Mimisal Panchayat,
Mimisal.

3.The Tahsildar,
Chathiram Administration,
Thanjavur.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the impugned notice dated Nil, under proceedings No.Nil, on the file of the 2nd respondent pertaining to classifying the petitioner tenant as encroacher by mandating the petitioner to be evicted from D.No.853, Vannankuttai Road, Meemisal Village, Pudukottai District and to quash the same as illegal and further direct the 2nd respondents to regularize the tenancy of the petitioner in the manner known to Law and thereby render justice.

For Petitioner : Mr.T.V.Sundaram
Party-in-Person

For Respondents : Mr.A.K.Baskara Pandian
1 and 3 Special Government Pleader

For Respondent 2 : Mr.T.S.Mohamed Mohideen
Additional Government Pleader

Writ Petition (MD) No.10254 of 2016

P.Karthikeyan

... Petitioner

-Vs-

1.The Tahsildar,
Avudaiyar Kovil Taluk,
Puudukottai District.

2.The President,
Mimisal Panchayat,
Mimisal.

3.The Tahsildar,
Chathiram Administration,
Thanjavur.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the impugned notice dated Nil, under proceedings No.Nil, on the file of the 2nd respondent pertaining to classifying the petitioner tenant as encroacher by mandating the petitioner to be evicted from D.No.862, Vannankuttai Road, Meemisal Village, Pudukottai District and to quash the same as illegal and further direct the 2nd respondents to regularize the tenancy of the petitioner in the manner known to Law and thereby render justice.



For Petitioner : No appearance
For Respondents : Mr.A.K.Baskara Pandian
1 and 3 Special Government Pleader
For Respondent 2 : Mr.T.S.Mohamed Mohideen
Additional Government Pleader

Writ Petition (MD) No.10255 of 2016

SRA.Sheikkath

... Petitioner

-Vs-

1.The Tahsildar,
Avudaiyar Kovil Taluk,
Puudukottai District.

2.The President,
Mimisal Panchayat,
Mimisal.

3.The Tahsildar,
Chathiram Administration,
Thanjavur.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the impugned notice dated Nil, under proceedings No.Nil, on the file of the 2nd respondent pertaining to classifying the petitioner tenant as encroacher by mandating the petitioner to be evicted from Shop Nos.841 to 848, East Coast Road, Meemisal Village, Pudukottai District and to quash the same as illegal and further direct the 2nd respondents to regularize the tenancy of the petitioner in the manner known to Law and thereby render justice.

For Petitioner : Mr.SRA.Sheikkath
Party-in-Person
For Respondents : Mr.A.K.Baskara Pandian
1 and 3 Special Government Pleader
For Respondent 2 : Mr.T.S.Mohamed Mohideen
Additional Government Pleader

Writ Petition (MD) No.10256 of 2016

J.Mohamed Yousuff

... Petitioner

-Vs-

<https://hcservices.ecourts.gov.in/hcservices/>
1.The Tahsildar,
Avudaiyar Kovil Taluk,
Puudukottai District.



2.The President,
Mimisal Panchayat,
Mimisal.

3.The Tahsildar,
Chathiram Administration,
Thanjavur.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the impugned notice dated Nil, under proceedings No.Nil, on the file of the 2nd respondent pertaining to classifying the petitioner tenant as encroacher by mandating the petitioner to be evicted from Shop Nos.837 and 838, East Coast Road, Meemisal Village, Pudukottai District and to quash the same as illegal and further direct the 2nd respondents to regularize the tenancy of the petitioner in the manner known to Law and thereby render justice.

For Petitioner : Mr.J.Mohamed Yousuff
Party-in-Person

For Respondents : Mr.A.K.Baskara Pandian
1 and 3 Special Government Pleader

For Respondent 2 : Mr.T.S.Mohamed Mohideen
Additional Government Pleader

W.A.(MD) No.933 of 2016

P.Chinnathambi Servai ... Appellant / Petitioner

-Vs-.

1.The District Collector,
Pudukkottai District.

2.The President,
Memisal Village Panchayat,
Avudaiyarkoil Panchayat Union,
Mimisal Post,
Avudaiyarkoil Taluk,
Pudukottai District,

... Respondents / Respondents

Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 04.02.2016 in W.P.(MD)No.2222 of 2016 passed by the Hon'ble High Court by allowing the writ appeal.

Prayer in WP(MD). 2222/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the order passed by the 2nd respondent dated 18.01.2016 and quash the same.



For Appellant : No appearance
For Respondent 1 : Mr.A.K.Baskara Pandian
Special Government Pleader

For Respondent 2 : Mr.D.Parisuthanathan

W.A.(MD) No.934 of 2016

A.Noor Mohammed ... Appellant / Petitioner

-Vs-.

1.The District Collector,
Pudukkottai District.

2.The President,
Memisal Village Panchayat,
Avudaiyarkoil Panchayat Union,
Mimisal Post,
Avudaiyarkoil Taluk,
Pudukkottai District,

... Respondents / Respondents

Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 04.02.2016 in W.P.(MD)No.2233 of 2016 passed by the Hon'ble High Court by allowing the writ appeal.

Prayer in WP(MD). 2233/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Certiorari calling for the records pertaining to the order passed by the 2nd respondent dated 18.01.2016 and quash the same.

For Appellant : No appearance

For Respondent 1 : Mr.A.K.Baskara Pandian
Special Government Pleader

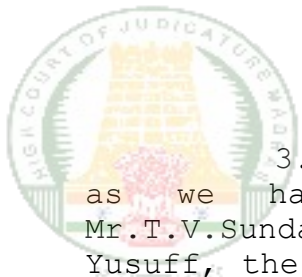
For Respondent 2 : Mr.D.Parisuthanathan

COMMON ORDER

(Order of the Court was made by **NOOTY.RAMAMOohana RAO,J**)

The Writ Appeals are preferred by the writ petitioners whose writ petition Nos.2222 and 2233 of 2016 have been dismissed by the learned Single Judge of this Court by judgment dated 04th February, 2016.

2. In the Writ Petitions, the orders passed on 18th January, 2016, by the President, Mimisal Village Panchayat, Avudaiyarkoil Panchayat Union, Mimisal Post, Avudaiyarkoil Taluk, Pudukkottai District, has been challenged. Through the said order, the Panchayat directed the writ petitioners/appellants to vacate and deliver the possession of the shop room, under the occupation of the respective writ petitioners / appellants within fifteen days.



3. We have heard the learned counsel for the parties as well as we have had the benefit of interacting with Mr.T.Ramu, Mr.T.V.Sundaram, Mr.Noor Mohammed, Mr.SRA.Sheikkath and J.Mohamed Yusuff, the writ petitioners and Mrs.Sumathi Muthuramalingam, President, Memisal Village Panchayat.

4. The grievance of the writ petitioners / appellants was that upon securing permission from the local panchayat, the shop room was got constructed by spending lot of money, no doubt, on the panchayat land, but suddenly, by serving a notice, if the Panchayat asked the writ petitioners / appellants to vacate the premises, they will be put to grave hardship. Whereas, the case of the panchayat was that upon the land belonging to local panchayat, the writ petitioners / appellants and others have constructed a shopping complex and then carried on business in those premises without paying any rent to the local panchayat, consequently, the panchayat is not in a position to take benefit of its own asset and consequently, the panchayat is handicapped in not rendering any services to the local residents / tax payers.

5. Though the learned Single Judge has dismissed the writ petitions on the ground that disputed question of facts are liable to be resolved satisfactorily in a Civil Court rather than in a Writ proceeding, however, we find that a solution can be found to the problem of both sides within four corners of the discretionary jurisdiction which this Court can exercise.

6. It is not in dispute that the land in question belongs to the local panchayat but the building was got constructed by the respective shop keepers by investing substantial money but that was no reason for them not to have paid rent to the local panchayat. We are not interested in noticing in detail the controversies raised by both sides with regard to offer of payment of rent and its refusal to be received. Suffice it to notice that the writ petitioners / appellants and the others like them are all carrying on some small time trade or business in their respective premises, it will be, therefore, appropriate that the interest of both sides should be protected and hence, we pass the following order:

(i) The panchayat is directed to grant a licence for each shop keeper, for a period of three years, commencing from 01.01.2016. Such a licence is liable to be renewed, if such an option is exercised by the shop keeper for a further term of three years only. After the extension of three years, no further extension is liable to be granted. Thus, the licence period had to come to an end latest by 31st December, 2018 or 31st December, 2021, as the case may be.

(ii) Each of the writ petitioners / appellants and other writ petitioners shall pay a licence fee of Rs.500/- (Rupees five hundred only) for the shop area of 10 feet x 10 feet, if the carpet area of the shop room is larger than 100 square feet, then for such additional area Rs.5.00 per square foot shall be paid. In case, if the carpet area of the shop room is less than 100 square feet, proportionately, the licence fee shall also stand reduced by Rs.5.00 per square foot.



(iii) The extension of three years is subject to the consent of each shop keeper shall raise the licence fee by 10% which works out to Rs.5.50 per square foot.

(iv) The panchayat shall recognise the writ petitioners / appellants as a licensee of the respective shop room.

(v) All the writ petitioners / appellants and writ petitioners shall pay the licence fee so calculated as per the above direction with effect from 01.01.2016, but, however, for payment of arrears upto the end of June, 2016, i.e., for six months period, we grant them six months time from now. In other words, apart from the monthly licence fee liable to be paid by them commencing from the month of July, 2016, onwards they shall also pay the arrears licence fee for the period from January to June, 2016, proportionately, so that by the end of 2016, the entire licence fee for the whole of the year 2016 would have been paid by them.

(vi) The licence fee payable shall be tendered in the office of the Panchayat before 15th of the succeeding month and if any default is committed in tendering the licence fee for a consecutive period of three months, the licence now directed to be granted stands cancelled.

7. Accordingly, all the writ petitions and writ appeals stand disposed of as we find that equities are also lying in favour of the present shop keepers who have invested their money and constructed the shop rooms. After the licence period expires, all the shop rooms shall be put to public auction wherein the petitioners / appellants along with other individuals are also entitled to participate. The Writ Petitioners / Appellants and other Writ Petitioners can not claim any exclusive proprietary rights, over the shop room concerned. Consequently, the connected miscellaneous are closed.

8. We place on record our appreciation of the spirit with which the discussions took place in the Court hall.

Sd/

Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar(CS-I)

To

1. The District Collector, Pudukkottai District.
2. The Tahsildar, Avudaiyar Kovil Taluk, Pudukkottai District.
3. The President, Mimisal Panchayat, Mimisal.
4. The Tahsildar, Chathiram Administration, Thanjavur.
- +5ccs to M/S.K.R.Lakshmanan, Advocate in SR.No.37796
- +3ccs to M/S.D.Parisuthanathan, Advocate in SR.No.36998
- +1cc to Special Government Pleader in SR.No.37248

Writ Petition (MD) Nos.10252 to 10256 of 2016
and Writ Appeal Nos.933 and 934 of 2016

15.07.2016