

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
And
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.Nos.1339 to 1342 of 2013

And

M.P.Nos.1 to 1 of 2013

(4MPS'S)

The Commissioner,
Salem Corporation,
Salem.

.... 1st Appellant in all the W.As.

Vs.

1.Seethalakshmi1st Respondent in W.A.No.1339 of 2013
1.S.Ramesh1st Respondent in W.A.No.1340 of 2013
1.S.Ramesh1st Respondent in W.A.No.1341 of 2013
1.R.Shanthi1st Respondent in W.A.No.1342 of 2013

2.S-627, Salem Milk Consumer
Co-operative Society Limited, Salem.

Represented by its Secretary,

.... Respondent in all the W.As.

Common Prayer:

Writ appeals filed under Clause 15 of Letters Patent
praying to set aside the order dated 01.04.2013 in
W.P.Nos.29898, 29899, 29900 and 29901 of 2012 respectively.

Prayer in W.P.No.29898/2012

Writ Petition has been filed under Article 226 of the
Constitution of India praying for the issuance of a writ of
mandamus forbearing the 1st respondent or their men, agents or
anyone else claiming through them from in any way interfering or
displacing the petitioners from carrying on the retail outlet
of the 2nd respondent's products from Central Platform of the
State Express Transport Corporation Office in the Salem City
Central Bus Stand (Vellore-Chennai Sector Platform), in
pursuance to the decisions of the Council meeting of the Salem
Corporation, as published in the Dina Mani Salem Edition dated
31.10.2012.

Prayer in W.P.No.29899/2012

forbearing the 1st respondent or their men, agents or anyone else claiming through them from in any way interfering or displacing the petitioners from carrying on the retail outlet of the 2nd respondent's products in the middle Platform near the Time Keeper's Office of T.P.T.C., in pursuance to the decisions of the Council meeting of the Salem Corporation, as published in the Dina Mani Salem Edition dated 31.10.2012.

Prayer in W.P.No.29900/2012

forbearing the 1st respondent or their men, agents or anyone else claiming through them from in any way interfering or displacing the petitioners from carrying on the retail outlet of the 2nd respondent's products near the Gents Toilet of the Salem City Old Bus Stand, in pursuance to the decisions of the Council meeting of the Salem Corporation, as published in the Dina Mani Salem Edition dated 31.10.2012.

Prayer in W.P.No.29901/2012

forbearing the 1st respondent or their men, agents or anyone else claiming through them from in any way interfering or displacing the petitioners from carrying on the retail outlet of the 2nd respondent's products from the 4th Platform of the Salem City Central Bus Stand, in pursuance to the decisions of the Council meeting of the Salem Corporation, as published in the Dina Mani Salem Edition dated 31.10.2012.

For Appellant : Mr.A.S.Thambuswamy

For Respondents: Mr.Perumbulavil Radhakrishnan for
for Mr.J.Franklin for-R1
Mr.L.P.Shanmugasundaram for R2

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN,J.)

These intra court appeals are directed against the common order dated 01.04.2013 in W.P.Nos.29898 to 29901 of 2012, protecting the possession of the sub-licencees, the petitioners in the writ Court

2.The appellant in larger public interest granted licence to the Salem Milk Consumer Co-operative Society Limited to operate milk booths at various locations and more particularly in Salem City Central Bus Stand, Platform near the Time Keeper's

Office, State Transport Corporation Bus Stand, near the Salem City Old Bus Stand and Fourth Platform of the Salem City Central Bus Stand. It was given for selling milk products to the travelling public. The licensee granted sub-licence to the first respondent in the respective intra court appeals (hereinafter referred to as 'sub-licencee'). The writ petitions filed by the sub-licencee to restrain the Salem Corporation from evicting or interfering with their peaceful possession were allowed by the learned Single Judge. Feeling aggrieved, the Commissioner of Salem Corporation is before us.

3. We have heard the learned counsel for the appellant. We have also heard the learned counsel for the first respondent in the respective appeals and the learned counsel for the second respondent.

4. The Salem Municipal Corporation with a view to provide milk products to the general public permitted the Salem Milk Consumer Co-operative Society Limited to run their retail outlet at various locations near the bus stand. The licence was given for a limited period of one year. The licensee notwithstanding the specific prohibition in the licence granted sub-licence to the first respondent in the respective writ appeals for a period of ten years. The sub-licencee started selling cigarettes and other items along with milk. The Corporation therefore contemplated to take action. The sub-licencee in the meantime filed writ petitions before the writ Court to restrain the appellant from interfering with their peaceful possession and enjoyment of the premises in question.

5. The learned Single Judge instead of directing the sub-licencee to approach the concerned Civil Court, restrained the Corporation from evicting them. The learned Single Judge further directed the appellant to approach the Civil Court in case it is necessary to evict the original licensee.

6. There is no dispute that the sub-licencee is a stranger. There is no privity of contract between the appellant and the sub-licencee. The licence was given to the Salem Milk Consumer Co-operative Society Limited with a specific condition that the premises should be used by the society for the sale of hot milk. The agreement entered into between the society and sub-licencee would not bind the appellant. The licence was given to the second respondent for a period of one year. However, the licensee granted sub-licence and that too for a period of ten years. The premises are not in the possession of the second respondent. The possession is with the sub-licencee. The sub-licencee has no right to keep possession of the premises owned by the appellant.

7.The Salem Corporation was expected to issue a Notification calling for tenders for giving the premises for running the milk outlet. Since it was a society, licence was granted to the second respondent without calling for applications from the public. The second respondent by mis-using the licence, granted sub-licence to various people. The sub-licencee started dealing with all items including cigarettes. The occupation by the sub-licencee is nothing but illegal. The learned Single Judge instead of directing the sub-licencee to approach the concerned Court, wanted the appellant to approach the Civil Court for eviction. We are therefore of the view that the learned Single Judge was not correct in issuing a Mandamus to protect the illegal possession by the sub-licencee.

8.Discretionary jurisdiction under Article 226 of the Constitution should not be exercised to protect those who are in illegal occupation of public property.

9.The writ petitions filed by the sub-licencee are not maintainable. The proceedings under Article 226 of the Constitution of India is not the appropriate proceeding for enforcing the alleged contractual rights. The learned Single Judge ought to have dismissed the writ petitions on the ground of maintainability. In any case, the sub-licencee are not entitled to continue to do the business by making use of the public property. We are therefore of the view that the common order dated 01.04.2013 is liable to be set aside.

10.The sub-licencee have enjoyed the premises for the last nine years. Even after the order in the writ petitions, they have enjoyed the licenced premises for a period of four years. Now it is time to vacate.

11.The sub-licencee are directed to vacate the premises and handover vacant possession to the appellant on or before 15.12.2017. It is open to the appellant to take possession of the premises from the concerned sub-licencee. In case of failure to hand over possession as indicated above, it is open to the Salem Corporation to take the assistance of the Commissioner of Police, Salem, to take possession of the public property, and in which case necessary Police protection should be given by the Police.

12.The intra court appeals are allowed as indicated above.
No costs. Consequently, the connected miscellaneous petitions
are also closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1.The Commissioner,
Salem Corporation,
Salem.

2.The Secretary,
S-627, Salem Milk Consumer
Co-operative Society Limited,
Salem.

3.The Commissioner of police,
Salem.

+ 1 cc to Mr.A.S.Thambuswamy, Advocate,SR.80003

+ 1 cc to Mr.J.Franklin, Advocate,SR.80057

+ 1 cc to Mr.L.P.Shanmugasundaram, Advocate,SR.80344

+ 1 cc to The Govt.Pleader, SR.80553

W.A.Nos.1339 to 1342 of 2013

And

M.P.Nos.1 to 1 of 2013

MP (CO)
NR 17/11/2017

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