

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Writ Petition No.2665 of 2017

1. B.Vinoth
2. Babu ... Petitioners

vs.

1. The Transport Commissioner,
Chepauk, Chennai.
2. The District Collector,
Thiruvannamalai,
Thiruvannamalai District.
3. Hindustan Petroleum Corporation Ltd.,
rep. By its Chief Regional Manager,
Chennai Retail Regional Office,
8, Gandhi Irwin Road,
Egmore, Chennai 600 008.
4. R.Srinivasan
5. R.Vishnu
6. R.Satish
7. Jothi
8. Sridevi
9. Andal

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the 1st respondent dated 21.12.2016 vide proceedings in R.No.24050/M5/2016, quash the same and consequently direct the 3rd respondent to supply petrol/diesel to the petitioner's Petrol Bunk M/s.Karthikeyan Auto Service at No.266, Gandhi Road, Arni, Thiruvannamalai District, pending resolution of dispute in respect of Lease by competent Civil Court.

For Petitioners : Mr.Niranjan Rajagopalan

For Respondents 1 & 2 : Mr.S.V.Dorai Solaimalai,
Addl. Government Pleader

O R D E R

Petitioners have come up with this Writ Petition seeking to quash the proceedings of the 1st respondent dated 21.12.2016 and for a consequential direction to the 3rd respondent to supply petrol/diesel to their Petrol Bunk viz. M/s.Karthikeyan Auto Service at No.266, Gandhi Road, Arni, Thiruvannamalai District, pending resolution of the dispute in respect of Lease by the competent Civil Court.

2. According to the petitioners, the 1st petitioner has been operating the retail outlet of Petrol/Diesel/Motor oil and other such products in the above premises on behalf of the petitioner firm along with his father, S.Babu, the 2nd petitioner herein. It is further stated that the said premises was originally leased out to the 3rd respondent in the year 1977 by Late Mr.Gnanasambhanda Chettiar, acting as a Power of Attorney. A Memorandum of Agreement dated 22.03.1977 was originally entered into between the 3rd respondent and Karthikeyan Auto services. After various family arrangements and partition, Mr.A.S.Karthikeyan acquired right over the petitioner firm, who entered into a partnership deed later in the year 1995 with the 2nd petitioner for running the Petrol outlet as a dealer of the 3rd respondent. After the reconstitution of the firm, Mrs.K.Padmini, W/o.Late A.S.Karthikeyan and the 1st petitioner are partners.

3. It is the case of the petitioner that the said Mr.Gnanasambhanda Chettiar had made a representation to the 1st respondent to cancel the 'No Objection Certificate' granted to the 3rd respondent, on the ground that the lease with the 3rd respondent had expired. In such circumstances, the legal heirs of Gnanasambhanda Chettiar filed a Writ Petition in W.P.No.12302 of 2015 seeking a direction to the 1st respondent therein to pass final orders on their representation dated 28.02.2014 and in the said Writ Petition, the 2nd petitioner herein was also shown as a party. This Court, by an order dated 24.04.2015, disposed of the said Writ Petition directing the 1st respondent therein to dispose of the representation dated 28.02.2014 after giving notice to the 2nd petitioner herein. Pursuant thereto, the 2nd respondent passed an order on 29.04.2016 vide proceedings Na.Ka.C3/11970/2014, cancelling the No Objection Certificate granted to the 2nd respondent under Rule 150 of the Petroleum Rules, 2002.

4. The grievance of the petitioners is that citing the said order of the 2nd respondent, the 3rd respondent had stopped supply of petrol/diesel and hence, the operation of the Petrol Bunk came to a standstill. Hence, challenging the order dated

29.04.2016 passed by the 2nd respondent, the petitioners filed a Writ Petition in W.P.No.18160 of 2016 and this Court, by an order dated 28.06.2016 disposed of the said Writ Petition directing the 1st respondent herein to entertain the appeal filed by the 3rd respondent herein within a period of eight weeks from the date of receipt of a copy of this order.

5. Pursuant thereto, the 1st respondent conducted an enquiry and passed the impugned order dated 21.12.2016 upholding the order passed by the 2nd respondent and dismissed the appeal without recording any reasons. Aggrieved by the same, the petitioners are before this Court.

6. Learned counsel for the petitioners contended that though the impugned order of the 1st respondent is against the 3rd respondent, as a dealer, the petitioners are aggrieved by the order of the 1st respondent, as there is no further appeal against the order passed by the 1st respondent. It is his further contention that the impugned order of the 1st respondent is liable to be set aside on the ground of absence of reasons and that the 2nd respondent has no jurisdiction to go into the question of ownership of rights of the party over the property and adjudicate dispute on such matters.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. This is a case of tenancy dispute. The 3rd respondent, Hindustan Petroleum Corporation Limited is the original tenant and the petitioners are its dealer. The only point for consideration in this case is whether there is a valid subsisting lease. Though it is contended by the petitioners that the suit filed by the land owners, i.e. respondents 4 to 9 for eviction in O.S.No.39 of 1984 was dismissed in favour of the 3rd respondent and that suit in O.S.No.113 of 1997 praying for permanent injunction restraining the 3rd respondent to carry on any construction was also dismissed in favour of the 3rd respondent, admittedly, the lease period had expired long back. It is also an admitted case of all the parties that the lease has not been subsequently renewed or accepted nor the rent was paid.

9. The Hon'ble Supreme Court has time and again held that a tenant after expiry of the lease period cannot claim any right or interest in the property, when the lessor does not agree to renew the lease. Such possession is neither legal nor lawful. As per the decision of the Hon'ble Supreme Court reported in 2004 (8) SCC 579, once the lease period comes to an end, the possession of the premises in question is unauthorised and illegal. Therefore, his inception is unauthorised and illegal.

But, when the matter between the original land owners and the 3rd respondent is pending before the Civil Court, the petitioners have no right to approach this Court. On a careful perusal of the impugned order, this Court finds no merit for consideration. First of all, the licence stipulates that unless he is a lawful tenant, he cannot be permitted to deal with the parties. In this case, admittedly there is no existing tenancy and eviction case is pending in Civil Court. Therefore, the authority has no option to take the consent of the landlord, which is mandatory to the grant of licence to be given. Hence, the appellate authority as well as the original authority have rightly rejected the claim of the petitioner. In view of the above, as nothing survives for consideration in this matter, the Writ Petition stands dismissed. No costs. Consequently, connected W.M.P.No.2622 & 2623 of 2017 are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Aeb
To:

1. The Transport Commissioner,
Chepauk, Chennai.
2. The District Collector,
Thiruvannamalai,
Thiruvannamalai District.

+1cc to M/S.G.R.Associates, Sr.6851
+1cc to the Government Pleader Sr.7319

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W.P.No.2665 of 2017

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