

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.42047 and 42054 of 2016
and
W.M.P.No.35974 of 2016

A.Rajamanickam, S/o Arumugam,
Lessee/licensee
IUDP Shop No.8,
(provision shop),
Jalakandapuram Bus Terminus,
Salem.

.. Petitioner in W.P.No.42047 of 2016

Veerasambu,
S/o Marimuthu,
Lessee/licensee
IUDP Shop No.7,
(Tea and provision shop),
Jalakandapuram Bus Terminus,
Salem.

..Petitioner in W.P.No.42054 of 2016

Vs.

1. The District Collector, Salem District, Salem.
 2. The Director of Panchayats, Chennai-108.
 3. The Assistant Director of Panchayats, Omalur, Salem District.
 4. The Executive Officer, Jalakandapuram Town Panchayat, Salem District.
 5. The Deputy Superintendent of Police, Salem District.
- (Fifth respondent suo motu impleaded as per order dated 24.11.2017 in W.P.Nos.42047and 42054 of 2016)

.. Respondents in both the Writ Petitions

Prayer:

Writ Petition No.42047 of 2016 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the fourth respondent in Na.Ka.No.257/2016, dated 22.09.2016 issued in the name of Yuvaraj and to quash the same as illegal and direct the respondents to remove the seal put on the petitioner's shop at IDUP Shop No.8, Jalakandapuram Bus Terminus, Jalagandapuram Town Panchayat, Salem.

Writ Petition No.42054 of 2016 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the fourth respondent in Na.Ka.No.257/2016, dated 30.09.2016 and to quash the same as illegal and direct the respondents to remove the seal put on the petitioner's shop at IDUP Shop No.7, Jalagandapuram Bus Terminus, Jalagandapuram Town Panchayat, Salem.

For petitioners : Mr.R.Sankarasubbu
For respondent : Mr.S.Diwakar, Spl.G.P.
for RR-1 to 3 and 5
Mr.A.Thambidurai, Spl.G.P. for R-4

ORDER

Writ Petition No.42047 of 2016 is filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the fourth respondent in Na.Ka.No.257/2016, dated 22.09.2016 issued in the name of Yuvaraj and to quash the same as illegal and direct the respondents to remove the seal put on the petitioner's shop at IDUP Shop No.8, Jalakandapuram Bus Terminus, Jalagandapuram Town Panchayat, Salem.

2. Writ Petition No.42054 of 2016 is filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the fourth respondent in Na.Ka.No.257/2016, dated 30.09.2016 and to quash the same as illegal and direct the respondents to remove the seal put on the petitioner's shop at IDUP Shop No.7, Jalagandapuram Bus Terminus, Jalagandapuram Town Panchayat, Salem.

3. It is the case of the petitioners in both the Writ Petitions that they have been running tea shop/provision shop for several years and that without following any procedure, with the help of Police, lock and seal have been made in the said shops on 22.09.2016 and that the same is in utter violation of the principles of natural justice. According to the petitioners, there is no reason for sealing the shops by the Police. When the same was questioned, it is alleged that the friends along with the petitioners, have been eve-teasing the girls and indulging in illegal activities and that the accused was arrested and as there is possibility of law and order problem, the said shops have been sealed and that the auction amount for the year 2016-2017 had not been remitted. It is further stated by the petitioners that they have made a representations to the respondents, dated 21.10.2016/29.09.2016 for removal of the lock and seal and at no point of time, the petitioners have indulged in the illegal act, much less the one alleged against them.

4. According to the petitioners, even though the reason for lock and seal had been stated that the petitioners and others have been eve-teasing women, in the FIR, it is stated that the petitioners are creating nuisance and other illegal activities when the Minister had participated in a meeting. It is stated by the respondents that the relatives of the petitioners and others, have attempted to throw petrol bombs by using fire and that there was also loss to the public property.

5. The respondents 1 to 4 have filed counter affidavit stating that as the petitioners' shops were used by unruly elements and were teasing ladies and creating law and order problem, the shops have been closed. It is further stated in the counter that due to public meeting presided over by the Minister, the petitioners and others have thrown petrol bombs in the stage and the FIR had been registered against the said Yuvaraj, son of Veerasambu and his friends. It is further stated in the counter that the fourth respondent has sealed the premises based on the letter of the local Sub-Inspector of Police, dated 22.09.2016 and in order to get proper instructions, it has been demanded by the fourth respondent to get a No Objection Certificate from the concerned Deputy Superintendent of Police, as the matter is with regard to the law and order problem.

6. Heard both sides and perused the materials available on record.

7. Whether the petitioners are involved in the criminal case or not, is a matter for investigation, which has got to be established before the trial Court. But however, two different versions are given, i.e. in one place, it has been stated that the petitioners' children and friends have been utilising the shops for eve-teasing the girls, and in another place, it has been stated that the petrol bombs have been thrown, thereby causing destruction to public property as could be seen from the FIR. In the counter affidavit, both the instances are being inter-linked and projected as if serious criminal acts are said to have been committed by the petitioners. The reason for locking and sealing the shops is only on the ground that the petitioners' children were using the shops for eve-teasing the girls. In the impugned communications, dated 22.09.2016 / 30.09.2016, it has not been stated that apart from the incident, they are also involved in throwing petrol bombs. What is not stated in the impugned notices/communication, cannot be improved by means of counter affidavit. That apart, in the FIR, there is no averment with regard to the eve-teasing of girls. Since different stands have been taken by the respondents and whether the petitioners are involved in the incident or not, as stated supra, has got to be decided before appropriate forum in case

criminal proceedings are proceeded with. That cannot be a ground for depriving the petitioners from running the shops.

8. Mr.Sankarasubbu, learned counsel for the petitioners submitted that the petitioners are willing to give an undertaking that they will not indulge in any illegal act. Learned counsel also submitted that there is no need to pay the arrears of rent, as the shops were illegally closed. I am of the view that as long as the shops are with the petitioners, they are bound to pay the rental amounts due to the fourth respondent-Jalakandapuram Town Panchayat. In view of the same, based on the observations made by this Court verbally in the last occasion, learned counsel for the petitioners had produced Demand Drafts in respect of rental arrears for the shops, drawn on State Bank of India, Jalakandapuram Branch, dated 23.11.2017, as detailed below:

(i) W.P.No.42047 of 2016: Demand Draft Nos.892283 and 892285 - each Rs.44,851/-

(ii) W.P.No.42054 of 2016: Demand Draft Nos.892286 and 892284 - each Rs.42,730/-.

9. Today, the above said Demand Drafts have been handed over to the learned Special Government Pleader appearing for the fourth respondent-Executive Officer of Jalakandapuram Panchayat, and the same shall be handed over to the fourth respondent. Though the learned Special Government Pleader appearing for the fourth respondent stated that the Demand Drafts may be handed over to the officials of the fourth respondent-Town Panchayat, as rightly pointed out by the learned counsel for the petitioners, the fourth respondent-Executive Officer of the Jalakandapuram Town Panchayat may not accept the said Demand Drafts and the petitioners may be prevented from opening the shops. Hence, this Court directs the learned Special Government Pleader appearing for the fourth respondent-Panchayat to accept the said Demand Drafts and forward the same to the fourth respondent. If there is any more arrears of rent, the same shall be paid by the petitioners within one month from the date of receipt of a copy of this order. Apart from that, on the above said undertaking to be produced by the petitioners before the fifth respondent-DSP, the petitioners shall be permitted to run the shops and the respondents shall open the lock and seal of the shops, within one week from the date of receipt of a copy of this order and on such undertaking being produced in the meantime. In case of repetition of illegal act, the petitioner or his child/children and his friends can be proceeded with in accordance with law.

10. With the above observations and directions, the Writ Petitions are disposed of. No costs. Consequently, W.M.P. is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

CS

To

1. The District Collector, Salem District, Salem.
2. The Director of Panchayats, Chennai-108.
3. The Assistant Director of Panchayats, Omalur, Salem District.
4. The Executive Officer, Jalakandapuram Town Panchayat, Salem District.
5. The Deputy Superintendent of Police, Salem District.

+1 CC to Mr.R. Sankarasubbu, Advocate sr 84767.

+1 CC to Govt. Pleader sr 85429.

W.P.Nos.42047 and 42054 of 2016

SP(20/12/2017)

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