

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 01.06.2017

Date of Reserving the Order	Date of Pronouncing the Order
24.04.2017	01.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM**and****THE HONOURABLE MR.JUSTICE P.VELMURUGAN****W.P. (MD) No.3700 of 2017**

V.Rameshkumar

... Petitioner

-vs-

The Commissioner
Kumbakonam Municipality
Kumbakonam-612 001
Thanjavur District

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondent to consider petitioner's representation, dated 13.10.2016, consequently direct the respondent to restore possession of Bunk Stall and the premises, where the Bunk Stall was stalled by the petitioner within a stipulated time.

For Petitioner : Mr.V.Santharaman

For Respondent : Mr.M.Raja Rajan, Standing Counsel

O R D E R

Heard Mr.V.Santharaman, learned counsel appearing for the petitioner and Mr.M.Raja Rajan, learned standing counsel appearing for the respondent - Municipality and carefully perused the materials placed on record.

2. This writ petition by the son and power of attorney agent of one Mr.P.Veerassamy, a Burma Repatriate, has been filed for issuance of a writ of mandamus to direct the respondent - Municipality to consider his representation, dated 13.10.2016 and consequently to direct the respondent - Municipality to restore the possession of the Bunk Shop where it was originally situated.

3. The petitioner's case is that his father being a Burma Repatriate, the respondent - Municipality allotted a Bunk Shop situated in the land owned by the Municipality and by proceedings, dated 13.08.1975, the respondent - Municipality permitted his father to get electricity service connection for the Bunk Shop. The petitioner has annexed rent receipts to establish his / father's possession of the Bunk Shop.



4. During 1995, an order was passed by the respondent - Municipality on the eve of Mahamaham festival imposing certain conditions on the petitioner's father, one such condition being that on direction issued by the Municipality, the Bunk Shop should be shifted to the place assigned by the Municipality. According to the petitioner, to facilitate the conduct of Mahamaham festival, direction was issued by the Municipality to shift the Bunk Shop to the rear end, which was complied with yet the respondent - Municipality wanted to evict the petitioner's father and therefore, his father was constrained to file a suit, in O.S.No.524 of 2004, before the learned I Additional District Munsif, Kumbakonam, to restrain the respondent - Municipality from in anyway removing the Bunk Shop by granting a decree of permanent injunction.

5. The said suit was decreed by Judgment and Decree, dated 26.03.2007, directing the petitioner's father to apply for fresh licence with a direction to the respondent - Municipality to consider the same and the respondent - Municipality was given liberty to collect the entire arrears of licence fee with interest due from the petitioner's father and to permit him to retain the Bunk Shop in the same place; and directing the petitioner's father to abide by the conditions imposed by the Municipality in order not to cause hindrance to the devotees / public during all festive occasions including the Mahamaham festival and the respondent - Municipality shall not resort to evict the petitioner's father except by due process of law.

6. It appears that armed with this decree, the petitioner continued to be in possession of the Bunk Shop. During 2013, the petitioner filed a writ petition, in W.P.(MD) No.5046 of 2013, for a direction to the respondent - Municipality to renew the lease / licence for the Bunk Shop. At the time when the writ petition was entertained, an interim order was granted, which was subsequently made absolute by an order, dated 26.08.2014. Thereafter, the said writ petition was posted before the Honourable First Division Bench and it was disposed of by an order, dated 21.01.2016, by passing the following order:

"The petitioner claims right to occupy a bunk shop near one of the tanks claiming to be son of the original licensee P.Veerasamy.

2. The counter affidavit shows that the respondent seeks to throw a doubt as to whether the petitioner is at all the son of P.Veerasamy. Such a doubt is stated to arise from the fact that the notices issued to P.Veerasamy have been returned unserved as the person is not available at the given address and also by the reason of the voter's identity card.



WEB COPY

3. The matter does not rest at this, since the respondent-municipality also claims that the licence period has expired and they are not desirous of renewing the licence. It is also alleged that the bunk shop area has been extended and encroached to the extent of 4.70 x 3.50 meter. It is, in these circumstances, the respondent states that they propose eviction proceedings in accordance with law.

4. In our view, all these aspects, cannot be examined in the present proceedings and once the respondent has assured that they will proceed in accordance with law, the immediate apprehension of the petitioner would not arise. We thus dispose of the writ petition with liberty to the respondent to proceed only in accordance with law, for eviction of the petitioner. No costs. Consequently, W.M.P.(MD)No.774 of 2016 is closed."

7. After the writ petition was disposed of by the aforesaid order, a notice was issued by the respondent - Municipality to vacate and hand over the vacant possession of the Bunk Shop within a period of seven days and immediately, thereafter, a notice of a caveat petition filed by the respondent - Municipality before the District Court, Thanjavur, was received. The petitioner submitted a representation on 23.01.2016 followed by representations, dated 25.01.2016, 27.01.2016 and 15.02.2016.

8. Roughly about the same time, the petitioner preferred an appeal before the Honourable Supreme Court against the order, dated 21.01.2016, passed by the Honourable First Bench, in S.L.P.C.C.No.16568 of 2016. The said special leave petition was disposed of by order, dated 14.09.2016, on the following terms:

"Heard Ms.V.Mohana, learned senior counsel for the petitioner.

Delay condoned.

It is submitted by her that the respondent-Municipality has demolished the structure without following the due procedure. It is her submission that the petitioner is entitled under law to retain the possession. In our considered opinion, the stand that the petitioner has a right to retain possession in respect of the land in question, gives a fresh cause of action and, therefore, it is open to the petitioner to approach the appropriate court in accordance with law. Be it clarified, the impugned order shall

not be an impediment for consideration of the prayer, inasmuch as the grievance on this score has not been addressed to by the High Court.



With the aforesaid observation, the special leave petition stands disposed of."

9. The petitioner as power agent of his father submitted a representation to the respondent - Municipality, on 21.09.2016, referring to the order passed by the Honourable Supreme Court stating that liberty has been granted to approach this Court as he has a right to be in possession of the Bunk Shop. Thus, the petitioner's claim is based upon the decree passed by the Civil Court and the observation made by the Honourable Supreme Court in its order, dated 14.09.2016.

10. The Decree passed by the Civil Court, in O.S.No.524 of 2004, empowers the respondent - Municipality to evict the petitioner following due process of law. When action was initiated, the petitioner filed a writ petition before this Court and the eviction process was stalled on account of the interim order granted by this Court which continued till the disposal of the writ petition by the Honourable First Bench. In the said order, dated 21.01.2016, the Division Bench took note of the submissions made on behalf of the respondent - Municipality that the licence period had expired and they are not desirous of renewing the licence and the Bunk Shop area has been extended and encroached to the extent of 4.70 X 3.50 meters and therefore, they proposed eviction proceedings in accordance with law. It was held that all these aspects cannot be examined in a writ petition and once the respondent - Municipality has assured that they will proceed in accordance with law, the immediate apprehension of the petitioner would not arise and the Honourable First Bench disposed of the writ petition with liberty to the respondent - Municipality to proceed only in accordance with law for eviction of the petitioner. The said order and directions issued by the Honourable First Bench were noted by the Honourable Supreme Court. Before the Honourable Supreme Court, the petitioner contended that he is entitled under law to retain possession. Considering the said submission, the Honourable Supreme Court observed that it gives a fresh cause of action and therefore, it is open to the petitioner to approach the appropriate Court in accordance with law.

11. Before us, there is no material placed by the petitioner to justify his stand that he is entitled under law to retain the possession of the Bunk Shop. Admittedly, the Bunk Shop was given to the petitioner's father by way of licence. The respondent - Municipality has taken a stand that they do not propose to renew the license and that the petitioner has violated the terms of license by extending the shop and encroaching on municipal property. The licence granted to the petitioner's father clearly states that the Bunk Shop is a Bunk Shop situated in a land owned by the Municipality. The petitioner did not approach the Civil Court for any declaratory relief and the suit, in O.S.No.524 of 2004, was



one for a decree of permanent injunction. The Civil Court did not grant the decree as prayed for, but while giving liberty to the Municipality to collect the arrears of licence fee, permitted the Municipality to resort to eviction by following due process of law. This liberty / direction was also issued by the Honourable First Bench in W.P.(MD) No.5046 of 2013, on 21.01.2016, which direction was not interfered by the Honourable Supreme Court.

12. In our considered view, in the absence of any new material placed before us by the petitioner to justify that he is entitled under law to retain the possession of the Bunk Shop, the present attempt of the petitioner is to squat on municipal property, after the respondent - Municipality has taken a decision not to extend the licence granted in favour of the petitioner's father.

13. It is submitted by the petitioner that the respondent - Municipality made an incorrect statement in Cont.P.(MD) No.1638 of 2015, which was filed for punishing the respondent - Municipality for violating the order of stay granted in W.P.(MD) No.5046 of 2013, dated 26.08.2014. We have perused the order, in Cont.P.(MD) No.1638 of 2015, dated 11.02.2016 and we find that factually there appears to be an error as there was no appeal before the Division Bench and the writ petition stood transferred to the Honourable First Bench and finally disposed of by order, dated 21.01.2016. In our view, this mistake has to be treated as inadvertent error and not as a wilful misstatement made by the respondent - Municipality.

14. As observed earlier, the petitioner has not established before us that he is under law entitled to retain the possession of the Bunk Shop and consequently, the question of entertaining this writ petition and issuing a direction to the respondent - Municipality to consider the representation cannot be granted.

15. In the result, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

+1cc to M/S. T.R.SUBRAMANIAN, Advocate, SR.No.58008.