

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.06.2018
CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.A.Nos.541 and 542 of 2018
W.M.P.Nos.5231 and 5232 of 2018

- 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 Deputy Superintendent of Police,
Salem District.
 - 5.The Executive Officer,
Jalakandapuram Town Panchayat,
Salem District.
- Vs. ... Appellants in both W.As.
- 1.A.Rajamanickam Respondent in W.A.541/2018
 - 2.Veerasmbu Respondent in W.A.542/2018

Prayer in W.A.No.541 of 2018: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 29.11.2017 made in W.P.No.42047 of 2016.

WP.No.42047 of 2016:Writ of certiorarified mandamus to call for the records of the 4th 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 shop at IDUP Shop No.8, Jalagandapuram Bus Terminus, Jalagandapuram Town Panchayat, Salem.

Prayer in W.A.No.542 of 2018: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 29.11.2017 made in W.P.No.42054 of 2016.

WP.No.42054 of 2016: Writ of Certiorarified mandamus to call for the records of the 4th respondent in Na. Ka. No. 257/2016 dt 30.9.2016 and to quash the same as illegal and direct the respondents to remove the seal put on the petitioners shop at IDUP Shop No.7 Jalagandapuram, Bus Terminus, Jalangandapuram Town Panchayat, Salem.

For Appellants : Mr.S.R.Rajagopal,
in both W.As. Additional Advocate General
assisted by
Mr.E.Manoharan,
Additional Government Pleader

For Respondents : Mr.R.Sankarasubbu
in both W.As.

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

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The official respondents in W.P.Nos.42047 and 42054 of 2016 are the appellants and aggrieved by the disposal of the writ petitions with some observations and directions, vide common order dated 29.11.2017, had filed these Writ Appeals. Since the Writ Petitions have been disposed of, vide common order, these Writ Appeals are also disposed of by this common judgement.

2. Facts leading to the filing of the Writ Petitions have been narrated in detail and in extenso in the impugned common order, which is the subject matter of these Writ Appeals and therefore, it is unnecessary to restate the facts once again, except the relevant facts necessary for the disposal of these Writ Appeals.

2.1. The first respondent in W.A.No.541 of 2018/petitioner in W.P.No.42047 of 2016, in the affidavit filed in support of the writ petition would aver among other things that he is a lessee/licensee in respect of IUDP Shop No.8 of Jalakandapuram Panchayat, located at Jalakandapuram Bus Stand and he was running a Tea stall for the last 20 years without giving room for any complaint. He would further aver that to his shock and surprise, the fourth respondent/fourth appellant herein, on 22.09.2016, had locked and sealed the shop in his possession without adhering to the principles of natural justice and good conscience.

2.2. The petitioner in W.P.No.42047 of 2016 would state that the Inspector of Police, Jalakandapuram Police Station, had written a letter to the fourth appellant with regard to registration of a case in Crime No.259 of 2016 for the alleged

commission of offences under Sections 147, 148, 323, 324, 307 and 120B I.P.C, Sections 4(a) and 3 of the Explosive Substances Act, 1908, Sections 3(1) and (4) of the Prevention of Damage to Public Property Act, 1984 against Anandhakumar and 12 others and out of them, Anandhakumar, Karthick, Meganathan and Yuvaraj had been detained under the Tamil Nadu Act 14 of 1982. It is further averred that the Sub-Inspector of Police, Jalakandapuram Police Station, has written a letter dated 22.09.2016 to the petitioner stating about the lodging of the complaint by one Emerald Venkatachalam, a party functionary belonging to AIADMK party and the arrest and interrogation of the accused revealed that the Licencees of Shops No.7 and 8 are belonging to "Alaikadal Nanbargal Group" and they used to eve tease girls/women who are passing through the said shops and also indulging in unlawful activities and so also the accused concerned in the above said crime number and apprehending law and order problem, has requested the said official to close the said shops.

2.3. The fourth respondent herein, taking into consideration the said letter as well as the notice dated 15.07.2016, in and by which the first respondent in W.A.No.542 of 2018/petitioner in W.P.No.42054 of 2016 was called upon to pay the arrears and since he did not pay the same, has ordered Locking and Sealing of the premises on that day itself and challenge was made to the said order.

2.4. Similarly, the first respondent in W.A.No.542 of 2018/petitioner in W.P.No.42054 of 2016 has also made an averment as that of the first respondent in W.A.No.541 of 2018/petitioner in W.P.No.42047 of 2016 and acting on the communication of the Sub-Inspector of Police, Jalakandapuram Police Station coupled with the fact there were in arrears of licence amount in respect of shop No.7, the licenced shops were put under Lock and Seal on 22.09.2016 and both of them made a challenge to the said order by filing W.P.Nos.42047 and 42054 of 2016.

2.5. Notices were ordered in the writ petitions. The fourth respondent/fourth appellant has filed a counter affidavit in W.P.No.42054 of 2016 and took a stand that they have sealed the premises based on the letter of the Sub-Inspector of Police, Jalakandapuram Police Station dated 22.09.2016 and further took a stand that due to pressure exerted by the ruling party, legal action has been taken and further took a stand that due process of law has been followed before locking and sealing the premises/shops.

2.6. No counter affidavit has been filed by the first respondent in W.P.No.42047 of 2017/first appellant herein.

2.7. The learned Judge, after taking note of the facts and circumstances and after considering the rival submissions, found that in the impugned communication dated 22.09.2016 and 30.09.2016, it has not been stated that apart from the incident, they are also involved in throwing petrol bombs and what is not stated in the impugned notices/communications, cannot be improved by means of counter affidavit and further, in the F.I.R., there is no averment with regard to eve teasing of girls/women. The learned Judge, after taking note of the arguments of the learned counsel for the petitioners that the writ petitioners will not indulge in any such illegal acts and further taking into consideration that in pursuant to the verbal directions, the learned counsel has also produced four Demand Drafts for a sum of Rs.44,851/- and Rs.42,730/-, has directed the lifting of the seal with a further direction that the petitioners shall run the shops within a period of one week from the date of filing of undertaking and in the meantime, in case of repetition of illegal act, they can be proceeded with in accordance with law.

2.8. The official respondents in the writ petitions, aggrieved by the said directions, vide common order dated 29.11.2017, has filed these Writ Appeals.

3. Mr.S.R.Rajagopal, learned Additional Advocate General assisted by Mr.E.Manoharan, learned Additional Government Pleader appearing for the appellants/official respondents would submit that one of the accused, namely Yuvaraj, Son of Veerasambu/first respondent in W.A.No.542 of 2018 has been named as accused in Crime No.259 of 2016 registered on the file of the Jalakandapuram Police Station and invited the attention of this Court to the contents of the F.I.R. and made a forceful submission that in the meeting, petrol bombs were thrown, which resulted in firing and one of the participants of the meeting was the then Hon'ble Minister for Public Works Department and the present Hon'ble Chief Minister of Tamil Nadu and on enquiry, jurisdictional police came to know that there is an organization namely "Alaikadal Nanbargal Group" in which the accused as well as the writ petitioners are members and the shops run by the writ petitioners viz., Shop Nos.7 and 8 was used to commit the illegal act of eve teasing as and when girls/women pass by and that apart, they were also in arrears of licence amount and therefore, action has been taken strictly in accordance with law and also in the light of the conditions for allotment of shops while giving tender auction in their favour. In sum and substance, it is the submission of the learned Additional Advocate General that the above said relevant facts have not been considered by the learned Judge while disposing of the writ petitions with observations and if the shops are allowed to open, it may put premium on the illegal acts committed by the writ petitioners and therefore, prays for interference.

4. Per contra, Mr.R.Sankarasubbu, learned counsel appearing for the first respondent/writ petitioners would submit that with regard to the alleged act of eve teasing, admittedly no complaint whatsoever has been given and even in the F.I.R. in Crime No.259 of 2016, registered on the file of the Jalakandapuram Police Station, the writ petitioners have not been arrayed as accused and action has been taken by the fourth respondent due to the pressure exerted by local ruling party functionary and that is also evidenced through the counter affidavit. It is the further submission of the learned counsel appearing for the first respondent in these Writ Appeals/Writ Petitioners that the arrears of licence amount, as ordered to be paid, has also been paid by way of four Demand Drafts and they were encashed also and in fairness, the fourth respondent ought to have reopened the shops and would further add that the writ petitioners as well as his family are solely dependant upon the income earned from running the said shops and therefore, prays that the lock and seal put up on the shops may be removed and the writ petitioner may be permitted to run the shops and also may be granted liberty to participate in the public auction to be held in future.

5. This Court has considered the rival submissions and also perused the F.I.R. in Crime No.259 of 2016, registered on the file of the Jalakandapuram Police Station against Anandhakumar and 12 others with regard to the incident said to have taken place on 16.09.2016.

6. One of the accused is the son of the writ petitioner in W.P.No.42054 of 2016/first respondent in W.A.No.542 of 2018 and he was also detained under the Tamil Nadu Act 14 of 1982. It is also brought to the knowledge of this Court that the Detention Order passed against the said persons have also been quashed and they are on bail. A perusal of the impugned communications, which are the subject matter of challenge in the Writ Petitions would disclose that the fourth respondent purported to have acted on the instructions of the Sub-Inspector of Police, Jalakandapuram Police Station. As rightly pointed out by the learned counsel appearing for the first respondent/writ petitioners, with regard to the alleged act of eve teasing etc., said to have been committed by the writ petitioners is concerned, no complaint has been lodged and even in the F.I.R. in Crime No.259 of 2016, the writ petitioners have not been arrayed as accused. Therefore, in the considered opinion of the Court, the said allegations are wholly unsubstantiated.

7. The only issue is the non-payment of the licence amount in time and according to the learned Additional Advocate General appearing for the appellants, the notice dated 15.07.2016 was issued to the writ petitioner in W.P.No.42054 of 2016 and

insofar as the petitioner in W.P.No.42047 of 2016 is concerned, the licence stands in the name of his son.

8. This Court has also perused the files produced by the fourth respondent and the contents of the same did not reveal that the licence in respect of Shop No.7 has been allotted in favour of Yuvaraj. Be that as it may, in the light of the directions issued by the learned Single Judge in the impugned Order, Demand Drafts given by the writ petitioners have been encashed and gone to the coffers of the fourth respondent/Local Body and however, after entertainment of the Writ Appeals, Miscellaneous Petitions have been filed for refund of the same to the writ petitioners.

9. It is also the submission of the learned counsel appearing for the first respondent/writ petitioners that no doubt the writ petitioners may be in arrears of licence amount and there are 100 licencees in the shops owned by the fourth respondent and most of them did not pay in time and only in the case of writ petitioners, action has been taken to Lock and Seal and in respect of other cases, time is granted to pay the said amount. However, the said fact is seriously disputed by the learned Additional Advocate General, who produced a tabulation column/chart which shows that the licencees were in arrears of licence amount and the shops in their possession has also been auctioned.

10. The fact remains that the arrears of licence amount has been paid by the writ petitioners pursuant to the orders passed by this Court and it has also been encashed. The learned Additional Advocate General appearing for the first respondent submitted that the licence granted to the writ petitioners in respect of Shop No.7 has expired on 31.03.2018 and communications have also been sent to the writ petitioner in W.P.No.42054 of 2016 directing him to produce Conduct Certificate from the Deputy Superintendent of Police, so as to enable him to participate in the ensuing auction, for which he has also responded.

11. The learned counsel appearing for the first respondent/writ petitioners also made a plea with regard to expiry of the period of licence and they may be allowed to remain in their respective shops, subject to payment of licence amount on time and as and when the tender-cum-public auction is held in respect of the shops, they may be allowed to participate in the auction.

12. The fact remains that at the time of filing the writ petitions, the petitioners were in arrears of the licence amount and the learned Judge, in exercise of his equitable

jurisdiction, permitted them to pay the arrears of the licence amount and it has been paid by demand drafts and it has also been encashed by the fourth respondent/Local Body.

13. It is a settled legal position that licensee cannot claim that they should be in perpetual possession of the shops and the fact remains that the licence period has already expired on 31.03.2018.

14. In the light of the reasons assigned above, this Court is of the considered view that there is no stigma attached to the first respondent/writ petitioners with regard to the alleged acts of eve teasing etc., by the Jalakandapuram Police Station. This Court, on account of the subsequent development of the expiry of the licence period on 31.03.2018, directs the fourth appellant/Local Body to conduct tender-cum-public auction in respect of Shop Nos.7 and 8 within a period of one month from the date of receipt of a copy of this order in accordance with law and in a fair and transparent manner and the writ petitioners are allowed to participate in the said auction and on completion of the auction, further process shall take place strictly in accordance with law.

15. These Writ Appeals are disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jvm

To

1.The District Collector,
Salem District, Salem.

2.The Director of Panchayats,
Chennai-108.

3.The Assistant Director of Panchayats,
Omalur, Salem District.

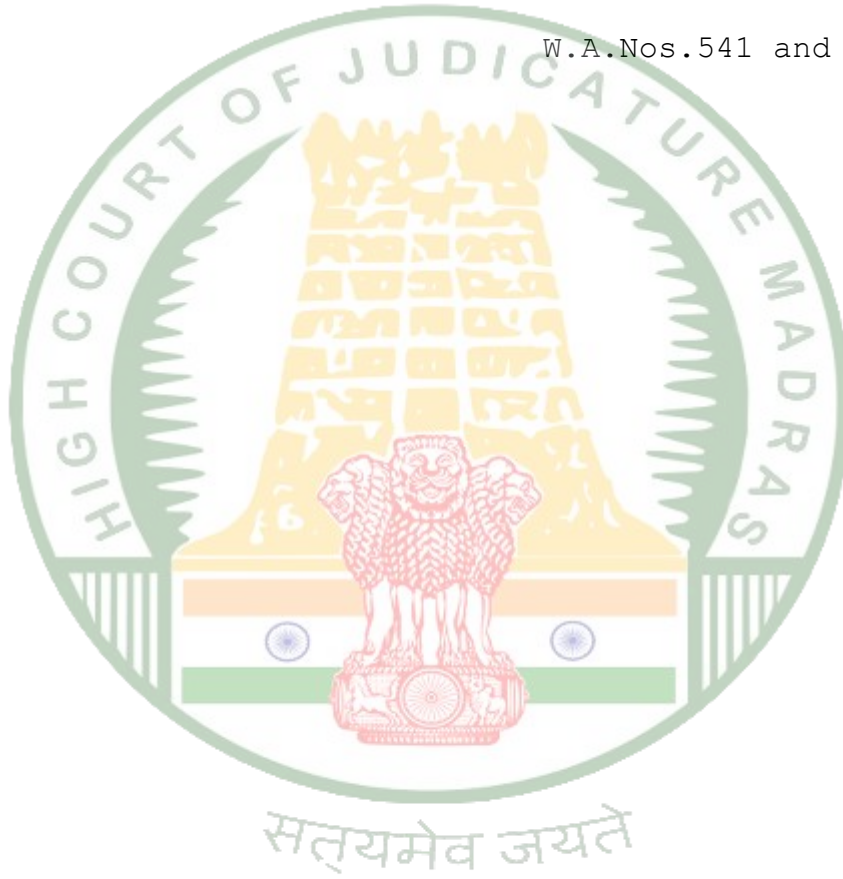
4.The Deputy Superintendent of Police,
Salem District.

5.The Executive Officer,
Jalakandapuram Town Panchayat,
Salem District.

+2cc to M/s.R.Sankarasubbu, Advocate Sr.No.37153 & 37332

KAN(CO)
sm:29.6.2018

W.A.Nos.541 and 542 of 2018



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