

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2018

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.24102 of 2011 and

M.P.No.2 of 2011 &

W.M.P.No.27157 of 2017 &

W.M.P.No.242 of 2018

Mahaluxmi & Co., (Indian Oil Dealer)
No.1, Trichy Road, Palladam 641 664,
Tiruppur District, rep by its
Partner K.Chinnasamy ... Petitioner

Vs

- 1.The District Collector,
Tiruppur District, Tiruppur.
- 2.The District Revenue Officer,
Tiruppur District, Tiruppur.
- 3.The Tahsildar,
Palladam Taluk, Tiruppur District.
- 4.The Executive Engineer,
Public Works and Water Resources Department,
Pollachi.
- 5.The Senior Regional Manager,
Indian Oil Corporation Limited,
Indian Oil Bhavan,
No.8/1079, Avinashi Road,
Coimbatore 641 018.

- 6.The Revenue Divisional Officer,
Palladam, Tirupur District.

R6 impleaded as per order dated 10.01.2018 in
W.M.P.No.557 of 2018

in W.P.No.24102 of 2017

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the order of the 3rd respondent in his Na.Ka.No.12208/05/A2 dated Nil/7/2011 signed on 21.07.2011, and to quash the same and consequently direct

the 3rd respondent to renew the lease in favour of the petitioner to the extent of 22 cents in respect of the land in S.No.594/B3 and 603/2, Naranapuram Village, Palladam Taluk, Tiruppur District.

For Petitioner : Mr.R.Gandhi (Senior Counsel) for
Mr.R.G.Narendhiran

For Respondents : Mr.T.M.Pappiah,
Spl. Govt. Pleader for RR1 to 4
and R6
: Mr.Anand Abdul and Vinodh for R5

O R D E R

Heard Mr.R.Gandhi, learned senior counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondent Nos.1 to 4 and sixth respondent, Mr.Anand Abdul and Vinodh, learned counsel appearing for the fifth respondent.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to call for the records relating to the order of the 3rd respondent in his Na.Ka.No.12208/05/A2 dated Nil/7/2011 signed on 21.07.2011 and to quash the same and consequently direct the 3rd respondent to renew the lease in favour of the petitioner to the extent of 22 cents in respect of the land in S.No.594/B3 and 603/2, Naranapuram Village, Palladam Taluk, Tiruppur District."

3. The case of the petitioner is as follows:-

The petitioner is a dealer of Petroleum Products and he has been leased out for the retail petrol pump outlet by the fifth respondent Corporation. The retail petrol pump is located in the revenue land leased out by the third respondent in favour of the fifth respondent. The lease was originally entered into between the Government and the fifth respondent way back in 1968. Thereafter, from time to time, the lease had been extended and periodical revision of rent had also been fixed and paid by the petitioner. These facts are not disputed by the respondents.

4. The subject land is originally comprised in 22 cents in Survey No.594/B3, 603/2 and 604/1, Naranapuram Village, Palladam Taluk. Out of 22 cents which was leased out to the fifth respondent, 6 cents have been acquired for widening the National Highway near the petrol outlet run by the petitioner. According to the petitioner, he had been paying the lease amount even after the acquisition of 6 cents for the entire 22 cents.

5. On 13.01.2001, the fifth respondent had requested the third respondent to renew the lease period. In response to the request, by communication dated 28.12.2004, a fresh rent has been fixed and a demand was made for payment of Rs.5,38,442/- from 14.05.1992 to 13.05.2001. According to the petitioner, the amount demanded has also been settled by the petitioner to the Government. Thereafter, the third respondent by proceedings dated November 2009, demanded the payment of some more amount for the period ending on 13.05.2010. According to the petitioner, even the said demand has been complied and the entire amount has been settled up to 30.06.2010.

6. According to the petitioner, there is no remaining balance to be paid to the Government towards the lease amount, as the entire claim by the Government towards periodical revision of lease amount had been settled. While matter stood thus, the third respondent by proceedings dated 21.07.2011, passed an order, rejecting to renew of the lease and directed the petitioner to vacate the place. The said order is impugned in the present writ petition.

7. According to the third respondent, the lands in which the petroleum outlet is located is a "Vaari" Poramboke and therefore, the same cannot be leased out to any party. The said fact which is stated in the impugned proceedings of the third respondent has been disputed by the petitioner, stating that they have been in occupation of the said land since 1968 and there was no iota of objection to their occupation all these years. The present objection is therefore misplaced and the same lacks bonafide.

8. According to the petitioner, the land which is under their occupation is not a "Vaari" Poramboke and the same is a Panamthopu land. Since there was a factual dispute between the claim of the petitioner and the reasoning of the third respondent, this Court in W.M.P.243 of 2018, vide order dated 10.01.2018, appointed an Advocate Commissioner and he was directed to inspect the premises and file a detailed report noting down the locality of the petitioner's petrol pump, its boundaries, the water courses if any and the distance between the petitioner's petrol pump and the water courses etc. The Advocate Commissioner after the inspection of the property on 20.01.2018, has submitted a detailed report on 22.01.2018. The Advocate Commissioner in his report has observed as follows:-

"(iii) In so far as water course is concerned, it is a fact that a 'kuttai' is located 100 metres away from the land in Survey No.603/2. There is no natural source of water for the said kuttai. It only collects water during the rainy season and it is channelized in such a way that water from the said kuttai flows through the canal and reaches a point on the Northern side of NH-67. Currently no water is

found flowing through the canal except the drain waters, here and there, collected from the locality. Though the land in Survey No.603/2 was described as Vaari land, the location of the said land, as stated earlier, is sandwiched between Natham Poramboke land on the Eastern side and Pananthoppu land in Survey No.594/B3 on the North-Western side. Hence, I observed that it will in no way obstruct the flow of water on the Southern side where it is properly channelized. Except describing the land situated in Survey No.603/2 as Vaari land in the Revenue record, its location does not go to suit the description that too keeping in mind the subsequent developments that have taken place several years back in the locality.

(iv) In so far as the distance between the location of the Petrol Bunk and the water course, I would submit that, as stated earlier, a kuttai is located 100 metres away from the Petrol Bunk on the South-Eastern side. However, on the Southern side of the Petrol Bunk, there is a canal through which water from the kuttai, if any, is taken to the Northern side of NH-67. The distance between the canal and the Petrol Bunk is 8 metres away. The said canal is separated from the compound wall of the Petrol Bunk by a road put up with the permission of the Revenue authorities and after obtaining No Objection from the PWD for entry and exit to the patta lands situated far behind the Petrol Bunk. There is a passage underneath the road for the flow of drain water from the kuttai."

9. From the above observation of the Advocate Commissioner, it is very clear that the location of the petrol pump did not cause any obstruction to the flow of water as the water course is properly channelized. The Advocate Commissioner further observed that except the description of the subject land as "Vaari" Poramboke in the revenue records but the location does not go to suit the description as such because of the various development which have taken place over the years. The Advocate Commissioner has also opined that the land is partly Panamthoppu land and the distance between the water course and the petrol outlet is 100 metres away.

10. In view of the above clear observations of the Advocate Commissioner, reasoning as said forth by the third respondent in the impugned proceedings cannot be countenanced both in law and on facts. As rightly contended by the learned senior counsel for the petitioner that the petitioner has been in occupation of the subject property since 1968, continuously and no such objection ever been raised by the authority concerned earlier. That being the case, a sudden objection

raised by the third respondent does not carry much conviction about the bonafides of the Officer concerned. As rightly contended by the learned senior counsel for the petitioner that the reason given in the impugned proceedings is only a pretext to evict the petitioner from the premises under his occupation since 1968.

11. In the above circumstances, this Court has no hesitation in holding that the impugned proceedings of the third respondent dated 21.07.2011, is a colourable exercise of power and the same cannot be sustained. Moreover, as averred in the affidavit filed in support of the writ petition that whatever lease amount which was revised and demanded, has been settled by the petitioner. That being the case, there cannot be any justification for the authority to refuse the renewal of the lease which was originally granted in favour of the fifth respondent and the fifth respondent, in turn, had given a retail outlet to the petitioner herein.

12. The learned counsel appearing for the third respondent would rely on the decision in the case of T.K.Shanmugam Vs. The State of Tamil Nadu and others, reported in 2015-5-L.W.397, wherein the Full Bench of this Court had dealt with the regularization of encroachment in the water bodies. However, the said case cannot be applied to the factual matrix of the present case, since, factually it is not established that the petitioner has obstructed any flow of water course squatting on the water body. In this case, the subject land has been properly leased out to the authority concerned and has been renewed periodically with the eyes widen. That being the case, this Court does not see any justification that presently the authority making a 'U' turn and citing the reason of "Vaari" Poramboke, for not renewing the lease. Such stand taken on the part of the authority clearly raised a doubt as to the bonafidies of the authorities concerned.

13. For all the above stated reasons, this Court has no hesitation to allow the writ petition. Therefore, the impugned order in Na.Ka.No.12208/05/A2 dated 21.07.2011, is set aside. The third respondent or the competent authority is directed to renew the lease of the subject property on reasonable terms and conditions and the petitioner shall be permitted to carry on his business as petrol outlet on the basis of the renewal of the lease. The orders shall be passed by the competent authority within a period of eight weeks from the date of receipt of a copy of this order.

14. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

-sd/-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The District Collector,
Tiruppur District, Tiruppur.
- 2.The District Revenue Officer,
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- 6.The Revenue Divisional Officer,
Palladam, Tirupur District.

+1C.C. to MR.R.G.Narendhiran Advocate SR.NO. 7353

+1 C.C. to M/S.Anand, Abdul & Vinodh Associates Advocate
SR.NO. 7905

+1 C.C. to The Government Pleader, High Court Madras
SR.NO. 8406

W.P.No.24102 of 2011

EV (CO)