



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.8934 of 2018

and

W.M.P. (MD) Nos.15755 and 8346 of 2018

A.Murugan

... Petitioner

vs.

1.The Commissioner,
Theni-Allinagaram Municipality,
Theni District.

2.V.Periyakaruppan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Mandamus directing the first respondent to unlock the shop No.54 in ground floor of southern side at Theni New Bus Stand, Theni and permit the petitioner to continue and run his business in the name and style of 'Bhagawathi Sweet Stall' in the above mentioned shop No.54 based on the relinquishment deed from the joint business and a deed of possession and enjoyment dated 19.01.2017 which was executed by the second respondent in favour of the petitioner based on his representation dated 09.04.2018.

For Petitioner : Mr.S.Sukumar

For Respondents : Mr.Hema Karthikeyan
for R.1
: Mr.R.Shankar Ganesh
for R.2

O R D E R

The petitioner has approached this Court seeking a writ of Mandamus directing the first respondent to unlock the shop No.54 in ground floor of southern side at Theni New Bus Stand, Theni and permit the petitioner to continue and run his business in the name and style of 'Bhagawathi Sweet Stall' in the above mentioned shop No.54 based on the relinquishment deed from the joint business and a deed of possession and enjoyment dated 19.01.2017 which was executed by the second respondent in favour of the petitioner based on his representation dated 09.04.2018.

2. When the matter is taken up for hearing, the learned Counsel appearing for the first respondent Municipality would submit that the second respondent is the licensee to run the shop leased out by the first respondent Municipality. However, the second respondent thought it fit to surrender the shop on 28.12.2017 and thereafter, the first

respondent auctioned the shop to the third party.

3. The learned Counsel appearing for the petitioner would submit that the petitioner was a partner of the second respondent and without any notice to him, he was evicted from the shop.

4. However from the materials and from the arguments advanced by the learned Counsel appearing on behalf of the first and second respondents, it appears that there is some financial arrangement between the petitioner and the second respondent and he was not treated as a licensee by the first respondent Municipality and he therefore was not entitled to issue of any notice for evicting him from the shop.

5. In view of the fact that the second respondent, who was the actual licensee, had surrendered the premises to the first respondent, thereafter, the petitioner, who had no privity of contract with the first respondent, was only a trespasser. Therefore, in the above said circumstances, this Court does not think that the writ petition can be entertained at the instance of the trespasser. Therefore, the writ petition lacks of merits and substance and the same is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar(CS I)

/True Copy/

Sub Assistant Registrar(CS IV)

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1CC TO MR. S.SUKUMAR, ADVOCATE SR 81272

1CC TO M/S. K. HEMA KARTHIKEYAN, ADVOCATE SR 81596

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