



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.P (MD) No.1035 of 2014
and
M.P (MD) Nos.1 & 2 of 2014
and
W.A (MD) No.1267 of 2016
and
C.M.P (MD) No.8636 of 2016

W.P (MD) No.1035 of 2014:-

M.Subramanian ... Petitioner

Vs.

1.Tiruchirappalli City Municipal Corporation,
Rep. by its Commissioner,
Bharathidasan Salai,
Trichy - 1.

2.Trichirappalli Municipal Corporation,
Rep. by Assistant Commissioner,
Srirangam Zone,
Gandhi Road,
Srirangam,
Trichy.

... Respondents

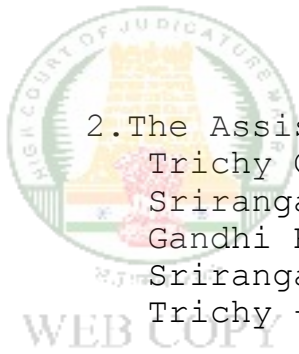
Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to calling for the records relating to the impugned order of the second respondent made in Na.Ka.No.A1/4751/13/Sri, dated 08.11.2013 and quash the same.

For Petitioner : Mr.P.Arun Jayatram

For Respondents : Mr.N.S.Karthikeyan

W.A (MD) No.1267 of 2016:-

1.The Commissioner,
Tiruchirappalli City Corporation,
Bharathidasan Salai,
Cantonment,
Trichy - 01.



2.The Assistant Commissioner,
Trichy City Corporation,
Srirangam Zone,
Gandhi Road,
Srirangam,
Trichy - 05.

... Appellants/Respondents

Vs.

M.Subramanian

... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 06.07.2016 made in W.P(MD)No.10778 of 2013, on the file of this Court.

Prayer in WP(MD). 10778/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents herein to issue proper license to the petitioner to restore the water connection and collect rent for Golden Broiler and Tiffen Centre run at 10/2 Kandhayya Pillai Street, Srirangam and pass such further or other orders.

For Appellants : Mr.N.S.Karthikeyan

For Respondent : Mr.P.Arun Jayatram

JUDGMENT

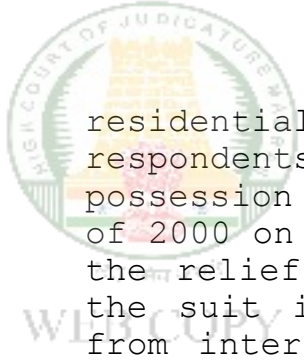
(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)

W.P(MD)No.1035 of 2014 is filed by the petitioner, challenging the order, dated 08.11.2013, passed by the second respondent-Assistant Commissioner in Na.Ka.No.A1/4751/13/Sri, calling upon the petitioner to vacate and hand over the disputed property within a period of three months.

2. The case of the petitioner, in brief, is as follows:-

2.1. The disputed property was given to the father of the petitioner for his service, after retirement in the year 1961, as a lease of a vacant site. A building was constructed by his father for residential purpose. As the respondents/Municipality had disturbed the peaceful possession and enjoyment of the petitioner's father, he filed a suit in O.S.No.194 of 1973 on the file of the District Munsif Court, Tiruchirappalli, for the relief of permanent injunction. On 30.10.1974, the trial Court granted decree in favour of the petitioner's father.

2.2. After the demise of the father of the petitioner, the petitioner had modified the structure and converted the said



residential building into two shops. Once again, as the respondents/Municipality disturbed the petitioner's peaceful possession and enjoyment, the petitioner filed a suit in O.S.No.876 of 2000 on the file of the II-Additional District Court, Trichy, for the relief of injunction. The trial Court, on 28.03.2008, decreed the suit in favour of the petitioner restraining the Corporation from interfering with the possession in any manner except by due process of law.

2.3. While the matter stood thus, the second respondent/Municipality disturbed the petitioner's possession and directed to remove the broilers shop run by the petitioner and also disconnected the water connection. Therefore, the petitioner filed a Writ Petition in W.P(MD)No.10778 of 2013 before this Court, directing the respondents to issue licence and restore water connection and collect rent to the shops in question. The said Writ Petition was allowed by the learned Single Judge on 06.07.2016, directing the respondents to issue proper license and restore the water connection and electricity connection.

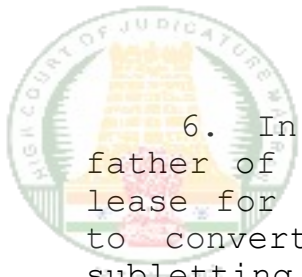
2.4. Aggrieved by the same, W.A(MD)No.1267 of 2016 is filed. Pending the Writ Petition, the second respondent/Municipality issued the impugned notice, dated 08.11.2013 calling upon the petitioner to vacate the land, since he is a licensee under the respondents/Municipality.

2.5. Aggrieved over the impugned notice issued by the second respondent/Municipality, the petitioner has filed the present Writ Petition in W.P(MD)No.1035 of 2014.

3. The second respondent-Assistant Commissioner had also filed his counter affidavit, wherein at paragraph No.4 it is stated that the petitioner had sublet the premises to various parties and he is not doing business as claimed by him. The said subletting is done by the petitioner without the knowledge and consent of the respondents-Municipality. It is also pointed out that the petitioner had not even mentioned the electricity connection number and the extent of the property either in the Writ Petition or in the suit.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. It is seen from the records that in O.S.No.876 of 2000, decree has been passed by the civil Court in favour of the petitioner, wherein it is specifically mentioned that it is open to the respondents-Municipality to terminate the lease or licence granted to the petitioner, as the case may be and recover the site by removing the superstructure. Accordingly, the impugned notice had been issued terminating the lease and directed the petitioner to hand over the vacant possession.



6. In any case, admittedly, the property was given to the father of the petitioner in appreciation of his service only for a lease for the residential purpose. The petitioner has got no right to convert the same into a non-residential purpose, much less subletting the same to third parties.

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7. When the Writ Appeals and Writ Petition were taken up for hearing, Mr.P.Arun Jayatram, learned counsel appearing for the writ petitioner contended that the said broiler shop and tiffin centre are not functioning there and the prayer sought for in the Writ Petition in W.P(MD)No.1035 of 2014 has become infructuous.

8. Recording the statement made by the learned counsel appearing for the first respondent/writ petitioner, the order, dated 06.07.2016 passed in W.P(MD)No.10778 of 2013 is set aside and the Writ Appeal is allowed.

9. In view of the fact that the petitioner in W.P(MD)No.1035 of 2014 had already vacated the petition mentioned premises, the Writ Petition becomes infructuous and the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar(CS-I)

To

1.The Commissioner,
Tiruchirappalli City Municipal Corporation,
Bharathidasan Salai,
Trichy - 1.

2.The Assistant Commissioner,
Trichirappalli Municipal Corporation,
Srirangam Zone,
Gandhi Road,
Srirangam,
Trichy.

+1cc to Mr.N.S.KARTHIKEYAN, Advocate, SR.No. 92169

W.P (MD)No.1035 of 2014
and
W.A (MD)No.1267 of 2016
26.10.2018

PS

KK/RP/SAR-1/27.11.2018/4P-4C