

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.10504 of 2010  
and  
M.P.No.2 of 2010

R.Senthilkumar

... Petitioner

Vs.

1. The Chief General Manager,  
Township Administration,  
Neyveli Lignite Corporation Ltd,  
Neyveli, Cuddalore District.

2. The Estate Officer,  
Neyveli Lignite Corporation,  
Township Administrative Office,  
Neyveli, Cuddalore District.

.... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in his proceeding Lr.No.TA/ESII-2/2000/R40105/2010 dated 11.01.2010 and quash the same and direct the respondents to effect a name transfer in favour of the petitioner on the basis of his application dated 15.11.2005.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.N.A.K.Sharma

ORDER

This Writ Petition has been filed seeking to quash the proceeding Lr.No.TA/ESII-2/2000/R40105/2010 dated 11.01.2010 and direct the respondents to effect name transfer in favour of the petitioner on the basis of his application dated 15.11.2005.

2. The petitioner submitted that he is running a coffee works shop at N.R.B. 010 S.Radhakrishnan Salai, Block 8, Neyveli 607 801, Cuddalore District, which is a premises belonging to

the respondents. According to the petitioner, one Saraswathi Ammal was the original licensee of the said premises under a license in Code R40105. The said Saraswathi Ammal through her Power of Attorney agent had sold her rights and interests of the premises to the petitioner on 19.09.2005. Thereafter, on 14.10.2005, the petitioner had obtained an application from the respondents for effecting transfer of the allotment from the name of Saraswathi Ammal to his name and duly submitted the same on 15.11.2005. However, the second respondent had rejected the petitioner's request by passing the impugned order, stating that it had been submitted after the expiry of the date for submitting the applications.

3. The petitioner further submitted that at the time of submitting the applications, he was not informed about the guidelines and it was notified by the respondents only on 21.08.2007 while the last date fixed for submitting the applications was 31.10.2005. When the guidelines were furnished only on 21.08.2007, the guidelines could be only prospective.

4. The petitioner also submitted that on the basis of the impugned order, the second respondent had initiated proceedings under the Public Premises (Eviction of Unauthorized Occupant) Act, 1971 and had issued a show cause notice dated 16.04.2010, calling upon the petitioner to show cause as to why he should not be evicted and further directed him to participate for an enquiry on 29.04.2010. However, the second respondent had passed an order of eviction against the petitioner without considering his contention and therefore, aggrieved by the order, he had filed this Writ Petition.

5. Denying the allegations of the petitioner, a counter affidavit has been filed by the respondents, wherein, it has been stated that the license issued by M/s.NLC India Limited (previously M/s.Neyveli Lignite Corporation Limited), hereinafter referred to as "NLCIL", is subject to numerous conditions as laid down in the respective agreements and other instructions issued by NLCIL from time to time. The administrative area of NLCIL in Neyveli comes under the purview of the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "Act, 1971"). As such, the licenses granted for running shops and other trades etc., and the quarters allotted for employees are governed by the said provisions of Act 1971. Admittedly, the petitioner is not a licensee of NLCIL and he is an unauthorized occupant of the premises of original license holder, namely, Smt.N.Saraswathi Ammal.

6. The respondents further stated that pursuant to impugned

order dated 11.01.2010, the first respondent being the licensing authority, by proceedings in Lr.No.TA/ESII - 2/2000/R40105/2010 dated 12.02.2010 called upon the original licensee Smt.N.Saraswathi Ammal to show cause as to why the license allotted to her shall not be cancelled and that the application received from the petitioner for regularisation was beyond the cutoff date under the Scheme. To which, the original licensee did not respond and thereafter, the license issued to her was cancelled by the second respondent by his proceedings dated 17.03.2010. The order of cancellation of license was received by the petitioner on 18.03.2010, but till date, it has not been challenged in the manner known to law and has attained finality. Once the original licence issued to the licensee is cancelled, the person who is in possession of the shop is unauthorised occupant. Moreover, the respondents stated that the second respondent issued another Show Cause Notice (Form A) dated 16.04.2010, calling upon the original licensee Smt.N.Saraswathi Ammal to show cause as to why an order of eviction should not be made and to appear for an enquiry in person. The said show cause notice was also received by the petitioner on 17.04.2010, but, neither the petitioner nor the original licensee had chosen to challenge the said show cause notice and it remains unchallenged till date. However, the petitioner on receipt of the said show cause notice, participated in the enquiry held on 29.04.2010 and after taking an adjournment, had filed this Writ Petition on 11.05.2010 challenging the letter dated 11.01.2010 and obtained an exparte interim injunction dated 12.05.2010 by suppressing the above facts.

7. The respondents also stated that the original licensee Smt.N.Saraswathi Ammal was granted the license in 1974 to a shop located at No.10, Shopping Complex, Block - 8, Neyveli, by NLCIL to run a trade of 'Wet Grinding' at rear side of Bay Nos.9 & 10 and "Coffee Grinding" at Shop No.10. The said license is non-transferable to any third parties and personal one. Any transfer by the licensee without the written consent of NLCIL is not binding and legally impermissible. While so, the original licensee Smt N.Saraswathi Ammal filed an application in 2001 for transferring the license in respect of the subject shop in favour of one Mrs.T.Amma Pillai and the respondents allowed such transfer subject to fulfilling certain conditions and payment of fees. Thereafter, during the process of the said request, the original licensee informed NLCIL not to transfer the license. However, during the inspection by NLCIL, it was found that the subject shop was in possession of one Smt.P.Padmavathi on the premises that the original licensee had allegedly executed a Power of Attorney in her name, which is contrary to the terms and conditions of the license granted to Smt.Saraswathi Ammal. Meanwhile, on 15.11.2005, an application was received by NLCIL from the petitioner, seeking transfer of license in the name of

petitioner on the premise that based on the alleged unregistered sale deed dated 15.10.2005 in favour of the petitioner executed by the Power of Attorney Smt.Padmavathi on behalf of Smt.Saraswathi Ammal for carrying on the trade of 'Coffee Works'. The said sale deed 15.10.2005 is legally impermissible and not binding on NLCIL.

8. The respondents further stated that a perusal of the application submitted by the petitioner apparently discloses that it was not signed by the original licensee Smt.Saraswathi Ammal and it has been made with certain manipulation. Similarly, another application was received from one Shri.P.Kaliyaperumal for name transfer in respect of 'Wet Grinding' trade in the subject Shop. This application was also apparently not signed by the original licensee Smt.Saraswathi Ammal. Therefore, the petitioner and others, without the knowledge of the original licensee Smt.Saraswathi Ammal, trying for transferring the licence and was also making conflicting requests, which is contrary to law and the terms and conditions of the license, which should not be permitted.

9. In addition, the respondents stated that as per the Regularization Scheme with effect from 01.07.2002, all existing shops licensees were eligible to seek renewal of license and regularisation of various violations. As the cut-off date specified in the scheme is 31.10.2005 and the regularization was one time measure aimed at benefiting the licensees, who were doing business in violation of the terms of licence, the said scheme was widely published among all the licensees and all the existing licensees were required to submit application and proforma indicating the violations as on 01.07.2002 and seek regularisation and renewal by paying the specified amounts, as due, under the regularization scheme. Almost all the affected small shop licensees submitted applications and proforma in terms of the scheme accepting the conditions of the scheme.

10. The respondents further stated that subsequent to the introduction of the Regularization Scheme dated 31.03.2003, certain representations were received from the trading community for review of certain items in the said Scheme. Therefore, the NLCIL, again constituted another Committee to look into their grievances. Based on the recommendations of the said Committee, certain additional guidelines as approved by NLCIL were notified widely. There was no change in the cutoff date fixed in the original Regularization Scheme dated 31.03.2003 and all the licensees were given ample time from 31.03.2003 to 31.10.2005 to make avail the Scheme. Admittedly, the petitioner made application on 15.11.2005 i.e. much after the cutoff date fixed on 31.10.2005 and therefore, his application was rejected by the respondents. Hence, sought for dismissal of this Writ Petition.

11. Heard the learned counsel for the petitioner and the learned counsel for the respondents, and perused the materials available on record.

12. It could be seen that originally, the license for running a coffee shop at N.R.B.010 S.Radhakrishnan Salai, Block 8, Neyveli - 607801, was issued on 23.12.1974 to one Smt.N.Saraswathy Ammal by the respondents. Thereafter, an agreement was entered into between Smt.N.Saraswathi Ammal and the respondents on 04.01.1996 for running a mill in rear side of Bay No.10, Shopping Complex, Block - 8, Neyveli - 1, for a period of 5 years commencing from 01.10.1994. As per the agreement, the original licensee Smt.N.Saraswathi Ammal has no right to transfer the licence issued to her in favour of any third parties. But, an application had been submitted by the original licensee on 03.08.2001, seeking for re-allotment of licence in favour of one T.Ammapillai. Subsequently, on 10.12.2001, another application had been submitted by the original licensee, seeking for re-allotment of licence in favour of another one P.Kaliyaperumal. Thereafter, a notice dated 21.04.2003 had been issued by the respondents, requesting all the licensees to calculate the licence fee based on the location, area allotted, area under occupation, additional trade, bifurcation/partition, change of trade, 9 month licence fee as security deposit, name change, outstanding electricity charges, quarters rent, etc., and deposit the arrears in terms of Demand Draft drawn in favour of Director, NLC Limited, payable at Neyveli, at Account Centre T.A. within 15 days from the date of issuance of the notice.

13. It could be also seen that on 05.11.2005, a notice had been issued by the respondents, stating that the issue of Application Form for Trade/Shop Licensees for name transfer, change of trade and additional trade etc., is stopped with effect from 31.10.2005 due to the ongoing Regularisation process. Thereafter, on 12.02.2010, a notice had been issued to the original licensee Smt.N.Saraswathi Ammal by the respondents, stating that one Shri.R.Senthilkumar, the petitioner herein, has submitted an application requesting to allot one portion of the shop in which the trade of Coffee Grinding is being carried out. But, the said application was received only on 15.11.2005 i.e. after the expiry of due date for submitting the applications and therefore, his request was rejected by the respondents as per the Regularization Scheme, and directing the original licensee to show cause as to why the license allotted to her shall not be cancelled and shop premises taken over by the respondents. But, the original licensee did not respond to the said notice.

14. It could be further seen that after issuance of the

above notice, a Show Cause Notice dated 16.04.2010 under Public Premises (Eviction of Unauthorised Occupants) Act, 1971, had been issued by the respondents to the original licensee Smt.N.Saraswathi Ammal, stating that since she did not respond to the notice dated 12.02.2010, the license issued to her was cancelled by the respondents vide Lr.No.TA/ESII-2/2000/R40105/2010, dated 17.03.2009 and directing her to show cause as to why an order of eviction should not be made and calling upon her to appear before the respondents in person to prove her case along with the evidence.

15. It could be also seen that after issuance of the above notice dated 16.04.2010, the petitioner herein had appeared for the enquiry on behalf of the original licensee Smt.N.Saraswathi Ammal on 29.04.2010, but, he has not produced any authorization letter received from the original licensee and therefore, the respondents have granted 3 days time to the petitioner to produce the same. Thereafter, the petitioner has produced the said authorization letter in the enquiry conducted on 03.05.2010 and has submitted before the respondents that he has been running the said shop at N.R.B.010, S.Radhakrishnan Road, Block - 8, from 19.09.2005 and he purchased the same from one Smt.P.Padmavathi, who is supposed to be Power of Attorney holder of the said Smt.N.Saraswathi Ammal. Further, the petitioner has submitted that he has invested more money for his business and has been properly paying the rent for the said shop and also his family members are fully depending on the said business and therefore, he could not vacate the said shop. Moreover, the petitioner has submitted that he filed the application for name transfer on 15.11.2005 and at that time, he was not informed either orally or in writing about the last date for submitting the applications and he was not aware of the same, and therefore, sought for effecting name transfer in favour of him on the basis of his application dated 15.11.2005.

16. It could be further seen that as per the agreement made between Smt.N.Saraswathi Ammal and the respondents, the licence issued to Smt.N.Saraswathi Ammal should not be transferred to any third parties without the written consent of the respondents. But, the original licensee Smt.N.Saraswathi Ammal has violated the conditions stipulated in the agreement and reallocated her licence to various third parties and therefore, her license was cancelled by the respondents. Further, when the original allottee's licence itself cancelled, the subsequent persons, to whom the licence was reallocated in respect of the subject shop, are unauthorized occupants to the respondents and they have no rights to run the business in the said shop.

17. The petitioner's contention that at the time of submitting the applications for name transfer, he was not

informed about the cutoff of date for the same and it was belatedly notified by the respondents. But, as per the statements given, there was a notice mentioning the cutoff of date for submitting the applications for transfer of licence, affixed on the notice board by the Administrative Department, but, it was not noticed by the petitioner while approaching the respondents belatedly, cannot be accepted.

18. It is seen that the petitioner is in possession of the said shop from 19.09.2005 onwards and had applied for name transfer of licence on 15.11.2005 for a period of five years. The application was considered by the Estate Officer and by letter dated 11.01.2010 in Lr.No.TA/ESII-2/2000/R40105/2010 had informed that his request for allotment of one portion of the shop is not possible for compliance and held that occupation of the shop by the petitioner is unauthorized as per the existing Rules. While considering his application, that it was found that the application was received by the respondent Department after the expiry date for submission of applications. Hence, they treated the application as invalid. The petitioner further sent an application dated 30.03.2010 seeking for condonation of delay in submission of the above application and requested for issuance of licence for a portion of the shop by revoking the order under reference letters dated 11.01.2010, 23.01.2010, 12.02.2010 and 17.03.2010. Further, the petitioner's contention that since the original allottee Saraswathi Ammal fell sick frequently, she had executed Power of Attorney in favour of one Mrs.P.Padmavathi, who in turn executed an unregistered sale deed to the petitioner herein on behalf of the original allottee during 2005, as she also could not continue her business in the said shop. The petitioner has produced an application dated 15.11.2005 for re-allotment of the shop to the respondent and as the same was not submitted within the time period, he sought for condonation of delay occurred while submitting the application. The said request was not considered by the respondents, who had sent a notice of eviction to the original allottee Saraswathi Ammal dated 16.04.2010 directing her to appear for an enquiry to answer all material questions raised. The notice dated 16.04.2010 issued is extracted hereunder:-

"You have been granted a licence to run the trade of "COFFEE WORKS" in N.R.B.010, S.RADHAKRISHNAN ROAD, BLOCK - 8, NEYVELI - 607 801. Under Regularization Scheme, an application was received from one Shri R.Senthilkumar with a request to allot one portion of the shop, in which the trade of Coffee Grinding is being carried out. But the application was received only on 15.11.2005 after the expiry of due date for

submission of application to consider the allotment of the stall portion. Hence, the application submitted by Shri R.Senthilkumar was not considered for allotment as per the Regularization Scheme. Further, you have been issued a show cause notice vide reference cited, to show cause as to why the license issued to you shall not be cancelled for the above violations. In response to the Show Cause Notice, you have not responded to the Notice issued. But Shri R.Senthilkumar has submitted a letter dated 18.02.2010 exerting various points which could not be considered as per existing Rules. Hence, the license issued to you was cancelled vide Lr.No.TA/ESII-2/2010/R40105/2010, dated 17/03/2009 and you have been instructed to vacate and surrender the premises within 14 days. But you have not vacated and handed over the scheduled premises. Keeping the shop premises beyond 01/04/2010 is totally unauthorized and illegal. Therefore, you are liable to be evicted from the premises.

Now, therefore in pursuance of sub-section (i) of Section 4 of the Act, I hereby call upon you to show cause on or before 27/04/2010, why such an order of eviction should not be made.

And in pursuance of clause (b)(ii) of sub section (2) of Section 4, I also call upon you to appear before me in person or through a duly authorized representative capable to answer all material questions connected with the matter along with the evidence which you intend to produce in support of the cause shown on 29.04.2010 at 3.00 P.M. in this office of the Township Administration for personal hearing. In case, you fail to appear on the said date and time, the case will be decided exparte."

Hence, as per said notice dated 16.04.2010, the original licensee Saraswathi Ammal was called upon to appear before the authorities on 29.04.2010 to answer why an order of eviction should not be made. The original allottee did not appear for enquiry regarding the said notice of eviction, but the petitioner herein appeared before the authorities and an enquiry was conducted. The petitioner took time before the authorities to put forth his defence and in the meantime, he filed the Writ Petition and got an interim order against the respondents from

evicting him.

19. It is further seen that the petitioner had come in possession of the said shop on 19.09.2005 and had applied for the license on 15.11.2005 for a period of 5 years. Even though, he has not been issued with any order in his favour, while the enquiry is pending, he has filed this Writ Petition in the year 2010 and obtained an order of injunction restraining the respondents from evicting him from the above shop. So, the petitioner has been enjoying the possession of the said shop for more than 14 years under the guise of litigation and interim orders passed by this Court. When the period of licence sought itself is only for 5 years and when there is no order of name transfer is issued in his favour and in the enquiry held against the original allottee, the petitioner has no right to claim for name transfer in his favour. Moreover, the original order of cancellation of license as well as the notice under Public Premises (Eviction of Unauthorised Ocupants) Act, 1971, have not been challenged by the original license holder till date. Hence, he has no authority to occupy the said shop and hold on his business further. Licence is only a lease hold right.

20. Now the petitioner's counsel contention that the petitioner ought to have been given notice under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, cannot be sustained because the petitioner is not an allottee and the said Saraswathi Ammal is the original allottee, who has been asked to vacate the said premises and when the said original allotment has already been cancelled and as he is in unauthorized occupation, the shop has to be vacated by the petitioner. There is no merit in the claim of the petitioner. The respondent has got every right to vacate the encroachers, whoever is in occupation, as the entire township is managed by them. The respondents are at liberty to bring the shop for auction and the petitioner is at liberty to participate in the auction, if any held by the respondents in future for the said shop and the same has to be considered by the respondents. The application submitted by the petitioner Senthilkumar was not considered as per the Regularization Scheme. The petitioner cannot blow hot and cold stating that he is claiming under the sale deed executed by one Padmavathi on behalf of Saraswathi Ammal for regularization, which has already been rejected and he cannot claim for name transfer and he has to be given an opportunity as an encroacher under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and fresh notice to be issued to him, cannot be accepted, as already he has been occupying the shop for more than 14 years.

21. The Hon'ble Division Bench of this Court in a judgment reported in 2018 (3) CTC 624 (T.Murugan ..vs.. Commissioner,

Nagercoil Municipality) has held that even assuming that the right conferred on the petitioners is one of lease, the petitioners have no vested right to continue in possession on expiry of the period of lease. The Government has to take measures to increase the income and as such, there is no fundamental right vested with the petitioners to continue to be in occupation in Municipal Property. The officials of the Government are apprehensive of taking a decision, which if taken would undoubtedly earn higher revenue for the local body. Where the petitioners had no vested right to continue in possession of the shops, a fresh public auction was directed to be held.

22. Applying this principle, even the person who has got a leasehold right has no vested right to continue in possession of the property after expiry of the lease. In view of the above principle, the petitioner who is not even a licensee, but only an unauthorised occupant, cannot claim right to stay in the property.

23. In view of the above facts and circumstances of the case, this Court is not inclined to quash the impugned order dated 11.01.2010 passed by the second respondent. Hence, the petitioner is directed to vacate the shop at N.R.B.010, S.Radhakrishnan Salai, Block - 8, Neyveli - 607801, Cuddalore District, within a period of eight weeks from the date of receipt of a copy of this order. The respondents are at liberty to bring the shop for auction and the petitioner is at liberty to participate in the auction, if any held by the respondents in future for the said shop and the same has to be considered by the respondents.

24. With the above direction, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते  
Assistant Registrar

//True copy//

Sub Assistant Registrar

raja/mra

To

1. The Chief General Manager,  
Township Administration,  
Neyveli Lignite Corporation Ltd,  
Neyveli, Cuddalore District.

2. The Estate Officer,  
Neyveli Lignite Corporation,  
Township Administrative Office,  
Neyveli, Cuddalore District.

+1cc to Mr.G.Jeremiah, Advocate SR.No.33718

+2cc to Mr.N.A.K.Sharma, Advocate SR.No.34661,33684

W.P.No.10504 of 2010  
and  
M.P.No.2 of 2010

KJ(CO)  
GMY(18/06/2019)



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