

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 30.05.2019

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN**W.P. (MD).No.11837 of 2019**

WEB COPY

M.Sankarasubramanian

... Petitioner

Vs.

1. The Executive Officer,
Special Grade Town Panchayat,
Alangulam,
Tirunelveli District.

2. The Inspector of Police,
Alangulam Police Station,
Alangulam,
Tirunelveli District.

3. Arumuganathan

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the first respondent to restore the possession of the petitioner over the IUDP Shop No.6 of Alangulam Bus Stand belong to the first respondent.

For Petitioner
For R1 & R2

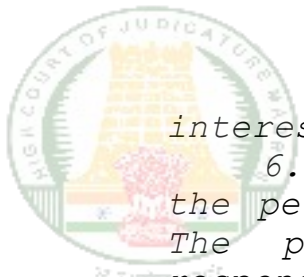
: Mr.S.S.Thesigan
: Mr.B.Bhagawathi
Government Advocate

ORDER

The first respondent Panchayat issued Notification dated 06.02.2019, bringing the shops belonging to it to auction. The writ petitioner herein is concerned with Shop No.6. He filed W.P. (MD).No.4418 of 2019. The said writ petition was allowed by a common order dated 15.03.2019, in the following terms.

"4.This Court wanted to know if the petitioners herein are ready and willing to clear the tax arrears within a period of four weeks. The petitioners through their counsel have given their consent for clearing their respective tax arrears on or before 22.04.2019.

5.The learned standing counsel for the respondent informed the Court that the panchayat has incurred expenses in publishing the impugned auction notices. He also submitted that the respondent will have to refund the amount deposited by the successful tenderers and bidders with



interest.

6. The learned counsel for the petitioners states that the petitioners would bear the respective interest burden. The petitioners herein have been lessees under the respondent for more than 8 years. Therefore, the respondent is entitled to refix the monthly rental in terms of G.O. (Ms) No.92, Municipal Administration and Water Supply Department, dated 03.07.2007. The respondent has agreed to abide by the same.

7. Recording the aforesaid undertaking given by the writ petitioners, the notification impugned in these writ petitions, insofar as the petitioners are concerned, stand quashed. If the petitioners fail to honour the undertaking given in these proceedings, the order now passed would stand recalled insofar as they concerned. The learned counsel for the petitioners gives a further undertaking that they would not ask for any further extension of time and modification of the order now passed.

8. Accordingly, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed. "

2. Following the direction passed by this Court, the petitioner herein cleared the entire tax arrears. He also paid the renewal fee in respect of Shop No.6. The stand of the petitioner is that the second respondent had taken sides with the third respondent Arumuganathan, who was the successful bidder and had physically put Arumuganathan in possession of Shop No.6. Therefore, seeking restoration of possession to him, this writ petition came to be filed.

3. The petitioner counsel states that the third respondent was served privately. Be that as it may, even though there is no appearance on his behalf, it is true that his name does not appear in the cause list. But then, for disposing of this writ petition, the third respondent is actually not a necessary party in the real sense.

4. The second respondent has filed a counter affidavit and denied the allegations made in the writ petition. He specifically states that the second respondent has not evicted the petitioner from the Shop in question and he has not interfered with the rights of the writ petitioner. All that he would say is that the petitioner had attempted to block the traffic and that therefore, Crime No.228 of 2019 came to be registered.

5. The writ petition has to be allowed in the light of the stand taken by the first respondent. The first respondent in the writ petition has fairly stated that following the allowing of W.P. (MD).No.4418 of 2019 and the payment of arrears as well as the renewal fee by the writ petitioner, the first respondent had



delivered the possession to the writ petitioner. It is further stated that the auction proceedings issued in favour of the third respondent have also been cancelled. Paragraph-5 of the counter affidavit filed by the first respondent reads as under:-

"5. I state that on 15.03.2019, this Hon'ble Court disposed above said writ petition and directed our office to allot the concern shop to the petitioner if he paid the entire tax arrears on or before 22.04.2019. Thereafter therefore based on the direction of this Court, the petitioner have paid all the arrears with taxes and renewal fees to concern shop, hence now we delivered the possession to the petitioner. I stated that we cancel the auction allotted to the third respondent by the order this Hon'ble Court order."

6. In para-6 of the the counter, it has been categorically stated that the possession of the shop is only with the writ petitioner and that it has not been allotted to any other person. In fact, it cannot be allotted. That is the only logical effect of the order dated 15.03.2019 passed by this Court in W.P.(MD). No.4418 of 2019 coupled by the remittance of the necessary amount by the writ petitioner.

7. However, the allegation made by the petitioner is that he is being harassed cannot be ignored. The allegation made by the petitioner is more than probablised by the registration of Crime No.228 of 2019 by the second respondent. This Court however does not wish to go further into the matter. This Court directs the respondents 1 and 2 to ensure that the petition mentioned Shop No.6 of Alangulam Bus Stand is restored to the possession of the writ petitioner. This shall be done forthwith. This writ petition stands allowed. No costs.

8. The Executive Officer, Special Grade Town Panchayat, Alangulam, Tirunelveli District and the Inspector of Police, Alangulam Police Station, Alangulam, Tirunelveli District are directed to be present before this Court in person on 31.05.2019 at 2.15 p.m. and report compliance that the shop in question has been handed over to the writ petitioner herein.

Sd/-

Assistant Registrar (vo-Record)

// True Copy //

Sub Assistant Registrar (CS)



To

1. The Executive Officer,
Special Grade Town Panchayat,
Alangulam,
Tirunelveli District.

2. The Inspector of Police,
Alangulam Police Station,
Alangulam,
Tirunelveli District.

3. The Government Advocate
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s.S.S.THESIGAN, Advocate(SR-66509[F] dated
30/05/2019)

akv

W.P. (MD) .No.11837 of 2019
30.05.2019

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