



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2019

CORAM:

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THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.13924 of 2015
and M.P.(MD).No.1 of 2015

Munusamy

.. Petitioner

Vs.

1.The Joint Commissioner/Executive Officer,
Arulmigu Mariamman Thiru Kovil,
Samayapuram, Trichy.

2.The Inspector of Police,
Samayapuram Police Station,
Samayapuram.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, forbearing the respondents from evicting the petitioner from shop No.4A, Sanathi Street, Samayapuram without following due process of law.

For Petitioner : Mr.S.Muthukrishnan

For Respondents : Mr.R.Murali for R1
Mr.B.Bhagawathi for R2
Government Advocate

ORDER

This writ petition is filed for issuance of writ of mandamus forbearing the respondents from evicting the petitioner from shop No.4A, Sanathi Street, Samayapuram, without following due process of law.

2.The petitioner states that he runs a shop No.4A, Sanathi Street, Samayapuram, from the year 1991. It is stated that he had entered into an oral lease agreement with one Vaithegi in order to run the shop on lease basis. It is also the case of the petitioner that he is paying a sum of Rs.1,000/- to his lessor. It is the case of the petitioner that more than 200 small shops are allotted in and around Samayapuram temple and all the shops are run by people from the nearby villages for their livelihood. It is also the case of the petitioner that there is no hindrance to any one by the petitioner by running the shop.

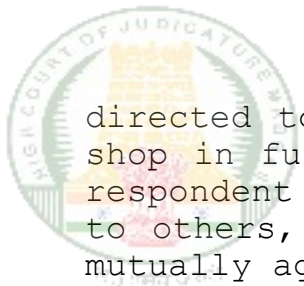


3.The petitioner admits that the land, in which he has put up the shop, belongs to Samayapuram Town Panchayat. The lease agreement produced before this Court by the petitioner, dated 01.03.2011, is neither registered nor stamped. The petitioner has not produced any independent document in favour of his lessor by name Tmt. Vaithegi to show that she had taken the property from local body on lease or in lawful enjoyment of the property by an arrangement. When the lawful possession of petitioner's lessor is not established by any document or specific plea, this Court is unable to accept the petitioner's contention regarding his lawful possession in respect of the property. Though the petitioner states that he is carrying on business, the learned counsel appearing for the respondent submitted that the petitioner has blocked a substantial portion just adjacent to the Administrative Building of the first respondent. Though it is not in dispute that the land belonged to the local body, the petitioner's possession either as licensee or as a lessee cannot be accepted. Merely because the petitioner has encroached a public land, it is not necessary in all cases that the petitioner should be shown indulgence under the guise of following procedure for lawful eviction.

4.The petitioner's encroachment on the basis of fabricated documents cannot give him any right. For the convenience of public and the temple authorities, the petitioner can be permitted to carry on business after getting permission from local body and the temple authorities. In this case, the petitioner has no rental agreement from the local body nor permission from the temple authorities. A payment of a sum of Rs.1,000/- per month to Vaithegi does not give the petitioner any right to be in possession as lessee or licensee. The petitioner is just an encroacher. In this case when the petitioner's right was not recognized by the local body, as owner of the land or as licensee under the temple authorities, it is very difficult to acknowledge the claim of petitioner either by the temple authorities or by the local body. Since the petitioner is trying to establish his right under a third party who has no semblance of right, this Court is not inclined to show any indulgence to the petitioner.

5.Learned counsel for the petitioner seeks indulgence of this Court to give a direction to the respondent to allot any alternative shop. In case, the petitioner evict the premises forthwith, it is open to the petitioner to approach the temple authorities and the local body for an allotment of a shop, if any other vacant space which has been earmarked for commercial purpose is available and such allocation does not cause any hindrance to the temple and the local body.

6.The first respondent is directed to consider the services rendered by the petitioner on humanitarian grounds. The first respondent is



directed to consider the representation of the petitioner. If any shop in future or any commercial space is available with the first respondent which can be utilised for commercial purpose by leasing to others, preference can be given to the petitioner for a premium mutually agreed.

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7. Accordingly, this writ petition is dismissed as devoid of any merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

TM

+1 CC to M/s.SPL GP (SR-103566[F] dated 05/12/2019)

+1 CC to M/s.S.MUTHUKRISHNAN, Advocate (SR-103949[F] dated 06/12/2019)

+1cc to M/s.K.GOVINDARAJAN, Advocate, SR No.103490

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