

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.8847 of 2020 and
W.P.No.8834 of 2020

CRL.O.P.No.8847 of 2020

S.Sakthivel
S/o.Sivanandam,
Managing Director,
M/s.Olympic Warehouse Pvt. Ltd.,
D.No.17/7, Vinayagapuram 3rd Street,
Arumbakkam, Chennai 106. Petitioner

Vs.

1. The Commissioner of Police,
Greater Chennai,
Officer of Commissioner of Chennai,
Vepery, Chennai - 600 007.
2. The Inspector,
M-4, Redhills Police Station,
Redhills,
Chennai - 600 052. Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to issue direction to the first respondent to transfer the complaint dated 05.06.2020, registered under C.S.R.No.193 of 2020 pending on the file of the second respondent to any other unbiased officer of equal rank or on higher the rank of the second respondent to conduct appropriate investigation and book the culprits for offences committed.

For Petitioner : Mr.V.Manohar
For Respondents : Mr.S.Karthikeyan
Additional Public Prosecutor

W.P.No.8834 of 2020

NTC Logistics India Private Limited,
{formerly known as Namakkal Transport Carriers Private Limited}
NTC Tower,

No.97, Old No.47,
Linghi Chetty Street,
Chennai - 600 001.

Rep by its Authorized Signatory,
Mr.Raaja Sundaram - Joint Managing Director

... Petitioner

Vs.

1. The Inspector of Police,
M-4, Red Hills Police Station,
No.1, 172 A, GNT Rd, Red Hills
Padianallur,
Madhavaram Taluk,
Chennai - 600 052.
2. M/s.Olympic Warehouse Pvt. Ltd.,
Rep by its Managing Director,
S.Sakthivel,
D.No.17/7, Vinayagapuram,
Arumbakkam, Chennai 600 106.
3. Lakshmi Narayanan,
No.62 Sothupakkam Road, Theerthangiriampet Village, Near EB
Office
Red Hills, Chennai - 600 052.
4. The Bond Officer,
Indian Customs,
Customs House,
Krishna Block,
60, Rajaji Salai.
Chennai-600 001.

... Respondents

Prayer in WP 8834/2020

Writ petition under Article 226 of the Constitution of India praying that in these circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to directing the 1st Respondent herein to give protection to the petitioner in removing the Shipments bearing Bill of Entry No.7824334 dated 04.06.2020 and the Gate pass dated 06.06.2020 containing 604 packages Bill of Entry No. 7758542 dated 27.05.2020 and the Gate pass dated 11.06.2020 containing 40 packages Bill of Entry No. 77252225 dated 22.05.2020 and the Gate Pass dated 26.05.2020 containing 24 packages bill of Entry No. 7758863 dated 27.05.2020 and the Gate Pass dated 29.05.2020 containing 9 packages and Bill of Entry No. 7805855 dated 02.06.2020 and the Gate Pass dated 17.06.2020 containing 80 packages totaling to 757 packages from the Customs Bonded

Warehouse owned by the 3rd Respondent and operated by the 2nd respondent situated at No.62,sothupakkam Road, Theerthangiriampet Village,Near EB Office,Red Hills,Chennai-600 052 based on the respective gate passes Out of Charge orders issued by the 4th respondent,by the officials of the petitioner.

For Petitioner :Mr.V.Lakshmi Narayanan
for M/s Fox Mandal & Associates

For Respondents

For R1 & R2 : Mr.S.Karthikeyan
Additional Public Prosecutor

For R3 : Mr.G.Mohana Krishnan

COMMON ORDER

This Criminal Original petition has been filed to direct the first respondent to transfer the complaint dated 05.06.2020, registered under C.S.R.No.193 of 2020 pending on the file of the second respondent to any other unbiased officer of equal rank or on higher the rank of the second respondent.

2. The Writ petition has been filed to direct the first respondent to provide protection to the petitioner during the removal of the Shipments from the customs bonded Warehouse owned by the third respondent operated by the second respondent.

3. The learned counsel appearing for the petitioner in CrI.O.P.No. 8847 of 2020 would submit that the petitioner is the Managing Director of M/s. Olympia Warehouse Pvt. Ltd., and they are running a business under the license issued by the customs office. While being so, the petitioner entered into a lease agreement with the third respondent in W.P.No.8834 of 2020 viz., Lakshmi Narayanan by an agreement dated 09.12.2012 for the monthly rent of Rs.4,15,000/- for a period of five years. The petitioner also paid a sum of Rs.30,00,000/- as an advance for the premises situated at No.62, Sothupakkam Road, Theerthangiriampet Village, Near EB Office, Red Hills, Chennai - 600 052, ad measuring 28,500 sq.ft. The petitioner is paying the rent regularly for the period of seven years from the date of rental agreement without fail. Thereafter, the third respondent in W.P.No.8834 of 2020 did not renew the rental agreement and therefore, there is dispute between the petitioner and the third respondent in W.P.No.8834 of 2020, in respect of the rental agreement and also quantum of rent.

3.1. While being so, utilizing the lock down situation due to Covid-19 on 02.06.2019, the third respondent in W.P.No.8834 of 2020 and his employees trespassed into the premises possessed by the petitioner and threatened the employees of the petitioner and through them away from the premises. Thereafter, they also locked the premises and did not permit the petitioner and his employees to enter into the premises. Further the third respondent also digged up a big pit in front of the gate of the warehouse and prevented the petitioner from taking shipments from the warehouse. Therefore, he lodged complaint before the second respondent and he was issued C.S.R.No.193 of 2020 on 05.06.2020. Thereafter, they did not take any action as against the third respondent in W.P.No.8834 of 2020 as such the petitioner sent a detailed representation to the Commissioner of Police viz., the first respondent in Crl.O.P.No.8847 of 2020 for taking appropriate action on 09.06.2020. Even then, the second respondent did not take any action on the complaint and instead of taking action as against the third respondent in W.P.No.8834 of 2020, the second respondent police colluded with him and demanding huge amount from the petitioner and did not allow the petitioner to warehouse.

4. The learned counsel appearing for the petitioner in W.P.No.8834 of 2020 submitted that the petitioner is running a business in name and style of NTC Logistics India Private Limited. The second respondent viz., the petitioner in Crl.O.P.8847 of 2020, is a service provider and the petitioner by a communication dated 08.08.2019, entered into an agreement with the second respondent, who is being the valid license holder from the customs authorities to have the customs bonded warehouse. While being so, the goods imported by the petitioner on behalf of his customers are placed in the warehouse owned by the second respondent herein and as and when required the petitioner will pay the necessary customs duty to the customs authority and after clearance of goods, it will be removed and despatched to the customers.

4.1. While being so, two shipments viz., (i) Panel parts for Xiaomi LED TV 32 inch model (ii) Electricity Generators 153 Nos., total worth of Rs.7,61,00,000/- are kept in the warehouse owned by the second respondent herein. After instructions and clearance by the Indian customs authority, the shipments which were lying in the warehouse have to be transported to their customers. But the petitioner heard that there is a dispute between the second and third respondents in respect of the tenancy and as such all the goods kept by the second respondent in the warehouse have been detained by lock and key by the third respondent herein. He further submitted that the warehouse being

a customs bonded warehouse, the second respondent is under the duty to facilitate the clearance of the goods there from. There is absolutely no relationship between the petitioner and the third respondent herein and the third respondent has no business to detain the shipments as against the alleged rental arrears said to be payable by the second respondent, since the shipments belonged to the petitioner's customers imported for their use and it valued more than Rs.7,61,00,000/-. Therefore, he lodged complaint before the first respondent seeking police protection to remove the shipments which were kept in the warehouse and the petitioner was issued C.S.R.No.216 of 2020. Since the first respondent police did not take any further action, the petitioner came up with this petition.

5. Per contra the learned counsel appearing for the third respondent in W.P.No.8834 of 2020 submitted that the warehouse premises owned by the third respondent herein, situated at No.62, Sothupakkam Road, Theerthagiriampet Village, Near EB Office, Red Hills, Chennai - 600 052, ad measuring 28,500 sq.ft. In the year 2012, it was leased out in favour of the second respondent viz., the petitioner in Crl.O.P.No.8847 of 2020, by an agreement dated 19.12.2012 for the monthly rent of Rs.4,15,000/- for the period of five years. After completion of five years, the second respondent did not pay rent as agreed by them, as such the third respondent did not renew the rental agreement. There is huge rental arrears by the second respondent to the third respondent and therefore, the third respondent has also filed a suit in C.S.No.123 of 2020 for recovery of money before this Court and the same is pending for trial. Hence, he prayed for dismissal of both the petitions.

6. The learned Additional Public Prosecutor submitted that on the complaints received from the petitioners in Crl.O.P.No.8847 of 2020 and W.P.No.8834 of 2019 and also from one Lakshmi Narayanan, they were issued C.S.R.No.193, 216 and 194 of 2020, respectively and on enquiry, all the complaints revealed that the second respondent is a tenant under the third respondent in W.P.No.8834 of 2019. Both of them not interested to settle the issue amicably. Further he submitted that the third and second respondents are trying to stop the cargo from the warehouse and take the cargo out of the warehouse by putting up lock and breaking open the lock respectively. Therefore, all of them directed to maintain status quo in order to avoid law and order issues until an is obtained by either party from the court and all the CSR were closed.

7. Heard Mr.V.Manohar, learned Counsel appearing for the petitioner in Crl.O.P.No.8847 of 2020, Mr.V.Lakshmi Narayanan, learned Counsel appearing for the petitioner in W.P.No.8834 of 2020, Mr.G.Mohana Krishnan, learned Counsel appearing for the third respondent in W.P.8834 of 2020 and Mr.S.Karthikeyan, learned Additional Public prosecutor appearing for the respondents Police.

8. Admittedly the second respondent in W.P.No.8834 of 2020 is a tenant under the third respondent, for the premises situated at No.62, Sothupakkam Road, Theerthangirampet Village, Near EB Office, Red Hills, Chennai - 600 052, ad measuring 28,500 sq.ft., for the monthly rent of Rs.4,15,000/- and the second respondent also paid a sum of Rs.30,00,000/- as advance for the period of five years by the agreement dated 19.12.2012. The petitioner has taken the premises for warehouse under the customs bonded warehouse and obtained licence from the fourth respondent viz., the Indian Customs Authority. Therefore, the premises is the customs bonded warehouse, in which the petitioner in Crl.O.P.No.8847 of 2020 has valid licence obtained from the fourth respondent and it is being used as customs bonded warehouse licensed by the Indian Customs Authorities for the past several years. Any goods imported are placed in the warehouse and after getting clearance from the customs authority, the good will be despatched to the customers. Likewise the petitioner in W.P.No.8834 of 2020 entered into an agreement with the petitioner in Crl.O.P.No.8847 of 2020 and using the warehouse for his customers. According to the petitioner in W.P.No.8834 of 2020, he kept the shipments viz., (i) Panel parts for Xiaomi LED TV 32 inch model (ii) Electricity Generators 153 Nos., to the value of more than Rs.7,61,00,000/- and after clearance of customs authority by payment of customs duty, the petitioner is not able to remove the goods from the warehouse and he is answerable to his clients. Because of the non supply of shipment of goods, all are suffering and the production unit stands still. Likewise, the petitioner in Crl.O.P.No.8847 also have kept lot of goods in the warehouse including perishable goods and even after clearing the customs, they are not able to supply the goods to their respective clients including the writ petitioner.

9. It is also seen that as per the agreement dated 19.12.2012, the petitioner in Crl.O.P.8847 of 2020, entered into the lease agreement with the third respondent in W.P.No.8834 of 2020 for the period of five years. The five years period has been lapsed in the year 2017 and even then the petitioner was permitted to be continued as a tenant by the third respondent

and received rent. In respect of the quantum of rent, there is a dispute between them, as such the third respondent refused to renew the agreement. The third respondent also filed a suit for recovery of money as against the petitioner in Crl.O.P.No.8847 of 2020 in C.S.No.123 of 2020 before this Court and it is pending. Even till date the third respondent did not file any petition to vacate the petitioner from the premises. Therefore, it is clear that the petitioner is continued as a tenant of the third respondent and in respect of payment of rent, there is a dispute in which a civil suit is pending for recovery of money before this Court in C.S.123 of 2020.

10. Under these circumstances, the third respondent in W.P.No.8834 of 2020 cannot prevent the petitioner in Crl.O.P.No.8847 of 2020 to enter into the warehouse and also cannot prevent the petitioner from taking the shipment from the warehouse by putting the lock and digging up the pit in front of the gate of the warehouse. In this regard, the petitioner in Crl.O.P.No.8847 of 2020 lodged complaint and he was issued C.S.R.No.193 of 2020 on 05.06.2020. Thereafter, by the report submitted by the first respondent, all complaints lodged by the petitioners in Crl.O.P.No.8847 of 2020 and W.P.No.8834 of 2020 and also the third respondent in W.P.No.8834 of 2020 were closed and ordered to maintain status quo until an order is obtained and directed the parties concerned to approach the Court. There is no quarrel in respect of the landlord and tenant relationship between the petitioner in Crl.O.P.No.8847 of 2020 and the third respondent in W.P.No.8834 of 2020. Though there is a dispute in respect of rent, it is sub-judiced by this Court in C.S.No.123 of 2020.

11. Therefore, the first respondent in W.P.No.8834 of 2020, without taking any action against the third respondent, simply closed the complaints and directed the parties to approach the Court. Further the first respondent also witnessed to the lock and key and digging up the pit in front of the warehouse even then, the first respondent did not take any action as against the third respondent. It shows that the first respondent is in hand and glow with the third respondent and threatened him to settle the amount which is subject matter of the suit pending before this court. Considering the above facts and circumstances of the case, this Court is inclined to pass the following orders :-

(i) the complaints lodged by the petitioners in both cases are hereby withdrawn from the file of the first respondent police in W.P.No.8834 of 2020, and transferred to the file of the Inspector of Police, Puzhal Police Station forthwith for enquiry.

(ii) On receipt of the same the Inspector of Police, Puzhal Police Station is directed to conduct enquiry on the complaints and take appropriate action as against the third respondent herein in accordance with law.

(iii) The Inspector of Police, Puzhal Police Station is directed to provide necessary adequate protection to the petitioner in Crl.O.P. No.8847 of 2020 to enter into the premises situated at No.62, Sothupakkam Road, Theerthangiriampet Village, Near EB Office, Red Hills, Chennai - 600 052, and also to carry out his business by removing all the shipments kept in the warehouse forthwith.

(iv) The Assistant Commissioner of Police, Puzhal is directed to monitor the enquiry done by the Inspector of Police, Puzhal Police Station.

12. With the above directions, both the Criminal Original Petition and the Writ Petition are allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. The Commissioner of Police,
Greater Chennai,
O/o the Commissioner of Chennai,
Vepery ,Chennai-600 007.
 2. The Inspector of Police,
M-4, Redhills Police Station,
Redhills,No.1, 172A ,Govt Road,Red Hills,Padianallur
Chennai - 600 052.
 3. The Public Prosecutor,
Madras High Court,
Chennai.
- +2cc to M/s Fox Mandal & Associates , Sr.No.25330

CRL.O.P.No.8847 of 2020
and W.P.No.8834 of 2020

MP(CO)
GS(13/08/2020)