

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.11.2020

PRONOUNCED ON: 04.12.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE M.S.RAMESH

Writ Appeal No.1025 of 2020

M/s. ACME Ware Housing Private Limited
rep. by its Managing Director
Mr.Sathish Mutukrishnan
No.675, 200 Feet Inner Ring Road
Madhavaram, Ponnamman Medu
Chennai 600 110,
Now No.5, 1st Street, Singaravelan Nagar
Maduravoyal, Chennai 600 095. ..Appellant

.Vs.

1. The Principal Commissioner (Preventive)
O/o. Chennai-V Commissionerate
Customs House, No.60, Rajaji Salai
Chennai 600 001.
2. The Assistant Commissioner of Customs (Bonds)
O/o. Chennai-V Commissionerate
Customs House, No.60, Rajaji Salai
Chennai 600 001.
3. S.Panneer Selvam ..Respondents

Appeal under Clause 15 of Letters Patent against the
order dated 25.08.2020 made in W.P.No.8086 of 2020.

Prayer in WP No.8086/2020: Writ Miscellaneous Petition filed
under Article 226 of the Constitution of India praying to Writ
of Certiorarified Mandamus to call for the records in and
connected with F.No. S4/1089/2010-Bonds-C dated 29.5.2020 passed
by the 2nd respondent quash the same and direct 1 and 2
respondents to renew/ extend the warehouse license in No.CO58
granted to the petitioner entity for operation of public customs
bonded warehouse at No.675 200 feet inner ring road
Madhavaram, Ponnamman Medu, Chennai-600110.

For Appellant : Mr.K.V.Sajeev Kumar
For Respondents 1 & 2 : Mr.A.P.Srinivas
For Respondent-3 : Mr.S.K.Raghunathan

J U D G M E N T

Dr.Vineet Kothari,J

The appellant M/s. ACME Warehousing Private Ltd. has filed this intra court writ appeal, only aggrieved by the observation of the learned Single Judge in paragraph 2 of the order dated 25.08.2020 made in W.P.No.8086 of 2020.

2. The Writ Petition, W.P.No.8086 of 2020 was dismissed by the learned Single Judge on 27.07.2020, with a direction to list the matter on 25.08.2020 for reporting compliance regarding removal of the goods from the licensed Warehouse, which was taken under lease by the petitioner appellant M/s. ACME Warehousing Private Limited, from the private respondent No.3 Mr.S.Panneer Selvam.

3. The Warehousing License No.C058, WH Code INMAA1, for which renewal was sought by the petitioner company, was refused to be renewed/extended since the lease by the third respondent in favour of the writ petitioner/Licensee stood expired on 31.03.2020, the learned Assistant Commissioner of Customs (Bonds), vide impugned communication dated 29.05.2020, held that the said License for Bonded Warehouse cannot be renewed in favour of the petitioner company and consequently, directed the petitioner to intimate the Importer/Customs House Agent for clearance of goods lying in the said Warehouse and that no further bonding of cargo was permitted thereafter.

4. The learned Assistant Commissioner in the said communication dated 29.05.2020 noted that there was no final outcome of the Court case between petitioner company and the owner of the premises Mr.S.Panneer Selvam, which was pending in the form of an injunction suit filed by the petitioner company, namely O.S.No.63 of 2019, wherein the plaintiff / petitioner company M/s. ACME Warehousing Private Ltd. was able to obtain a status quo order from the said Trial Court on 26.04.2019. But, the said injunction suit did not acquire any finality and the lease in question stood expired on 31.03.2020.

5. Assailing the said non renewal /extension of the Warehouse License, the appellant/petitioner approached this Court by way of W.P.No.8086 of 2020, in which though initially an interim order of status quo was granted by the learned Single

Judge, the said status quo order was vacated and the writ petition itself was dismissed by the learned Single Judge on 27.07.2020 and as per the provisions of Section 58B of the Customs Act, 1962, the Importers/Customs House Agents whose goods were lying in the said Bonded Warehouse were directed to remove the said goods from the said Bonded Warehouse and the respondents were directed to give compliance report on the next date 25.08.2020 and the following order was passed by the learned Single Judge on 25.08.2020.

"This matter is listed today under the caption 'for reporting compliance'. Learned counsel for the petitioner as well as R3 report that the warehouse is in the process of being cleared of the contents and Mr.A.P.Srinivas, learned Senior Standing Counsel seeks some more time to complete the process. This is recorded.

2. R3 is already in possession of the warehouse and is granted full liberty to take such action, as he may deem fit and necessary, to obtain gainful use thereof.

3. With the above observation this matter is closed."

6. In the present writ appeal, the learned counsel for the appellant, Mr.Sajeev Kumar, submitted that the appellant is not aggrieved by the dismissal of the writ petition, but by the observation of the learned Single Judge in paragraph 2 of the said order, which gives a finding that the third respondent, Mr.Paneerselvam, is already in possession of the warehouse and is granted full liberty to take action as he may deem fit and necessary to obtain gainful use thereof. He submitted that while verifying compliance of the previous order, the learned Single Judge ought not to have made these observations, which will unduly affect the appellant's right in the pending suit filed by the appellant against the respondent, in which injunction suit, admittedly the Customs Department is not a party.

7. Mr.A.P.Srinivas, learned counsel for the Customs Department however submitted that the Department has taken steps for removal of the goods from the said Bonded Warehouse and a counter in regard to it has been filed before this Court by letter dated 17.11.2020 given by the appellant himself stating that the goods have been removed to another warehouse and the same has been duly acknowledged by the Assistant Commissioner of Customs - Bonds Section, who has stated in the Note that since goods have been removed from the licensed bonded warehouse to

another warehouse, no Customs Duty collection is due from him.

8. Mr.S.K.Raghunathan, learned counsel for the third respondent also submitted that suit was only for injunction against the third respondent in which Customs Department is not a party and the appellant had admitted arrears of rent to be paid to the third respondent not only in the plaint, but also before this Court and he also submitted that the learned counsel for the appellant Mr.Sajeev Kumar himself has stated in the hearing before the learned Single Judge that the appellant/petitioner is taking steps to clear arrears of rent, which statement was now refuted by the learned counsel for the appellant Mr.Sajeev Kumar.

9. We have heard the learned counsel at length and we are of the opinion that there is no merit in the present writ appeal and the same deserves to be dismissed.

10. The writ petition was filed by the appellant/petitioner based upon the status quo order granted by the trial Court on 26.04.2019 in the suit filed by the appellant/petitioner for injunction against the lessor Mr.S.Paneerselvam for his alleged disturbing the peaceful possession of the licensee during the period of the lease, which expired admittedly on 31.03.2020. The present writ petition was filed in this Court on 02.06.2020 and even though initially an order of status quo was granted by the learned Single Judge of this Court, the same got vacated with a detailed findings and observations and the writ petition itself was dismissed by the learned Single Judge on 27.07.2020. While verifying the compliance on 25.08.2020, the learned Single Judge came to the conclusion that since the lease period was already over, namely on 31st March 2020, the petitioner licensee could not be held to be in valid and legal possession and therefore recorded a finding that the lessor is already in possession of the Warehouse and is therefore granted full liberty to take possession as he may deem fit and necessary.

11. The appellant cannot take any exception to the said observation of the learned Single Judge, because, in the eye of law, after 31st March 2020 with the lease period being over, there is no legal right vested with the lessee to remain in possession and that the goods lying in the said bonded warehouse after cancellation of license by the Customs Department have to be removed. Therefore, the appellant cannot hold over the vacant possession of the warehouse in question, which admittedly belongs to the third respondent.

12. On the other hand, we are constrained to observe that multiplying the litigation by availing the remedies in different forums is a deliberate effort on the part of the petitioner to

abuse the process of law. For alleged civil rights in the warehouse in an injunction suit filed against the third respondent under the garb of the status quo order granted by the trial Court only, the appellant/petitioner not only approached against the Customs Department in writ jurisdiction, but also talks of his continued right of possession and non payment of arrears of rent etc. which were claimed by the third respondent. We make it clear that issues like arrears of rent, non payment thereof etc. cannot be gone into in writ jurisdiction at all and therefore, these were issues which were unnecessarily raised before the learned Single Judge.

13. The appellant/petitioner, at the same time, cannot be allowed to take exception to the findings of the learned Single Judge about the possession, because, in the eye of law, when the said order was passed on 25.08.2020, there is no legal right for the appellant/petitioner to remain in possession and therefore the observation of the learned Single Judge that the third respondent is in possession of his own warehouse in question cannot be assailed by filing this intra court writ appeal.

14. As far as the cancellation of license of warehouse on the ground that there is no subsisting valid lease after 31st March 2020 is concerned, again there is no valid ground to assail the same. If the licensee under Customs Act does not have a valid possessory title or right of possession over the bonded warehouse, the Customs Authorities cannot permit the same to be operated as a bonded warehouse to keep the goods of the importers against whom adjudication of duties is yet to take place and clearance of goods is yet to be made.

15. The licensee under the Bonded Warehouse Scheme acts as an Agent on behalf of the Customs Department for that purposes and the provisions of Sections 57 to 73A in Chapter IX of the Customs Act, 1962 read with The Warehouse (Custody and Handling of Goods) Regulations, 2016, deal with these issues in detail. Section 58B of the Act, under which the said license was cancelled by the concerned authority, clearly stipulates vide Section 58B (4) of the Act that where the license issued under Section 57 or Section 58 or Section 58A, the three different kinds of licenses, is cancelled, the goods warehoused shall within seven days from the date on which order of such cancellation is served on the licensee or within such extended period as the proper officer may allow, be removed from such warehouse to another warehouse or be cleared for home consumption or export.

16. Sections 57, 58, 58A and 58B of the Act are quoted below for ready reference.

SECTION 57

Licensing of public warehouses. - The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a public warehouse wherein dutiable goods may be deposited.

SECTION 58

Licensing of private warehouses. - The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

SECTION 58A.

Licensing of special warehouses. - (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.

(2) The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1).

SECTION 58B.

Cancellation of licence. - (1) Where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions of the licence, the Principal Commissioner of Customs or Commissioner of Customs may cancel the licence granted under section 57 or section 58 or section 58A :

PROVIDED that before any licence is cancelled, the licensee shall be given a reasonable opportunity of being heard.

(2) The Principal Commissioner of Customs or Commissioner of Customs may, without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, suspend operation of the warehouse during the pendency of an enquiry under sub-section (1).

(3) Where the operation of a warehouse is suspended under sub-section (2), no goods shall be deposited in such warehouse during the period of suspension:

PROVIDED that the provisions of this Chapter

shall continue to apply to the goods already deposited in the warehouse.

(4) Where the licence issued under section 57 or section 58 or section 58A is cancelled, the goods warehoused shall, within seven days from the date on which order of such cancellation is served on the licensee or within such extended period as the proper officer may allow, be removed from such warehouse to another warehouse or be cleared for home consumption or export:

PROVIDED that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period."

17. Therefore, the law enjoins upon the licensee a duty to clear off the goods after cancellation of the license within seven days. There is no case of extension of period under Sub-section (4) of Section 58B of the Act in the present case. Therefore, in the eye of law, the possession of the vacant licensed warehouse, after seven days of the impugned order passed by the Customs Authority on 29.05.2020, should be deemed to be with its owner only. Even assuming for argument sake that this observation may affect the right of the appellant/petitioner in the pending suit before the Civil Court, it is the appellant/petitioner who is to be blamed for this, because it is the appellant/petitioner who has invoked the extraordinary jurisdiction of this Court based upon an interim order passed by the trial Court.

18. The plaint of the injunction suit filed by the appellant/petitioner only seeks injunction against the third respondent/defendant from interfering with the peaceful possession during the period of the lease. The said suit was filed much before the expiry of the lease period on 31.03.2020 and the interim order of status quo granted by the trial Court on 26.04.2019 also cannot extend beyond the extent of the period of lease itself nor it can validate the possession of the licensee beyond the period of lease. We do not see any reason to extend the scope of the civil suit, which may be so if the contention of the appellant/petitioner before us is to be accepted.

19. On the contrary, we do not see any reason for the appellant/ petitioner to have invoked the writ jurisdiction of this Court on the basis of a status quo order granted by the trial Court in a civil Suit in which Customs Department was not at all a party. Nothing prevented him to even implead Customs Department also as Defendant in that very suit, so that all

related issues could be adjudicated by one Court. This is what, the abuse of process of law is and if an observation of a learned single Judge in this process is given against the appellant/petitioner, he cannot be permitted to raise a plea against that in the intra court appeal. Therefore, we do not find any merit in the writ appeal and the same is liable to be dismissed. Accordingly, it is dismissed. No costs. Consequently, CMP No.12510 of 2020 is also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Commissioner (Preventive)
O/o. Chennai-V Commissionerate
Customs House, No.60, Rajaji Salai
Chennai 600 001.
2. The Assistant Commissioner of Customs (Bonds)
O/o. Chennai-V Commissionerate
Customs House, No.60, Rajaji Salai
Chennai 600 001.

+lcc to Mr.P.S.Amal Raj, Advocate, S.R.No.39268
+lcc to Mr.A.P.Srinivas, Advocate, S.R.No.39000

Judgment in
W.A.No.1025 of 2020

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