

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 34054, 34056 to 34058, 34060, 34061, 34063 to 34066,  
34293, 35857 and 35860 of 2019  
and

W.M.P. Nos. 34653, 34656, 34659, 34661, 34663 to 34669, 34931,  
34932, 36763 and 36766 of 2019

S. Ramesh ... Petitioner in W.P. No. 34054 of 2019  
Ismail ... Petitioner in W.P. No. 34056 of 2019  
B. Devaki ... Petitioner in W.P. No. 34057 of 2019  
S. Karthikeyan ... Petitioner in W.P. No. 34058 of 2019  
S. Sivakumar ... Petitioner in W.P. No. 34060 of 2019  
S. Vinayagam ... Petitioner in W.P. No. 34061 of 2019  
K. Munusamy ... Petitioner in W.P. No. 34063 of 2019  
G. Vijayakumar ... Petitioner in W.P. No. 34064 of 2019  
S. Chithra ... Petitioner in W.P. No. 34065 of 2019  
Ibrahim ... Petitioner in W.P. No. 34066 of 2019  
Pushpammal ... Petitioner in W.P. No. 34293 of 2019  
K. Ramachandran ... Petitioner in W.P. No. 35857 of 2019  
K. Sudha ... Petitioner in W.P. No. 35860 of 2019

-vs-

The Executive Officer,  
Kaveripakkam Selection Grade Town Panchayat,  
Kaveripakkam,  
Vellore District.

... Respondent in W.P. Nos. 34054,  
34056 to 34058, 34060, 34061,  
34063 to 34066 and 34293 of 2019

The Executive Officer,  
Kaveripakkam Selection Grade Town Panchayat,  
Kaveripakkam,  
Ranipet District.

... Respondent in W.P. Nos. 35857 and  
35860 of 2019

Common prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order of the Respondent in Na. Ka. No. 106/2018 dated 20.11.2019 and quash the same as illegal and not supported by any statutory provision.

For Petitioners: Mr. Shivakumar for  
M/s. K.M. Vijayan Associates (in all W.P.s)

For Respondent : Mr. V. Jayaprakash Narayanan,  
Government Pleader (in all W.P.s)

#### C O M M O N O R D E R

Heard Mr. Shivakumar, Learned Counsel for the Petitioner and Mr. V. Jeyaprakash Narayanan, Learned Government Pleader for the Respondent in these Writ Petitions and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioners in these Writ Petitions, on their requests made by applications dated 30.08.2004 to the Respondent were permitted by the Council of the Kaveripakkam Selection Grade Town Panchayat in its meeting held on 12.10.2004 to put up shops in the allotted vacant land belonging to the Respondent in the Bus Stand of Kaveripakkam to an extent of 10.15 cents each, recording their undertaking that they shall vacate from those premises immediately whenever required without demanding any compensation for the same. It is the case of the Petitioners that they continue to occupy the said shops since then.

3. While so, the Petitioners have been issued individual notices dated 20.11.2019 calling upon them to vacate their respective shops and hand over vacant possession of the land within seven days therefrom for the reason that it was intended to modernise the bus stand as per expansion plans and in the event of further failure to do so, they would be evicted. It has further been required that the Petitioners should clear the arrears of rent due. Aggrieved thereby, the Petitioners have filed these Writ Petitions challenging the said notices as illegal and not supported by any statutory provision.

4. As noticed supra, it is borne out from the record that though the Petitioners were only temporarily allotted the shops, the undisputed fact remains that they have been occupation of the same from October 2004 onwards till now for which rents are also collected from them. Such an arrangement existing between the parties necessarily leads to the interference that the legal character of the Petitioners' possession has to be attributed to a jural relationship of Lessor and Lessee between the Respondent and the Petitioners arising out of lease created by oral agreement accompanied by delivery of possession, falling within the purview of second para of Section 107 of the Transfer of Property Act, 1882, as declared in the authoritative pronouncement of the Hon'ble Supreme Court of India in Anthony -vs- K.C. Ittoop & Sons [(2000) 6 SCC 394] which holds the field.

5. Having due regard to the fact that the Petitioners have agreed to vacate from the premises immediately whenever required without demanding any compensation in their applications dated 30.08.2004, it would mean that the impugned notices dated 20.11.2019 issued by the Respondent to the Petitioners would have to be treated as termination of their respective leases on the expiry of seven days from the date of receipt of the same by the concerned Petitioners and they cannot have any grievance in that regard. Further, in terms of the ruling of the Hon'ble Supreme Court of India in C.Albert Morris -vs- K.Chandrasekaran [(2006) 1 SCC 228], it would follow that the occupation by the Petitioners in those lands belonging to the Respondent, after the aforesaid termination of the respective leases, is only litigious possession which does not confer any legitimate right on the Petitioners to lawfully carry on business there. Viewed from that perspective, there does not appear to be any illegality, perversity, unreasonableness, unfairness or irrationality in the impugned action of the Respondent for warranting any interference by this Court in the exercise of its powers of judicial review under Article 226 of the Constitution of India.

6. The question, however, requires to be considered as to the manner in which the Petitioners would have to be evicted from the premises on their failure to hand over possession to the Respondent. In this context, reference may be made to the dictum laid down by the Full Bench of this Court in Ramaraju -vs- The State of Tamil Nadu [2005 (2) CTC 741], which is reproduced below:-

"38(6) If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the procedure contemplated in

law, namely, either by taking recourse to the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral force."

As per Section 2(g) of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 'unauthorised occupation' includes the continuance in occupation by any person of the public premises, after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises, has been determined for any reason whatsoever. This would reflect that the Respondent has to resort to the aforesaid procedure for evicting the Petitioners from the respective portions of the land occupied by them.

7. In the upshot, the Writ Petitions are disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vjt/das/sj

To

1. The Executive Officer,  
Kaveripakkam Selection Grade Town Panchayat,  
Kaveripakkam,  
Vellore District.
2. The Executive Officer,  
Kaveripakkam Selection Grade Town Panchayat,  
Kaveripakkam,  
Ranipet District.

+lcc to M/s.K.M.Vijayan, Advocate SR.2974

+lcc to Mr.V.Jayaprakash Narayanan, Advocate SR.2812

W.P. Nos. 34054, 34056 to 34058, 34060, 34061,  
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NRL(CO)  
CB(12/06/2020)