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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.08.2021

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.OP.No.18394/2013 & WP.No.12659/2013 & WMP.No.7446/2021

[Video Conferencing]

Crl.OP.No.18394/2013:-

P.Prabhu

...Petitioner/A-3

Versus

1. The State of Tamil Nadu
rep.by the Inspector of Police
District Crime Branch [Team 15]
Egmore, Chennai 600 008.

2. The Inspector of Police
Railway Police, Perambur
Chennai 600 011.

3. S.Rajedran

...Respondents

**RR2 & 3 are impleaded as per the order
of this Court dated 24.10.2018 made
in Crl.MP.No.14041/2018 in
Crl.OP.No.18394/2013

Prayer:- Criminal Original Petition filed under Section 482 of
the Code of Criminal Procedure to call for the records in
CC.No.1398/2013 on the file of the learned Special Metropolitan
Magistrate, Special Court for Exclusive Trial of Land Grabbing
Cases, Chennai and quash the same only insofar as it relates to
the petitioner.

For Petitioner	:	Mr.K.Selvaraj
For RR 1 & 2	:	Mr.E.Raj Thilak Government Advocate [Crl.Side]
For R3	:	Mr.Manikannan



WP.No.12659/2013:-

R.Pushpa

...Petitioner

Versus

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1. The Commissioner
Corporation of Chennai
Rippon Buildings,
Chennai 600 003.
2. Additional Commissioner
Revenue and Health,
Corporation of Chennai
Rippon Buildings,
Chennai 600 003.
3. Revenue Officer
Corporation of Chennai
Rippon Buildings, Chennai 600 003.
4. The Assistant Revenue Officer,
Zone-6, Corporation of Chennai
5, Anderson Road
Ayyanavaram, Chennai 600 023.
5. The Inspector of Police
Government Railway Police
Arakkonam, Vellore District.

...Respondents

**R5 impleaded vide order dated 16.03.2020 made
in WMP.No.12068/2018 in WP.No.12659/2013

Prayer : - Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents herein to pass appropriate order to renew the license bearing Code No.P037032432 being periodically renewed from the year 1998 onwards for eating house situated at No.57A, New No.72, Perambur High Road, Chennai-82, in the name of the petitioner herein with reference to the application already submitted on 20.03.2013 and also with reference to the further representation dated 09.04.2013.

Prayer in WMP.No.7446/2021: To implead the petitioner namely Lion G.Devarajan as party in the above the WP.No.12659/13

For Petitioner	:	Mr.G.Thangavel
For RR 1 to 4	:	Mr.R.Gopinath Standing counsel
For R5	:	Mr.C.Kathiravan Government Advocate



For Petitioner in : Mr.G.Devarajan
WMP.NO.7446/2021 Party-in-Person

COMMON ORDER

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- (1) On a Note placed by the Registry, both the Criminal Original Petition in Crl.OP.NO.18394/2013 and the writ petition in WP.No.12659/2013 aforementioned, have been directed to be heard together by the Hon'ble Chief Justice. It is in that manner, that the present petitions are before me.
- (2) Let me take up WP.No.12659/2013 for consideration.
- (3) This writ petition has been filed in the nature of a mandamus seeking a direction to the respondents, who are five in number, viz., [1] The Commissioner, Corporation of Chennai, [2] Additional Commissioner, Revenue and Health, Corporation of Chennai, [3] Revenue Officer, Corporation of Chennai, [4] Assistant Revenue Officer, Corporation of Chennai ; and [5] the Inspector of Police, Government Railway Police, Arakkonam in Vellore District, to pass appropriate orders to renew the license bearing Code No.P03032432, which was according to the petitioner, was periodically renewed from the year 1998 onwards for the purpose of running an Eating House at No.57A, new No.72, Perambur High Road, Chennai-82, with reference to an application in this regard submitted on 20.03.2013 and a further representation dated 09.04.2013.
- (4) The petitioner claims to be in occupation of the said premises in her capacity as widow of the original occupant Mr.P.K.Rajendran, who is unfortunately no more and who died on 05.01.2013. It is claimed that the petitioner's husband was running the said Eating House from the year 1998 onwards in the said premises and on his death, she had made a representation to the respondents, particularly to the officials in the Corporation of Chennai, to grant license to continue to run the Eating House and since there had been no effective disposal of either the application or the further representation, the present writ petition had been filed.
- (5) A counter has been filed on behalf of the Corporation of Chennai, claiming that the land in question belongs to the Railways and therefore, the petitioner herein cannot, as a matter of right, claim to run any Eating House and much less, claim a right to be granted a license for running the Eating House. It is also pointed out that with reference to illegal occupation of the said premises, the husband of



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the petitioner herein, viz., P.K.Rajendran, had been actually shown as A-1 in a charge sheet filed on 13.03.2013 before the jurisdictional Court and the said charge sheet is pending on the file of the Special Metropolitan Magistrate, Special Court for Exclusive Trial of Land Grabbing Cases, at Chennai. The said Final Report had been taken cognizance by the said Special Magistrate in CC.No.1398/2013, which is now renumbered as CC.No.50/2013. Further proceedings in the said Calendar Case had been stayed in view of the order of stay granted by this Court in Crl.OP.No.18394/2013.

- (6) It is for that reason, since the issues are intricately interwoven, that both the Criminal Original Petition and the Writ Petition are being heard together.
- (7) Heard Mr.G.Thangavel, learned counsel for the petitioner, Mr.R.Gopinath, learned Standing counsel for respondents 1 to 4 / Corporation of Chennai and Mr.C.Kathiravan, learned Government Advocate appearing for the 5th respondent/Inspector of Police, who had been impleaded.
- (8) On perusal of the records, it is evident that the husband of the petitioner herein and his brother, have both instituted a suit in OS.No.5439/2012 which is pending on the file of the learned IV Assistant Judge, City Civil Court, Chennai and among other reliefs sought in the said suit, they had also sought the relief of declaration that the plaintiffs therein, viz., the petitioner's husband and his brother, are entitled to receive patta from the Revenue Authorities and for a mandatory injunction, directing the defendants therein, to issue patta and also for an injunction, restraining the defendants from interfering with the peaceful possession and enjoyment. It is thus seen that the petitioner does not have the relevant Title Deeds for the property in which a right to run the Eating House is claimed. Seeking such a right, I am informed, the petitioner herein, had independently instituted a suit in CS.No.80/2021 seeking a declaration, on the basis of adverse possession, of title over the said property. Both suits are still pending.
- (9) Mr.G.Thangavel, learned counsel for the petitioner drew the attention of this Court to the order passed in IA.No.12773/2012 in OS.No.5439/2012, wherein, interim protection of possession had been given. That was an application filed under Order 39 Rule 1 of the Code of Civil Procedure.



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(10) Let me extract the entire order which is dated 21.09.2012:-
ORDER DATED 21.09.2012

Affidavit of Service with acknowledgment cards filed. R1 to R3 called absent. No representation. Passed over.

Again called at 3.50 P.M. R1 to R3 called absent set exparte. Records perused. Prima facie case and balance of convenience and in favour of petitioners. Hence IA is allowed. No costs.

Sd/- *****
IV ASSISTANT JUDGE

(Certified to be true copy)

- (11) Even though I am not called upon to examine the veracity of the said order, I can straight away say that the said order is non est and has no effect at all. Reasons as to why the injunction has to be granted had not been stated. The opinion reached on examination of the documents filed along with the plaint and on appreciation of the pleadings had not been stated. The only reason given is that the respondents were called absent and therefore, the plaintiffs were said to be entitled for an order of injunction. The said order thus, does not convey any sense. It is non est. The petitioner herein cannot take any advantage of the same in any Court of law in future.
- (12) With that observation, let me now move forward to examine the right of the petitioner to seek license as a matter of right from the respondents herein. Admittedly, the husband of the petitioner faced a criminal case in CC.No.50/2013 before the Special for Exclusive Trial of Land Grabbing Cases, at Chennai. A perusal of the charge sheet filed indicates that it had been filed for the offences u/s.447, 467, 467 read with 417, 468, 420 and 120-B of IPC. Quite apart from the husband of the petitioner herein, there are two other accused. At this point, let me also point out that the 3rd accused therein, viz., P.Prabhu, had filed Crl.OP.No.18394/2013, which is also now pending consideration of this court and in which, stay had been granted, effectively preventing any further progress of the said Calendar Case.
- (13) As stated, the petitioner herein has filed a suit seeking a declaration of the title on the basis of adverse possession. The said fact itself establishes that the petitioner has encroached onto the lands. It is on the



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basis of such encroachment and possession for a long period of time, according to the petitioner hostile to the actual owners who claim right and claim title over the land, viz., the Railways, that the suit had been instituted seeking such a declaration. When that suit is pending, unless the petitioner's rights are declared by the Civil Court, the petitioner cannot, as a matter of right, seek to run any business, much less, an Eating House in the said premises.

- (14) I would therefore, without going any further into the details, relegate the petitioner to get necessary orders from the Civil Court and thereafter, approach the respondents. At this stage, the representations of the petitioner which have not been considered, need not be considered by the respondents and they may await further directions from the Civil Court where the suit has been filed.
- (15) Therefore, the writ petition stands dismissed. No costs.
- (16) In view of the fact that the writ petition has been dismissed, an application/miscellaneous petition which has been filed by a third party to implead, viz., WMP.No.7446/2021, has no legs to stand and the same is also dismissed and rejected.
- (17) Now, let me examine CrI.OP.No.18354/2013.
- (18) As stated, the said Original Petition has been filed under Section 482 of the Code of Criminal Procedure to call for the proceedings in CC.No.1398/2013, subsequently, renumbered as CC.No.50/2013 and to quash the same. The petitioner herein is arrayed as A-3.
- (19) Mr.K.Selvaraj, learned counsel appearing for the petitioner/A-3 stated that the mother of the petitioner has a property adjacent to Door No.57 and 57A, which door numbers, viz., 57 and 57A, are properties of Railways. However, the property of the mother at Door.No.58/1, which is adjacent, is said to belong to the mother of the petitioner herein. He stated that the petitioner had taken on rent from A-1, P.K.Rajendran, who is no more and whose widow had filed WP.No.12659/2013, in which, while dismissing the said writ petition, by order was just now proclaimed, a shop in the premises measuring about 300 sq.ft. It is contended by the learned counsel for the petitioner that quite apart from the petitioner herein, there were six other similarly placed tenants and they were all shown as accused in the First Information Report. However, when the charge sheet was filed, all the other



tenants were left out and the petitioner alone had been arrayed as A-3.

- (20) The learned counsel further pointed out that at the time when the encroachment took place, the petitioner / A-3 was aged 7 years and as on date, he is 28 years and therefore, it cannot be stated that the petitioner was instrumental in encroaching the property of the Railways. It is also pointed out by the learned counsel that pending present petition, the petitioner had handed over possession of the shop and also all the sub-tenants who were there under him have all vacated and the property which was in his possession, had been handed over to the Railway Authorities. This, as a fact, has also been acknowledged by the learned Government Advocate [Crl.Side], who appeared for the prosecution herein.
- (21) As a matter of fact, a Status Report had also been filed by the Deputy Commissioner of Police, Central Crime Branch-III, Vepery, Chennai, dated 21.01.2020, wherein, he had also acknowledged that the property had been handed over to the Railway authorities. He has also stated that there is still a substantial area of property under the control of the writ petitioner, Pushpa W/o.P.K.Rajendran, the writ petitioner. In view of all these facts, since the petitioner claimed to have handed over the property, the learned counsel for the petitioner seeks to quash the proceedings insofar as the petitioner is concerned.
- (22) The petitioner has been arrayed as A-3 in the said Calendar Case. The offences have been enumerated in the earlier paragraphs of this order. One other point which the learned counsel stated was that, only one list witness, viz., Sakthivel, had spoken about the possession of the petitioner herein / A-3 and there are no other incriminating circumstances as against the petitioner in the materials submitted by the prosecution along with the charge sheet. It is therefore, stated that the petitioner should be exonerated from facing trial.
- (23) The charge sheet which has been laid, more particularly under Sections 467, 468 and also 420 of IPC, requires evidence to be recorded, requires proof and the petitioner herein will always be granted an opportunity to disprove any incriminating statement. The Court can take cognizance of an offence. The offence alleged against the petitioner was that, at the time when the FIR was lodged and at the time when the Final Report was taken cognizance by the competent jurisdictional Magistrate Court, the petitioner was in occupation as an encroacher over Government



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property. That, he had vacated the property pending present Original Petition, is of no significance. He has to answer that particular charge. If vacating premises is a mitigating circumstance, then, if that fact is put forth before the jurisdictional Magistrate Court, I am confident that the learned Magistrate would take an appropriate decision. At the time when the charges are framed, the learned Magistrate has every option to discharge the petitioner/A-3. At that stage, if materials warrant, he may frame charges. These are aspects to the exclusive domain of the learned Magistrate. This Court cannot interfere with such process and direct the petitioner to be discharged primarily because he had vacated the premises, according to the learned counsel, on the earlier directions of a learned Single Judge of this Court. Even if he had vacated, it should have been a voluntary act and the learned counsel cannot state that the petitioner had vacated because a direction to that effect had been passed earlier by this Court.

- (24) The guidelines of the Hon'ble Supreme Court of India reported in 2021 SCC Online SC 315 [Neeharika Infrastructure Pvt Ltd Vs State of Maharashtra and Others], are comprehensive in nature and the Apex Court had very clearly stated that while examining an application to quash proceedings, the High Court should not embark upon a roving enquiry on the genuineness or on the probabilities of the averments made in a charge sheet or in a FIR. It had been cautioned that exercise of jurisdiction under Section 482 of the Code of Criminal Procedure should only be used as an exception and with circumspection and not as an ordinary rule.
- (25) I would give every liberty to the petitioner herein to put forth any aspect before the competent jurisdictional Magistrate Court where the criminal case is now pending, and urge that he may be discharged on the fact that he had vacated the said premises.
- (26) Giving that liberty, the Criminal Original Petition stands dismissed.
- (27) In the result,
- i. WP.No.12659/2013 is dismissed.
 - ii. WMP.No.7446/2021 is dismissed.



iii.No costs.

iv. CrI.OP.No.18394/2013 is dismissed.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Special Metropolitan Magistrate,
Special Court for Exclusive Trial
of Land Grabbing cases,
Chennai.
2. The Inspector of Police
State of Tamil Nadu
District Crime Branch [Team 15]
Egmore, Chennai 600 008.
3. The Inspector of Police
Railway Police, Perambur
Chennai 600 011.
4. The Commissioner
Corporation of Chennai
Rippon Buildings,
Chennai 600 003.
5. Additional Commissioner
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Corporation of Chennai
Rippon Buildings,
Chennai 600 003.
6. Revenue Officer
Corporation of Chennai
Rippon Buildings, Chennai 600 003.
7. The Assistant Revenue Officer,
Zone-6, Corporation of Chennai
5, Anderson Road
Ayyanavaram, Chennai 600 023.



8. The Inspector of Police
Government Railway Police
Arakkonam, Vellore District.

9. The Public Prosecutor,
High Court, Madras.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

+1 cc to Mr.Gopinath,Advocate Sr.No.43289
+1 cc to Mr.G.Thangavel,Advocate Sr.No.43198
+1 cc to Mr.K.Selvaraj,Advocate Sr.No.43158
+1 cc to the Government Pleader, Sr.43683

+3ccs to Mr.G.Devarajan, Advocate, SR.NO.43171 (25.11.2021)

Crl.OP.No.18394/2013 &
WP.No.12659/2013
& WMP.No.7446/2021

SS[co]
NSK 20/09/2021