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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.NO.168 OF 2013

G.Rajam

... Appellant/Petitioner

-Vs-

The Commissioner,
Mayiladuthurai Municipality,
Mayiladuthurai - 609 001.

... Respondent/Respondent

PRAYER:-

Appeal filed under Clause 15 of the Letters Patent, against the order dated 20.06.2012 made in W.P.No.23039 of 2008.

Prayer in W.P.No.23039 of 2008:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, to direct the Respondent to refrain from taking forcible possession of the moieties of T.S.No.1472 and 183 measuring 2377 sq.ft. at Mayiladuthurai adjacent to Vijaya Theatre, Mayiladuthurai

For Appellant :: Mr.Kandan Duraisami

For Respondent :: Mr.V.Jayaprakash Narayanan

JUDGMENT

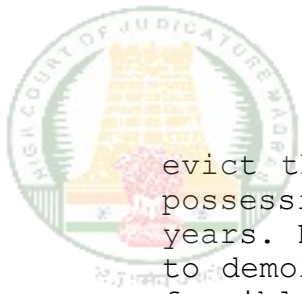
(Judgment of the Court was made by T.RAJA, J.)

This writ appeal is directed against the impugned order dated 20.6.2012 passed in Writ Petition No.23039 of 2008, wherein the learned single Judge has rejected the prayer of the appellant/writ petitioner for issuance of a mandamus to the Commissioner, Mayiladuthurai Municipality, the respondent herein to refrain from taking forcible possession of the moieties of



T.S.Nos.1472 & 183 measuring 2377 sq.ft at Mayiladuthurai adjacent to Vijaya Theatre, Mayiladuthurai enjoyed by the appellant.

2. Mr.Kandan Duraisami, learned counsel appearing for the appellant submitted that the appellant is the owner of Vijaya Theatre (Airconditioned) situate at Avayambalpuram, Mayiladuthurai, which was purchased by her husband late Gurunathan Chettiar on 17.7.74 with all its buildings, compound walls and easementary rights. Thereafter, late Gurunathan Chettiar bequeathed the said property by a Will in favour of the appellant. After the death of her husband on 1.1.2003, the appellant applied for change of ownership in respect of the theatre. Adjacent to the said theatre, some parcels of land covered in T.S.Nos.1472 and 183 measuring 2377 sq.ft are available, which are used as road and lane. As the said land was claimed by the respondent Municipality and also on the basis of the fact that the appellant's husband has been encroaching and enjoying the land along with the theatre, steps were taken to have the appellant's husband evicted from the said land. Hence, notices dated 10.9.75 and 25.7.76 were issued. Opposing the same, a suit in O.S.No.89 of 1976 was filed before the Sub Court, Mayiladuthurai. But the said suit was dismissed by the judgment dated 21.3.78 with an observation that the extent of encroachment made in T.S.No.183 is negligible and the said encroachment would in no way be an objectionable encroachment to the users of the road, the appellant's husband was permitted to approach the authorities concerned seeking suitable remedy either to get the property assigned to him or to enjoy the property on licence with a further direction to the authorities to consider the case favourably, in view of the fact that the encroachment has been there since 1952 and no steps have been taken so far by the Municipality for removing the encroachers. Thereafter, the appellant's husband submitted a petition on 25.5.79 requesting to reconsider the matter and to take steps for assignment of the land in T.S.Nos.183 and 1472. Although the appellant's husband and the appellant were ready and willing to pay the reasonable price that may be fixed by the respondent for getting it assigned, no positive response was forthcoming. Finally, an order dated 20.12.79 was passed directing the appellant's husband to pay the licence fee of Rs.1320/- for the period from 1976-77 to 1979-80 and thereafter, by a letter dated 14.12.88, the licence fee was enhanced from Rs.330/- to Rs.495/- and the appellant's husband also paid a sum of Rs.1485/- for the period from 1986-87 to 1988-89 by way of cheque along with his covering letter dated 29.12.88. Again the respondent enhanced the licence fee by letter dated 5.2.97 and demanded a sum of Rs.3,465/-, that was also paid to the respondent. When the licence fee was regularly paid till 31.3.2008 without there being any arrears, they are estopped from taking any steps to



evict the appellant, for the simple reason that she has been in possession and occupation of the said land for more than 56 years. Now all of a sudden, the respondent is making all efforts to demolish the construction on the said land and also trying to forcibly take possession. As the appellant has been in lawful possession and enjoying the same after paying the licence fee regularly, there is nothing wrong on the part of the respondent to allow the appellant to use the same land, as she is agreeable to pay the licence fee. Therefore, the impugned order passed by the learned single Judge, overlooking this fact that the appellant has been in possession and enjoyment of the property on payment of licence fee, is liable to be interfered with. Learned counsel appearing for the appellant also submitted that even if the respondent communicates or informs the appellant with regard to the payment of licence fee to the land in question, she is prepared to pay the same by moving appropriate application therefor.

3. Mr.V.Jayaprakash Narayanan, learned counsel appearing for the respondent, opposing the above prayer, submitted that the appellant, while running the theatre, had started encroaching into the land belonging to the respondent covered in T.S.Nos.1472 & 183 to an extent of 3144 sq.ft, therefore, the respondent raised objection. Otherwise, the land in question being used by the public as road and lane would be disturbed, resultantly, the public would be put to prejudice. Finally, on repeated representation, it was considered that the licence fee may be collected from the appellant for the usage of the said land. Accordingly, the respondent directed the appellant to pay the licence fee of Rs.1320/- for the period from 1976-77 to 1979-80. But after sometime, the appellant failed to pay it from 2008. Till date, she has not come forward to pay the licence fee, therefore, when she is a rank trespasser, this appeal shall not be entertained. Moreover, when it is an admitted fact that the land does not belong to the appellant, stating that the appellant has been using the land for quite sometime, filed a suit in O.S.No.89 of 1976 on the file of the Sub Court, Mayiladuthurai seeking for a declaration and also for a consequential injunction restraining the respondent herein from interfering with her peaceful possession and enjoyment of the same. The trial Court, considering the detailed written statement filed by the respondent, rightly came to the conclusion that the appellant/plaintiff was not entitled to any relief. However, considering the fact that the appellant has been using the road for quite a long time, the trial Court gave liberty to the appellant to seek suitable remedy before the authorities concerned either to get the land assigned to her or for allowing her to enjoy the property on licence with a further direction to the authorities concerned to consider the same. Based on the observation, when the appellant was considered as



an encroacher and was allowed to enjoy the land on payment of the licence fee, all of a sudden, the appellant stopped making the payment. Moreover, when the appellant encroached the land belonging to the respondent in the year 1976 to an extent of 3144 sq.ft., with further extension of total encroachment to 681 sq.mts, namely, 7327.63 sq.ft, a show cause notice was also given to her on 21.11.2012 bearing No.17706/F2 giving the details as to the extent of encroachment made by the appellant and the licence fee liable to be paid by her. In spite of that, the appellant has come forward, hence, the liberty granted by the trial Court to consider the case of the appellant also cannot be accepted. Finally, learned counsel appearing for the respondent submitted that if the appellant makes a fresh application after depositing the arrears of licence fee, as she had defaulted from 2008 till now, her application will be considered by the respondent subject to clearance of arrears as aforementioned.

4. In reply, learned counsel appearing for the appellant instantly submitted that the appellant will clear all the arrears and the appellant will also file an application within a week's time.

5. Since the learned counsel appearing for the appellant has agreed to clear the arrears of licence fee from the year 2008 till now to the respondent and the learned counsel appearing for the respondent has also stated that subject to such clearance of arrears of licence fee, the application to be made by the appellant will be considered, finding no merits whatsoever in the appeal, the appellant is given liberty to make an application to the respondent within a week from the date of receipt of a copy of this order and if the appellant clears the arrears of licence fee as agreed before this Court, the respondent can consider the same on merits. With this observation, the writ appeal stands dismissed. Consequently, interim order stands vacated and the M.P.No.1 of 2013 is also dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

SS



To

1. The Commissioner,
Mayiladuthurai Municipality,
Mayiladuthurai - 609 001.

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+1cc to Mr.V.Jayaprakash Narayanan, Advocate, S.R.No.39077
+1cc to Mr.Muthumani, Advocate, S.R.No.39006

W.A.NO.168 OF 2013

SSD (CO)
PBS/01/09/2021