

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.NO.32627 OF 2019

AND

WMP NO.33019 OF 2019

AND

W.M.P.NO.1301 OF 2020

K.Hariyappan

... Petitioner

Vs

1. The Greater Chennai City Municipal Corporation,
Rep.By its Commissioner,
Rippon Building, Chennai 600 003.

2. The Junior Engineer,
Greater Chennai City Municipal Corporation,
Division No.140, Alandur Road,
Arulyampet, Chennai 600 097.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to direct the respondents 1 and 2 herein, not to interfere with the petitioner's peaceful possession and enjoyment of his leasehold shop, measuring an extent of 300 sq.ft., comprised in S.No.62/1, situated at Door No.53/1, Jawaharlal Nehru Street, Ekkattuthangal, Chennai 600 097.

For Petitioner: Mr.D.Anand Raja

For Respondents: Mrs.Karthika Ashok,
Standing Counsel

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O R D E R

This Writ Petition has been filed to issue a Writ of Mandamus, directing the respondents 1 and 2, not to interfere with the petitioner's peaceful possession and enjoyment of his leasehold shop, measuring an extent of 300 sq.ft., comprised in S.No.62/1, situated at Door No.53/1, Jawaharlal Nehru Street, Ekkattuthangal, Chennai 600 097.

2. The case of the petitioner is that he is a tenant of the legal heirs of one Munusamy. The said Munusamy has already filed a suit in O.S.No.447 of 2002 before the IV Assistant City Civil Court at Chennai to declare that he is the sole and absolute owner of the said shop in which the petitioner is a tenant. The suit was decreed in favour of Munusamy on 09.12.2003. After the demise of the said Munusamy, his legal heirs entered into lease agreement with the petitioner on 05.11.2020 and the petitioner is in possession of the said shop pursuant to the said lease agreement. The petitioner intends to utilise the said shop as a tea shop, whereas the Corporation is not permitting him to do so and also interfering with his possession and enjoyment of the shop. Therefore, he has filed this writ petition seeking the above said relief.

3. The respondent has filed counter affidavit and the relevant paragraphs in the counter affidavit reads as follows:

4. It is submitted that the subject Property is the Part of the open land left adjacent to the ward Councillor Office at the junction of Jawaharlal Nehru Salai and Reddy Street. The subject land to an extent of 300 sq.ft. alleged to have been in occupation of the Petitioner under lawful tenancy entered with the owner of the land is not correct and the Petitioner is put to strict proof of the same. The land, the Councillor Officer and Public Toilet and other premises constructed by the building at the junction of the said Jawaharlal Nehru Salai and Reddy Street belonging to this Respondent Corporation.

5. It is submitted that the entire claim of the petitioner is based on the exparte decree obtained by one S.Munusamy in O.S.No.447 of 2002 where the said Munusamy had been decreed a Decree of Declaration that he is sole and absolute owner of the property as prayed for, setting this respondent Corporation exparte decree. The knowledge of the above exparte decree is obtained from the Affidavit filed in the above Writ Petition. On nothing the decree against the Corporation, this Respondent has taken steps and filed a Petition to set aside and Restore the Exparte Decree dated 09.12.2003 in I.A.SR.No.26683 of 2020. And as such the relief claimed in the above Writ Petition is subject to the result of the set aside Petition filed in the above Suit. As the present Writ

Petition prays for an injunction against the Corporation not to interfere in the peaceful possession of the subject Property. Moreover, the declaration of the title which is in favour of the said Munusamy cannot hold good as the Property at Door No.53/1, Jawaharlal Nehru Salai, Ekkattuthangal has no existence at any point of time and no such Door No. is entered in record of Corporation. It is actually the Door No.53, belong to the P.S.Industrials and adjacent to which in the sides of the Reddy Street, the Corporation Office and other structures constructed by the Corporation is in occupation by the Corporation. It was in the earlier period of time, the Bunk Stall in the Road Margin adjacent to Corporation Office encroaching the Road Margin. The said Bunk stall was entered without any permission or any authority of law which was removed in accordance with law. At present there is no any bunk stall in the subject Property but behind the back with the support of irrelevant Documents, the said Munusamy has obtained an Ex-parte Decree.

4. Admittedly, the suit was decreed in favour of one Munusamy in the year 2003 by the IV Assistant City Civil Court in O.S.No.447/ 2002 and this petitioner has also entered into lease agreement with the legal heirs of the late Munusamy on 05.11.2020. The decree passed by the competent Civil Court is not denied by the respondents. However, the respondents have stated that as against the exparte decree, the Corporation has taking steps to file a petition to set aside the exparte decree. Though the learned counsel for the respondents seeks time to get further instructions, this Court is not inclined to grant time, as the respondents have filed counter affidavit wherein they have admitted that a decree was passed in favour of Munusamy.

5. In view of the above, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

PP

To

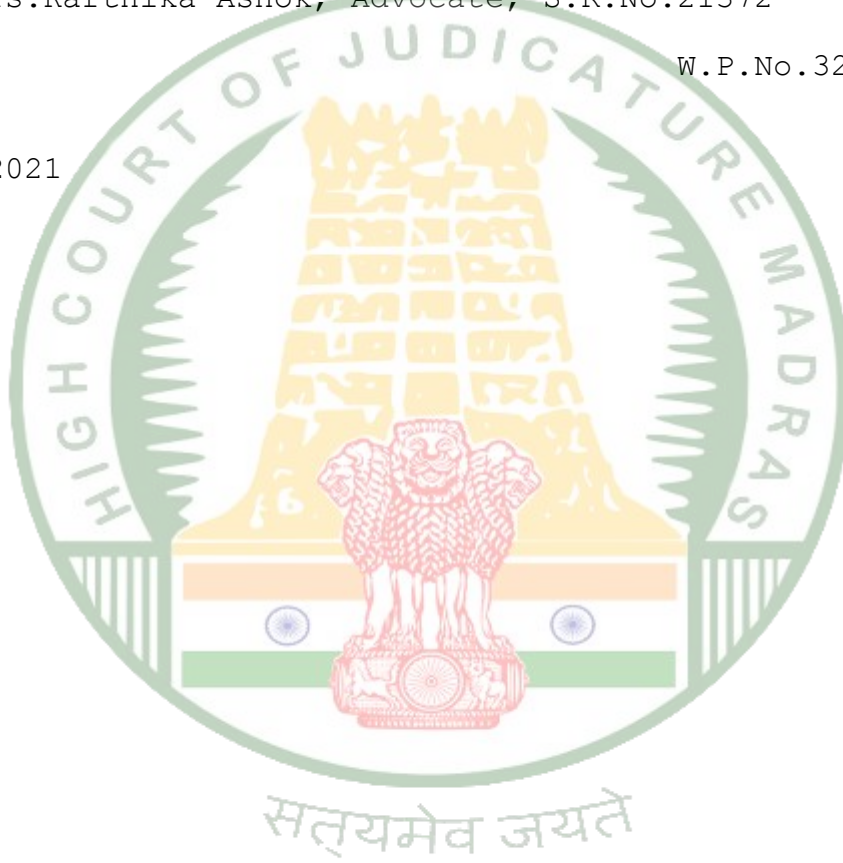
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+lcc to M/s.Venkataswamy Babu, Advocate, S.R.No.21343

+lcc to Mrs.Karthika Ashok, Advocate, S.R.No.21372

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PP (CO)
CS/29/04/2021



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