



BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 25.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WEB COPY

W.P. (MD)No.9811 of 2013
and M.P.Nos.1 and 2 of 2013
(Through Video Conferencing)

V.Thangaraj

... Petitioner

Vs.

1.The Executive Officer,
Sri Kalugachalamoorthy Devasthanam
Kalugumalai
Kovilpatti Taluk
Tuticorin District.

2.The Deputy Superintendent of Police
Kovilpatti
Tuticorin District.

3.The Inspector of Police,
Kalugumalai Police Station,
Kalugumalai
Kovilpatti Taluk
Tuticorin District.

4.Stanislas

5.Danielraj

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents 1 to 3, to make this petitioner to run his business in shop No.12, Door No.29 in East Car Street, Kalugumalai in Kovilpatti Taluk, in Tuticorin District, without the disturbances from the 4th respondent or his men in the same property.

For Petitioner :Mr.F.X.Eugene

For Respondents :Mr.M.Lingadurai for R2 &R3

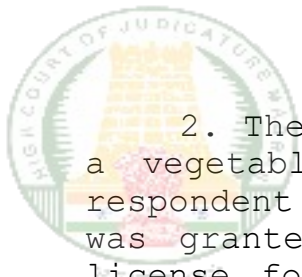
Government Advocate

Mr.B.Rajesh Saravanan for R4 & R5

Mr.S.Madhavan for R1

ORDER

This writ petition has been filed for the issue of a writ of mandamus directing the respondents 1 to 3 to take action against the fourth respondent, who is said to be disturbing the petitioner from carrying on with the business of vegetable vending.



2. The case of the petitioner is that the petitioner is running a vegetable shop by virtue of the license given by the first respondent temple, who is the owner of the property. The petitioner was granted license for D.No.28 and the 4th respondent was given license for D.No.29. There was a family arrangement between the parties and by virtue of the same, the petitioner was allowed to conduct the business from D.No.29 also. However, contrary to the family arrangement, the 4th respondent and his son started interfering with the business at D.No.29. In spite of complaint being made to the respondents 1 to 3, no action was taken against 4th and 5th respondents. Left with no other alternative, the present writ petition has been filed before this Court seeking for appropriate directions.

3. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents 1 to 3 and the learned counsel for the respondents 4 and 5.

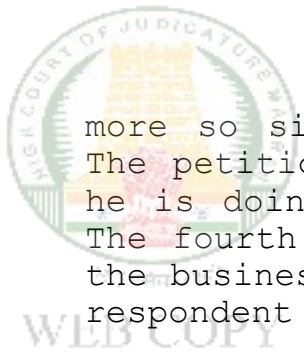
4. The first respondent has filed a counter affidavit in this case. The relevant portions in the counter affidavit are extracted hereunder:

"3.I submit that the temple is owning number of shops in South Car Street and are being rented to tenants and collecting rents periodically are true. But the fact that the father of the petitioner was never a tenant in any shop as per our permanent rent register. The fat is shop bearing door number 28 was leased to V.Thangaraj, the petitioner in this case and shop bearing Door number 29 was leased to V.Stanislas the fourth respondent in this case.

4.I submit that the other facts alleged in the petition seems to be family dispute but the facts alleged therein amounts to violation of conditions of lease since encroachment, alleged transfer and alleged sub lease if true are admitted and action is going to be taken against both namely the petitioner and the fifth respondent.

5.I submit that as per our temple registers the above factum of shop bearing door number 28 and shop bearing door number 29 were leased to the petitioner and 4th respondent respectively and any deviation without permission of the temple authorities amounts to violation of conditions of lease and both are liable to be evicted if the allegations in the writ petition are true."

5. The categoric stand taken by the first respondent is that D.No.28 was leased to the petitioner and D.No.29 was leased to the fourth respondent. According to the first respondent, if at all there was any arrangement between the parties, it should have been done with the permission of the first respondent, failing which, the first respondent is not bound by the family arrangement. This is



more so since the first respondent is the owner of the property. The petitioner is claiming that he is in possession of D.No.29 and he is doing business even in this door number apart from D.No.28. The fourth respondent is coming up with the claim that he is doing the business in D.No.29 by virtue of the license given by the first respondent and he should not be disturbed.

6. This Court exercising jurisdiction under Article 226 of the Constitution of India cannot undertake the process of appreciation of evidence. The fact as to who is in possession of the property cannot be found out by this Court since both the parties are claiming to be in possession of D.No.29. This Court has to only go by the stand taken by the first respondent, wherein the first respondent categorically states that D.No.29 was allotted in favour of the 4th respondent.

7. In view of the above, this Court cannot merely act upon some family understanding between the parties and this Court has to necessarily act upon the stand taken by the first respondent. Hence, this Court is not inclined to grant the relief sought for in this writ petition and accordingly, this writ petition stands dismissed. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Executive Officer,
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Kalugumalai
Kovilpatti Taluk
Tuticorin District.

2.The Deputy Superintendent of Police
Kovilpatti
Tuticorin District.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Inspector of Police,
Kalugumalai Police Station,
Kalugumalai
Kovilpatti Taluk
Tuticorin District.

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+1 CC to M/s.SPL GP (SR-20453[F] dated 28/06/2021)

W.P. (MD)No.9811 of 2013
25.06.2021

KB(05.07.2021) 4P 5C