



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.05.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.9544 of 2021

and

W.M.P.(MD) No.7290 of 2021

WEB COPY

M/s.Jupiter Talkies,
Through its Proprietor,
Mr.Joseph Francis,
Market Road,
Thanjavur.

... Petitioner

-Vs-

The Thanjavur Municipal Corporation,
Through its Commissioner,
Thanjavur

... Respondent

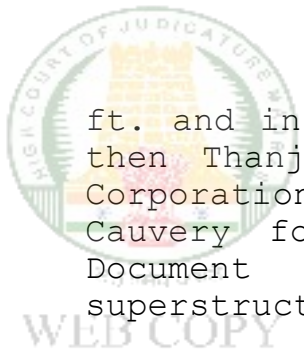
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondent herein to execute a temporary lease agreement in favour of the petitioner for the lands in Ward No.5, Block No.8, Market Road, Thanjavur Town, to an extent of 13605 Sq. ft in S.No.82 and to an extent of 26395 Sq. ft in S.No.455, both put together about 40000 Sq. ft., from and out of total extent measuring an extent of 35835 Sq. ft. in S.No.82 and measuring an extent of 26395 Sq. ft. in S.No.455 belonging to the respondent Municipal Corporation, in which the petitioner own a superstructure and running a cinema theatre under the name and style "Jupiter Talkies" for the further period and upon such terms and conditions of fresh lease.

For Petitioner : Mr.V.R.Shanmuganathan for kannan
For Respondents : Mr.N.Dilipkumar
Standing Counsel

ORDER

This Writ Petition has been filed to direct the respondent herein to execute a temporary lease agreement in favour of the petitioner for the lands in Ward No.5, Block No.8, Market Road, Thanjavur Town, to an extent of 13605 Sq. ft. in S.No.82 and to an extent of 26395 Sq. ft. in S.No.455, both put together about 40000 Sq. ft., from and out of total extent measuring an extent of 35835 Sq. ft. in S.No.82 and measuring an extent of 26395 Sq. ft. in S.No.455 belonging to the respondent Municipal Corporation, in which, the petitioner own a superstructure and running a cinema theatre under the name and style "Jupiter Talkies" for the further period and upon such terms and conditions of fresh lease.

2. Lands in question viz., Ward No.5, Block No.8, Market Road, Thanjavur Town, in S.No.82, measuring an extent of 35835 sq.



ft. and in S.No.455 measuring an extent of 26395 sq. ft. belong to then Thanjavur Municipality, now called as 'Thanjavur Municipal Corporation'. Originally, the said lands were leased out to Lodge Cauvery for 99 years, by a lease deed dated 30.05.1922, vide Document No.1665 of 1922 with the permission to put up superstructure and also sub-lease the property.

3. The said Lodge Cauvery constructed a hall called 'Freemasons Hall' in the eastern portion of the lands in S.No.82 to an extent of 22230 sq. ft. Thereafter, the said Lodge Cauvery sub-leased the remaining portion to an extent of 13605 sq. ft. in S.No.82 and to an extent of 26395 sq. ft. in S.No.455 to one Ramasubramania Iyer under a lease agreement dated 12.09.1946. The said Ramasubramania Iyer had constructed a cinema theatre in the said lands and transferred the same to one M.Thirupathi, who in turn transferred the same to one C.T.Arunachalam. The said C.T.Arunachalam had transferred the said theatre to one T.K.Narayanan and subsequently, to the petitioner.

4. There was some change in the petitioner Firm and the petitioner Firm is represented by its Proprietor Joseph Francis. Subsequently, after change in the petitioner Firm, the petitioner and Lodge Cauvery entered into a lease agreement on 04.03.1996 and sub-lease was granted by Lodge Cauvery to the petitioner for a period of 25 years from 01.04.1996 to 30.05.2021. The petitioner is paying rent to the respondent for the lands and the petitioner is the owner of the superstructure. The petitioner is also paying the property tax and other tax to the Thanjavur Municipality, now, the respondent Corporation.

5. While the lease is in force till 30.05.2021, the original lessee, namely, Lodge Cauvery, issued a letter dated 26.10.2019, informing the petitioner to surrender the possession on 31.05.2021. After issuing the said letter dated 26.10.2019, the Lodge Cauvery filed a suit in O.S.No.171 of 2020 seeking a mandatory injunction as against the Municipality to extend the lease by another 99 years, as per the clause found in the original lease deed, dated 30.05.1922, only in respect of the lands in their possession and claiming that they are surrendering the lands, which are in possession of the petitioner.

6. On coming to know about the Suit filed by the Lodge Cauvery, the petitioner gave a representation to the respondent in person on 19.09.2020 and also sent a representation by a Registered Post with acknowledgment due. The respondent received the same on 21.09.2020. The petitioner filed a writ petition in W.P.(MD) No.13722 of 2020 before this Court seeking a direction to the respondent to consider the said request. This Court, vide order dated 05.10.2020, directed the respondent Municipal Corporation to consider the request of the petitioner and pass orders after affording sufficient opportunity to the petitioner. According to

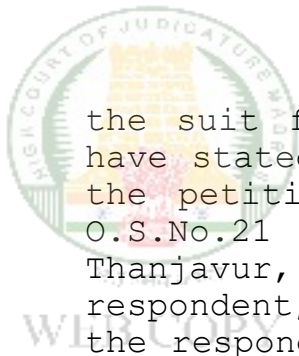


the petitioner, without any notice or enquiry, the respondent Corporation, vide proceedings dated 09.11.2020, informed the petitioner that their request is not feasible as the lease in favour of the Lodge Cauvery itself will not be extended. Challenging the said order, the petitioner filed a writ petition in W.P.(MD)No.783 of 2021. When the writ petition came up for admission on 21.01.2021, the petitioner withdrew the said writ petition with liberty to file a comprehensive suit. Thereafter, the petitioner filed O.S.No.21 of 2021 before the Principal District Munsif Court, Thanjavur, for declaration that the proceedings of the respondent, dated 09.11.2020 as null and void and for a direction to the respondent to execute a fresh lease agreement. While the suit is pending, on 23.05.2021, the officials of the respondent Corporation came to the premises of the petitioner and informed to surrender the possession on 31.05.2021, otherwise, they will take forcible possession. In the said circumstances, the petitioner has come out with the present writ petition.

7. Mr.N.Dilipkumar, learned Standing Counsel appearing for the respondent Corporation submitted that the lease given to Lodge Cauvery expires on 31.05.2021. The lessee and the petitioner are not entitled to be in possession after 31.05.2021. The respondent Corporation is entitled to take possession of valuable property both from Lodge Cauvery as well as the petitioner herein. The learned counsel further submitted that since the petitioner has already filed a suit in O.S.No.21 of 2021 for execution of fresh lease agreement, they cannot maintain the present writ petition for the very same relief, in view of the ratio laid down by the Hon'ble Apex Court in **K.K.Modi Vs. K.N.Modi and others** reported in **AIR 1998 SCC 1297**, wherein it has been held that re-litigation is an abuse of the process of the Court and contrary to justice and public policy and prayed for dismissal of the writ petition.

8. Heard Mr.V.R.Shanmuganathan, learned counsel appearing for the petitioner and Mr.N.Dilipkumar, learned Standing Counsel appearing for the respondent and perused the materials on record.

9. From the materials on record, it is seen that the then Municipality granted lease to the Lodge Cauvery on 30.05.1922 for 99 years with permission to put up superstructure and also to sub-lease. The Lodge Cauvery constructed a hall called 'Freemasons Hall' in the lands in S.No.82 to an extent of 22230 sq. ft. and the remaining portions were leased to one Ramasubramania Iyer, who put up cinema theatre. It is seen that the cinema theatre was sold to various parties and the Lodge Cauvery executed lease deeds in favour of the purchasers. The Lodge Cauvery executed a lease deed in favour of the petitioner for 25 years from 01.04.1996 to 30.05.2021. Now, the Lodge Cauvery is not seeking extension of lease for the lands in possession of the petitioner, but, they are seeking extension of lease for the lands, which are in their possession. In



the suit filed by the Lodge Cauvery for extension of lease, they have stated that they will surrender the lands in the possession of the petitioner. In such circumstances, the petitioner has filed O.S.No.21 of 2021 before the Principal District Munsif Court, Thanjavur, seeking declaration that the proceedings of the respondent, dated 09.11.2020, is null and void and also to direct the respondent to execute fresh lease agreement by way of mandatory injunction and also for consequential permanent injunction.

10. From the materials, it is seen that the lease deed executed in favour of the petitioner is for 25 years. The petitioner has made a request to the respondent Corporation for extension of lease, but the same was rejected without giving any opportunity to the petitioner.

11. Considering the fact that the petitioner is the owner and is in possession of valuable superstructure and filed a suit in O.S.No.21 of 2021. The petitioner is also a party in O.S.No.171 of 2020 filed by the original lessee, namely, Lodge Cauvery. Now, both the suits are pending before the Principal District Munsif Court, Thanjavur.

12. Considering the relief sought for in both the suits, it will be the interest of justice, if the petitioner is granted time to be in possession of the property till the disposal of both the Suits. At the same time, the disposal of the suits should not be delayed, which will prevent the respondent Corporation from dealing with the property.

13. Considering all the above materials in its entirety, the learned Principal District Munsif, Thanjavur, is directed to conduct trial as expeditiously as possible. Taking into consideration the present COVID-19 Pandemic situation, the learned Principal District Munsif, Thanjavur, is directed to dispose of both the suits within one year from the date of receipt of a copy of this order. Till the disposal of both suits, the respondent is directed not to dispossess the petitioner from the property in question.

14. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

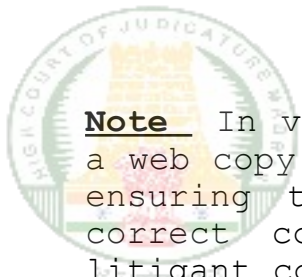
Sd/-

Vacation Officer ()

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/ /2021

Sub Assistant Registrar(CS)



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.

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To

- 1.The Principal District Munsif, Thanjavur.
- 2.The Commissioner,
Thanjavur Municipal Corporation,
Thanjavur.

Copy to

The Registrar Judicial,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-18610[F] dated 27/05/2021)

W.P. (MD) No.9544 of 2021
26.05.2021

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