



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.A.(MD) No.1509 of 2021

and C.M.P(MD)No.6176 of 2021

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Thanjavur Municipal Corporation,
Through its Commissioner,
Thanjavur.

.. Appellant/Respondent

Vs.

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

... Respondent/Petitioner

PRAYER: Appeal under Clause 15 of the Letters Patent Act, against the order dated 26.05.2021 in W.P(MD)No.9544 of 2021.

Prayer in WP(MD). 9544/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus to directing the respondent herein to execute a temporary lease agreement in favour of the petitioner for the lands in the lands in Ward no. 5, Block no. 8, Market Road, Thanjavur Town, to an extend of 13605 Sq.ft in S.no.82 and to an extend of 26395 Sq.ft in S.no.455 both put together about 40000 Sq.ft from and out of total extend measuring an extend 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 petitioner own a superstructure and running a cinema theatre under the name and style Jupiter Talkies for the further period upon such terms and conditions of fresh lease.

For Appellant : Mr.N.Dilip Kumar

For Respondent : Mr.V.R.Shanmuganathan

JUDGMENT

[Judgment of the Court was delivered by **The Hon'ble Chief Justice**]

The appeal could have been disposed of on the basis of the material noticed in the order of admission of July 30, 2021, but since the Court was in extreme shock in receipt of the impugned order, the matter was adjourned so that the respondent-writ petitioner could not complain that it had not been afforded due opportunity to present its case.



2.The writ petition in this case was filed on May 23, 2021, ostensibly upon the writ petitioner's representation of May 15, 2021 (which was received by the appellant on May 17, 2021) not being acted upon. The prayers in the writ petition need to be noticed:

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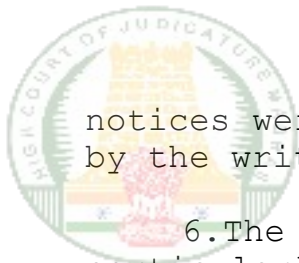
"Issue a writ of Mandamus directing the respondent herein to execute a temporary lease agreement in favour of the petitioner for the lands in the lands in Ward No.5, Block No.8, Market Road, Thanjavur Town, to an extent of 13605 sq. ft. in S.No.82 and to an extent of 26935 sq. ft. in S.No.455, both put together about 400000 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 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 and upon such rent as the corporation may reasonably fix for execution of fresh lease."

Significantly, there is no reference to the notice dated May 15, 2021 in the prayers, though such notice is mentioned in the body of the petition.

3.At least two previous writ petitions pertaining to the same matter had been filed in this Court by the respondent-writ petitioner. The second of the writ petitions, WP(MD)No.783 of 2021, was withdrawn on the ground that the petitioner would pursue his remedy elsewhere as is recorded in an order of January 21, 2021.

4.According to the writ petitioner, a parcel of land was leased out by the appellant herein in favour of a private party in the year 1922 for a period of 99 years with a right to sub-lease. The writ petitioner claims that the original lessee sub-leased a portion of the property in 1946 to the petitioner's immediate predecessor-in-interest. The writ petitioner further informs the Court that such predecessor-in-interest constructed a cinema hall at the site and the writ petitioner purchased the leasehold rights along with the construction in 1988.

5.Prior to the expiry of the head lease on May 31, 2021, notices were issued to the lessees or sub-lessees or occupants at the leasehold premises. Two essays by invoking Article 226 of the Constitution to prolong the occupation ended in little joy to the petitioner. After withdrawing the second writ petition and this Court permitting the writ petitioner to work out his remedies in accordance with law, the writ petitioner duly instituted a suit in Thanjavur. A prayer for interim relief was made in the suit,



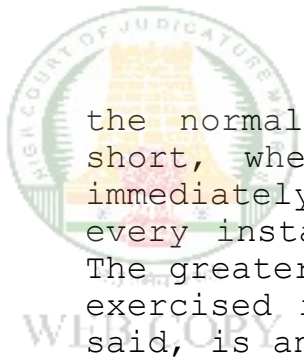
notices were directed to be issued but no interim order was obtained by the writ petitioner.

6.The writ petitioner says that it is in such circumstances, particularly since the lockdown following the second surge of the pandemic stopped normal functioning in courts, that the writ petitioner was constrained to issue a notice to the appellant herein on May 15, 2021 making the following request:

"We state that since the period of lease is to over by 31/5/2021 and we are in lawful possession and enjoyment for decades together, we are making this request, requesting the Corporation to grant temporary lease till the disposal of the pending suit. We stated that since the agreement dated 30/05/1922 provides for renewal of lease for further 99 years, we request the corporation to consider our request for execution of lease atleast for another 3 years, till the suit seeking the relief for execution of lease for 99 years is disposed of and reaches finality."

7.Thus, if the writ petitioner's case is taken at face value, it amounts to this: that notwithstanding the pendency of a civil suit in which the right of the writ petitioner to continue in occupation and the right of the writ petitioner to use the land and the construction made thereon were directly and substantially in issue, the writ petitioner made a request to the principal defendant in the suit for a kind of interim arrangement that the writ petitioner applied to obtain from the suit court but is deemed to have been declined; and, upon the unreasonable and irrational conduct of the appellant herein in failing to respond to the rather unusual request of the writ petitioner within five days of the receipt thereof, the writ petitioner carried the complaint to this court by invoking the extraordinary jurisdiction under Article 226 of the Constitution. Even if the writ petitioner may have feigned ignorance of the principle of res judicata, which is a matter of public policy and of universal application, the Court should have been aware thereof.

8.A word needs first to be said as to the width and breadth of the authority available to a constitutional Court under Article 226 of the Constitution before the mendacity on the part of the writ petitioner takes centre-stage. The authority under Article 226 is of the widest amplitude. Though, ordinarily, the remedy available under such provision is seen to be confined to the field of public law, the last five words of Article 226(1) permit orders in other fields to be issued in appropriate cases. Indeed, Article 226 of the Constitution can be the authority to deal with all matters in a breakdown situation, as in the unforeseen circumstances brought about by the pandemic or when there is an act of God that prevents

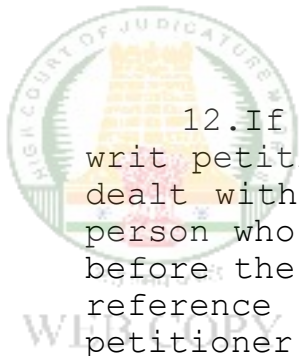


the normal functioning of courts in the District Judiciary. In short, when there is injustice which requires to be dealt with immediately, Article 226 of the Constitution is available. But every instance of authority comes with a degree of self-restraint. The greater the authority, the more the caution that is needed to be exercised in wielding such authority. Jurisdiction, as it must be said, is an obligation and a responsibility; not a privilege.

9. In a situation where the civil court machinery was completely non-functional, a High Court could have been approached, whether under Article 226 or under Article 227 of the Constitution, to grant relief to a person who did not have a forum open to approach. However, what is evident from the conduct of the writ petitioner here is that the forum may have been chosen not upon there being no choice, but more by design.

10. The order permitting the writ petitioner to withdraw the second of his writ petitions in this Court was made on January 21, 2021. It is common knowledge that till or about the middle of March, 2021 the second surge of the pandemic was not noticed and lockdown measures came to be clamped down in this State only in April, 2021. Even though the Courts reacted earlier, by the end of March, 2021, to stop footfall in Court complexes, the virtual mode of Court operations continued unabated and there was scarcely a grievance of a matter requiring attention but not being taken up. At any rate, if the writ petitioner's prayer for interim relief had not been granted within reasonable time, it was open to the writ petitioner to carry an appeal from the relevant order or even a revision, if only to direct the trial court to dispose of the prayer for interim relief within a time-bound period. After all, in February, 2021 when the suit may have been instituted, the date of expiry of the lease on May 31, 2021 was more than two months away.

11. Yet, the writ petitioner chose not to be proactive upon instituting the suit and suddenly swung into action in the third week of May when the weather conditions may have suited the writ petitioner. It was ridiculous on the part of the writ petitioner to make a prayer in the purported request dated May 15, 2021 that would have resulted in virtual interim decree in the suit in which the appellant herein was the principal defendant. It was preposterous for the writ petitioner to suggest that the appellant herein was under an obligation to immediately respond to the purported request on May 15, 2021. Just as it was unusual and unnatural for this Court to entertain the writ petition to pass an order that the civil court is deemed to have declined in issuing, despite the writ court not enjoying the powers of an appellate forum or revisional forum and at least one previous writ petition pertaining to the matter having been voluntarily withdrawn by the writ petitioner.

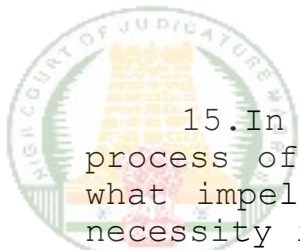


12.If at all any order was necessary to be passed or even the writ petition entertained, the first aspect that was required to be dealt with was the need for the writ court to open its doors to a person who had already withdrawn from it and had carried the matter before the appropriate civil forum. There does not appear to be any reference in the order impugned to the attempts made by the writ petitioner to seek an interim order in the civil proceedings or exhaust its appellate or revisional remedies.

13.As is the wont in such cases, the order impugned is littered with errors. The appellant rightly points out that there was no lease deed executed by the appellant in favour of the writ petitioner for 25 years as recorded in the tenth paragraph of the impugned order. The appellant also says that in the context of the proceedings between the writ petitioner and the Corporation and at least two previous writ petitions ending with no cheer for the present writ petitioner, the following sentence from paragraph 10 of the order impugned makes little meaning and may, probably, not be presenting the correct picture:

"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."

14.It may do well to recount the facts once again. A 99-year lease was granted to a party with a right to sub-lease; and a portion of the land had been sub-let by the original lessee in 1946. The sub-lessee constructed a cinema hall, which such sub-lessee transferred along with sub-lease rights over the land to the writ petitioner in the year 1988. The writ petitioner entered into the transaction with eyes wide open that the right to occupy the leasehold premises would run out by the middle of the year 2021 and serious doubts existed as to the rights of the parties in respect of the construction that had been made. At any rate, as to the right of the lessee or sub-lessee to retain any construction put up on any leasehold land, it would depend upon the interpretation of the document executed by the parties; in this case, the deed of lease of the year 1922. It was presumptuous to perceive any right in favour of the petitioner without even the barest of references to the deed of lease or of the rights of the original lessee that, at the highest, the writ petitioner could have claimed to have inherited. Merely because the petitioner may have been the owner of any "valuable superstructure" did not and could not imply that the Court - a writ Court, no less - would re-write the contract between the parties and extend a benefit to the writ petitioner, to the detriment and prejudice of a public body as the appellant Corporation, without assigning the slightest of reasons in such regard.



15. In a constitutional republic wedded to the rule of law, the process of adjudication demands reasons to be furnished to justify what impelled the judicial mind to arrive at the conclusion. The necessity is just and much in support of an interim order as it is in support of a final order or decree. The reasons indicate the journey that the judicial mind took while applying the relevant law to the facts and arriving at the conclusion; temporary or permanent. The order impugned herein is singularly lacking in such feature and is, at the highest, a judicial diktat or a fiat in the absence of any reasons in its support. More importantly, when the writ petition had voluntarily abandoned the writ jurisdiction and had carried his claim to the civil forum, it could not have returned without citing extraordinary grounds therefor. At any rate, the writ court could not have entertained the petitioner anymore. It was not only unusual that the writ petition was received, but also shocking that an exparte order was made thereon without indicating any reasons therefor.

16. For the reasons indicated above, the judgment and order impugned dated May, 26, 2021 cannot be sustained and are set aside. As a consequence, W.P(MD)No.9544 of 2021 is dismissed with costs assessed at Rs.75,000/- (Rupees Seventy Five Thousand Only) to be paid by the writ petitioner to the appellant Corporation within a fortnight from date.

17. Nothing in this order or the order impugned herein should influence the suit court in adjudicating the action before it in accordance with law.

18. W.A(MD)No.1509 of 2021 is allowed. C.M.P(MD)No.6176 of 2021 is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

pm/ps

+1 CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-27108[F] dated 24/08/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-27110[F] dated 24/08/2021)

W.A. (MD) No.1509 of 2021

23.08.2021

ps (CO)

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