



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.13759 of 2021

and

W.M.P. (MD) No.10711 of 2021

WEB COPY

Chellapandi

.. Petitioner

Vs.

1. The District Manager,
Tamilnadu State Marketing Corporation Ltd. (TASMAC),
No 100, Annanagar, Madurai 625 020.

2. The District Manager,
Tamilnadu State Marketing Corporation Ltd. (TASMAC),
Madurai South, Kappaloor,
Madurai District.

3. The Supervisor,
Tamilnadu State Marketing Corporation Ltd. (TASMAC),
Tasmac Shop No.5171,
Plot No 161, Ashoknagar,
Koodalnagar, Madurai District.

4. A. Mani

..Respondents

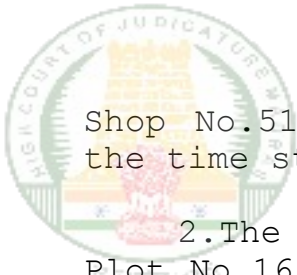
*(R4 is suo motu impleaded vide order dated
11.08.2021 in W.P. (MD) No.13759 of 2021 by RSKJ)*

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings issued by the 2nd respondent in Na Ka No.675/2021/E dated 16.06.2021 and quash the same as illegal and unconstitutional and consequently direct the respondents to vacate the said Tasmac Shop No.5171 situated at Plot No.161, Ashok Nagar, Madurai within the time stipulated by this Court.

For Petitioner	: Mr.B.Arun
For R1 & R2	: Mr.H.Arumugam
	Standing Counsel
For R4	: Mr.S.Vinayak

ORDER

Prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings issued by the second respondent in Na.Ka.No.675/2021/E dated 16.06.2021 and quash the same as illegal and unconstitutional and consequently direct the respondents to vacate the said tasmac



Shop No.5171 situated at Plot No.161, Ashok Nagar, Madurai within the time stipulated but this Court.

2.The petitioner claimed to be a leaseholder of the property at Plot No.161, Ashok Nagar, Madurai, as a lease agreement was entered into between the petitioner and the fourth respondent dated 03.05.2017. With the strength of the said leasehold right, he had entered into an agreement with the respondents/TASMAC to locate the retail vending IFML Shop No.5171 at the said address.

3.In this context, it is the case of the petitioner that, the fourth respondent is the owner of the property, from whom, with the lease agreement dated 03.05.2017, the property had been taken for lease, that is by way of usufructuary mortgage (othi) for a period of six years, for which, a bulk amount of Rs.30 Lakhs was paid, therefore, without any rent to be paid for the said leasehold right on monthly basis or yearly basis, the petitioner had obtained the leasehold right of the property concerned, that is empty land, for a period of six years, where the petitioner claimed that, after obtaining necessary permission from the local authority, he had put up some structure for the purpose of locating the TASMAC retail vending shop. Accordingly, after putting up the structure, the petitioner claimed to have entered into an agreement with the respondents/TASMAC to have the tasmac shop No.5171 in the said address and accordingly, the TASMAC shop was located and was functioning.

4.When that being so, it seems that, there has been some issues arose either between the petitioner and the TASMAC or the petitioner and the fourth respondent. However, with the result, it seems that, the petitioner by request dated 14.06.2021 has asked the respondents/TASMAC to vacate the TASMAC shop as according to the petitioner, for locating and continuing the TASMAC shop in the said building, the original owner that is the fourth respondent is objecting. Therefore, within 10 days, the TASMAC shop should be vacated and the vacant possession shall be handed over to the petitioner.

5.By considering the said request of the petitioner dated 14.06.2021, the respondent/TASMAC on 16.06.2021 has sent the following communication:-

“டாஸ்மாக் லிட்., மதுரை தெற்கு மாவட்டத்தில் இயங்கும் மதுபான சில்லறை விற்பனைக் கடை எண்.5171-ன் கட்டிட உரிமைதாரர் திரு.எ.மணி என்பவர் இடத்தில் இயங்கும் கடை எண்.5171 மற்றும் மதுக் கூடம் ஆகியவற்றை காலி செய்து தரக்கோரி ஒப்பந்ததாரர் திரு.பி.செல்லப்பாண்டி, த.பெ.பெரியகருப்பன் என்பவர் பார்வையில் காணும் மனு அளித்துள்ளார். மேற்கு அரசு மதுபான கடையை 10 தினங்களில் காலி செய்துதர இயலாது என்ற விபரம் இதன்மூலம் தெரிவிக் கப்படுகிறது.”



6.Felt aggrieved over the said communication of the respondents/TASMAC, the petitioner has filed this Writ Petition with the aforesaid prayer.

7.At the time of admission of this Writ Petition, since this Court found that the original owner one A.Mani is a necessary party to be heard in this Writ Petition he was made as a party, *suo motu* this Court by order dated 11.08.2021 impleaded the fourth respondent, who is the original owner of the property concerned as one of the respondents. That is how, the fourth respondent has come into picture.

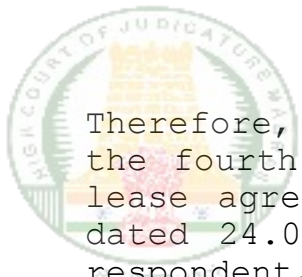
8.Thereafter, pleadings have been completed where counter affidavit has been filed both by the respondents/TASMAC as well as the fourth respondent.

9.The stand of the fourth respondent is that, no doubt there has been an agreement between the fourth respondent and the petitioner on 03.05.2017. However, according to the fourth respondent, the agreement is purely a lease agreement of monthly rental basis. Under which, the property in question was leased out to the petitioner for a monthly rent of Rs.15,000/- for first year, Rs.20,000/- for second year and Rs.22,000/- for third year for a period of three years, for which a rental advance of Rs.4,00,000/- was also received by the fourth respondent.

10.It is the further case of the fourth respondent that, however the petitioner has fabricated the lease agreement on the same date, i.e., 03.05.2017, whereby, he claimed that, the lease agreement is by way of usufructuary mortgage (othi) for a period of six years, for which a lump sum amount of Rs.30,00,000/- was paid in lieu of the rental to be collected from the petitioner by the fourth respondent for a total period of six years.

11.It is the further case of the fourth respondent that, the actual lease agreement is for three years that too on the basis of monthly rental and therefore, the lease agreement projected by the petitioner as if it is not a lease agreement, but it is nothing but usufructuary mortgage agreement for a period of six years, is a forged one, according to the fourth respondent. Therefore, the fourth respondent denied such execution of any lease deed to and in favour of the petitioner.

12.It is the further case of the fourth respondent that, since three years original rental period was over from 2017 to 2020, the fourth respondent was free to exploit the property as he is the owner of the property and accordingly, he entered into one agreement with the TASMAC on 24.06.2021. By which, the property in question has been leased out to the TASMAC to continue to locate the TASMAC shop referred to above at the fourth respondent's premises.

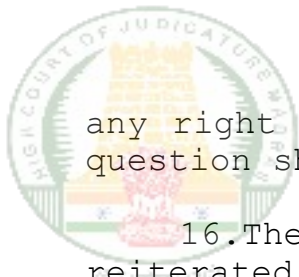


Therefore, insofar as continuing the TASMAC shop in the premises of the fourth respondent is concerned, it is legally validated by the lease agreement executed by the fourth respondent with the TASMAC dated 24.06.2021, wherein the petitioner, according to the fourth respondent, has no say, as the agreement entered into between the petitioner and the fourth respondent came to an end by 02.05.2020 itself as the three years lease period was over.

13.However, it is a case of the petitioner that, the actual lease agreement between the petitioner and the fourth respondent dated 03.05.2017 is for six years for which a sum of Rs.30,00,000/- was paid by the petitioner to the fourth respondent and it was a vacant land. Knowing well that the vacant land is given to lease to the petitioner with an understanding that the petitioner would spend money and construct the structure for the purpose of doing business and accordingly, the petitioner after having obtained permission from local authority and constructed the structure and let in the same to the TASMAC for locating the retail shop. Therefore, for six years period, the petitioner can maintain the lease with the fourth respondent. Therefore, unilaterally, the TASMAC cannot have any lease agreement with the fourth respondent without taking into confidence of the petitioner, as the petitioner is having the subsisting leasehold right of the property concerned even today.

14.Therefore, once the petitioner decided to terminate the agreement between the petitioner and the TASMAC, the same should be accepted by the TASMAC and the TASMAC shop should be vacated. However, contrary to the same, the request of the petitioner since has been rejected, through the impugned order of the respondents/TASMAC, dated 16.06.2021, the same shall be liable to be interfered with and a suitable direction can be given to the second respondent to vacate the TASMAC shop from the premises in question and hand over the possession.

15.On the other hand, it is a case of the TASMAC that, no doubt, originally TASMAC entered into an agreement with the petitioner, who, with the strength of the leasehold rights of the property concerned obtained from fourth respondent entered into an agreement with the TASMAC to locate the TASMAC shop and subsequently when the same was requested to be vacated, it was considered by the TASMAC, where the TASMAC had come to know that the lease agreement between the petitioner and the fourth respondent came to an end with three years period by May 2020 itself. Thereafter, the petitioner did not have any right over the property in question. Therefore, in order to continue to locate the TASMAC shop in the same address, the TASMAC had negotiated with the fourth respondent, who is the owner of the property and accordingly, a lease agreement had been entered into between the TASMAC and the fourth respondent on 24.06.2021. Thereby, the TASMAC shop already been located there, is continuing of course legally. Therefore, the petitioner cannot have



any right to claim that the TASMAC shop located in the premises in question shall be vacated by the TASMAC.

16.The learned respective counsel appearing for the parties reiterated aforesaid respective facts as projected by them on their behalf and seek indulgence of this Court.

17.I have considered the said rival case projected by the parties herein and have perused the materials placed before this Court.

18.Insofar as the property in question is concerned, it is admittedly the property of the fourth respondent from whom, the petitioner claimed to have obtained the leasehold right for six years with the lease agreement dated 03.05.2017.

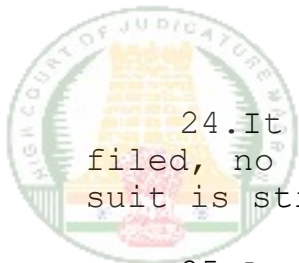
19.However, it is a claim of the fourth respondent, who is the owner of the property that, as per lease agreement dated 03.05.2017, it is not for six years and the terms of the lease agreement are differed than the one projected by the petitioner. Therefore, according to the fourth respondent, the lease agreement projected by the petitioner as if entered into between the fourth respondent and petitioner is a forged one.

20.Similar case has been made by the petitioner stating that the lease agreement projected by the fourth respondent as if entered into between the fourth respondent and the petitioner is a forged one.

21.Which lease deed is a forged one and which one is genuine cannot be decided by this Court. Moreover, it is to be noted that both the lease agreements have not been registered.

22.Be that as it may, insofar as the property is concerned, the owner is the fourth respondent, who entered into a lease agreement with the TASMAC on 24.06.2021 with that strength, the TASMAC is continuing with the IFML retail shop in the said address. Therefore, for continuous functioning of the TASMAC shop in the said address, as of now, there can be no legal impediment.

23.In this regard, it is further to be noted that, in order to get a protection on the strength of the lease agreement dated 03.05.2017 for six years period ie., between 2017 and 2023, the writ petitioner had already filed a civil suit in O.S.No.43 of 2021 on the file of the learned District Munsif Court, Madurai, seeking for judgment and decree for injunction restraining the fourth respondent from interfering with the possession and enjoyment of the suit property till the expiry of six years period as per the lease agreement dated 03.05.2017.



24.It is further to be noted that, though said suit has been filed, no interim order has been granted by the Civil Court and the suit is still pending.

25.As to whether, which agreement of lease between the petitioner and the fourth respondent is a genuine one and which one is fabricated one, can very well be decided by the Civil Court, for which, evidence have to be led in. Therefore, in the pending civil suit, both parties can let in evidence to establish their rights as to whether, the petitioner has the leasehold right for six years even by way of usufructuary mortgage or the petitioner has lost the leasehold right on the expiry of three years period between May 2017 and May 2020. That can very well be decided depending upon the evidence to be let in by both parties before the pending Civil Suit.

26.Therefore as of now, since the fourth respondent is admittedly the owner of the property concerned with whom, the TASMAC had already entered agreement to continue to locate and run the TASMAC shop by agreement dated 24.06.2021, the said shop can continue in the said address. Once the civil suit filed by the petitioner is decided, depending upon outcome of the civil Court's judgment and decree, the parties can work out their remedy not only the continuous possession and enjoyment of the suit property as a lessee by the petitioner but also as to whether any rent has to be paid by the petitioner or any usufructuary mortgage amount said to have been paid by the petitioner to the extent of Rs.30,00,000/- to be returned by the fourth respondent to the petitioner. As all these issues are depending upon the outcome of the Civil Court's judgment and decree, for which, this Court cannot express any view or opinion.

27.In that view of the matter, this Court feels that, absolutely there could be no ground to interfere with the impugned order passed by the respondents / TASMAC. As the respondents / TASMAC is, for the time being, entitled to continue the TASMAC shop in the property located belongs to the fourth respondent.

28.The present Writ Petition with a prayer couched therein would fail and therefore, the Writ Petition is liable to be dismissed with the aforesaid observations. Accordingly, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

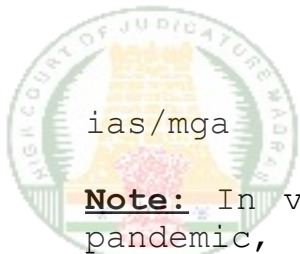
Sd/-

Assistant Registrar (AD-I)

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/ /2021

Sub Assistant Registrar(CS)



ias/mga

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 District Manager,
Tamilnadu State Marketing Corporation Ltd. (TASMAC),
No 100, Annanagar, Madurai 625 020.
2. The District Manager,
Tamilnadu State Marketing Corporation Ltd. (TASMAC),
Madurai South, Kappaloor,
Madurai District.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-30534[F] dated
28/09/2021)

+1 CC to M/s.B.ARUN, Advocate (SR-30801[F] dated
30/09/2021)

W.P. (MD) No.13759 of 2021
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NSN(CO)
KB(10.12.2021) 7P 5C