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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2021

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) Nos. 14999 & 16141 of 2020 and

W.M.P. (MD) Nos. 12639 & 13511 of 2020

Smt. S. Annalakshmi

... Petitioner
in both petitions

Vs.

1. The Hon'ble Secretary,
Home Department, Fort St. George,
Chennai - 600 009.
2. The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai - 600 005.
3. The District Revenue Officer-
cum-Additional District Magistrate,
Virudhunagar, Virudhunagar District.
4. The Special Tahsildar,
Sivakasi Taluk,
Virudhunagar District.
5. The Arunagiri Swamigal Trust,
Rep. by its Secretary,
Venkatesan,
363, Thattumettu Street,
Sattur Road, Sivakasi,
Virudhunagar District.

... Respondents
in both petitions

Prayer in W.P. (MD) No. 14999 of 2020: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent vide proceedings No. Oo. Mu. E5/11689/2020 dated 15.06.2020 and quash the same as illegal and consequently direct the third respondent herein to renew the periodical license from 01.04.2020 to 31.03.2022 to the petitioner with reference to the application to the renewal dated 20.03.2020 for the period from 01.04.2020 to 31.03.2022.

Prayer in W.P. (MD) No. 16141 of 2020: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the second respondent vide proceedings No. RA5(1)/7637/2020 EA No. 05-2020 dated 02.11.2020 to quash the same as illegal.



(in both W.Ps.)
For Petitioner
For R-1 to R-4
For R-5

: Mr.G.Thangavel
: Ms.M.Rajeswari,
Government Advocate.
: Mr.N.Dilip Kumar
* * *

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C O M M O N O R D E R

Heard the learned counsel appearing for the writ petitioner and the learned Government Advocate appearing for respondents 1 to 4 and the learned counsel appearing for the fifth respondent.

2. The petitioner had taken the petition mentioned property on lease from the fifth respondent trust. The lease was regularly renewed and it was valid up to 31.03.2019. Thereafter, the fifth respondent refused to renew the lease. However, the petitioner is very much in possession of the property in question. Since the petitioner faced threat of dispossession from the lessor, the petitioner had filed O.S. No.69 of 2018 before the jurisdictional civil Court. The fifth respondent is also said to have given a complaint before the concerned authorities.

3. In the site in question, the petitioner was running a fire crackers shop. She was given LE5 license also. Following the complaint lodged by the lessor, the license came to be cancelled by the District Revenue Officer, Virudhunagar District on 30.07.2019. Challenging the same, the writ petitioner Annalakshmi filed an appeal before the Commissioner of Revenue Administration. The appeal was also dismissed on 02.11.2020. The order dismissing the writ petitioner's appeal has been put to challenge in W.P.(MD) No.16141 of 2020. In the other writ petition, namely, W.P.(MD) No.14999 of 2020, the petitioner challenges the order dated 15.06.2020 passed by the District Revenue Officer, Virudhunagar District, declining to renew the writ petitioner's license.

4. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition.

5. His core argument is that the petitioner is very much in possession of the property in question on which she is running the business. It may be true that the landlord had refused to extend the lease. But then, the petitioner is a tenant holding over. The petitioner is not a tenant at sufferance. The petitioner's counsel wanted this Court to bear in mind the distinction in this regard. The learned counsel also placed reliance on the order dated 19.03.2020 passed by the Hon'ble Supreme Court in civil appeal No.9918 of 2011 (NAND RAM (D) TH. LRS. VS JAGDISH PRASAD(D)TH.LRS). The learned counsel drew my attention to what is set out in paragraph No.44 of



the order which reads as follows:-

"44. To sum up the legal position or status of a lessee whose lease has expired and whose continuance is not assented to by the landlord, is that of a tenant at sufferance. If, however, the holding over has been assented to in any manner, then it becomes that of a tenant from month-to-month. Similar, i.e. from month-to-month, is the status of a lessee who comes into possession under a lease for a period exceeding one year but unregistered. He holds it not as a lessee for a fixed term, but as one from month-to-month or year-to-year depending on the purpose of the lease. If upon a tenant from month-to-month (or year-to-year) and in either of the aforesaid two contingencies, a notice to quit is served, then on the expiry of the period, his status becomes of a tenant at sufferance. Waiver of that notice, or assent in any form to continuation restores to him his status as a tenant from month-to-month, but capable, of once again being terminated with the expiry of any ensuing tenancy month."

6. The learned counsel wanted to challenge the impugned orders passed by the authorities, particularly on the ground that they have completely misconstrued the nature of possession of the writ petitioner over the petition mentioned property. He wanted this Court to set aside the impugned orders and allow the writ petitions.

7. Per contra, the learned Government Advocate as well as the learned counsel submitted that the orders impugned in these writ petitions do not call for any interference.

8. I carefully considered the rival contentions and went through the materials on record.

9. Before considering the rival contentions, it is necessary to have a brief look at the relevant statutory provisions. Rules 103, 112 and 118 of the Explosives Rules, 2008 reads as follows:-

"103. Procedure to be observed for issue of no objection certificate and for grant of licence.- (1) The applicant desiring to obtain a licence from the Chief Controller or Controller, shall apply to the District Magistrate or the Director General of Mines Safety with copies of the site plan showing the location of the premises proposed to be licensed for issue of a certificate to the effect that there is no objection to the applicant receiving licence for the site proposed.

(2) The District Magistrate shall be the authority to issue the certificate referred to in sub-rule (1) if the area of the proposed site does not come under the Indian Mines Act, 1952 (35 of 1952) and the



Director General of Mines Safety shall be such authority if the area of the proposed site is for ANFO, Liquid Oxygen Explosives or SME and comes under the Indian Mines Act, 1952.

(3) The District Magistrate on receipt of application referred in sub-rule (1), shall make verification of the antecedents of the applicant, lawful possession of the site, genuineness of the purpose, interest of public and any other verifications or enquiries as may be specifically required by the licensing authority to be carried out, if any, and on any other matter as deemed necessary.

(a) For verification of the interest of public, the District Magistrate shall forthwith cause a notice to be published calling upon the public to submit objections, if any, with reasons thereof, within a period of one month from the date of publication of the notice and specifying the date, time and place for consideration of objections by him. Where the site of the proposed premises lies within 1.5 kilometers of the limits of the jurisdiction of any town planning municipal authority or port or air port or satellite or space craft launching station or similar establishments of national importance, the District Magistrate shall cause the notice to be served to such authority or establishment. The day of hearing for consideration of objections shall be fixed as early as possible, after the expiration of the period of one month from the date of publication of notice. On receipt of objection, the District Magistrate shall call the person or persons raising objection and also the applicant, giving not less than seven clear days before the day fixed for hearing for consideration of the objection. On the day fixed for the hearing or any day to which such hearing may be adjourned from time to time, the District Magistrate shall hear any objection relating to the purpose of no objection certificate and shall make such enquiry, as he may deem necessary to assess justification of such objection.

(b) If the quantity of explosives does not exceed one hundred kilograms or in case of ANFO or Liquid Oxygen Explosives or SME or transport of explosives in a road van, the notice for public for objection as stated in clause (a) shall not be necessary. .. ''

Rule 112 reads as follows:-

"112. Renewal of licence.-(1) Every licence except the licences granted for a specific period not exceeding one year, shall be renewable for a maximum period of five financial years ending on the 31st March.



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(2) Every application under sub-rule (1) for renewal of the licence shall be accompanied by the following documents, namely :-

- (a) application in Form RE- 1;
- (b) the original licence;
- (c) prescribed renewal fee.

(3) A licence may be renewed by the authority empowered to grant such licence :

Provided that a licence which has been granted by the Chief Controller may be renewed without any alteration by a Controller duly authorised by the Chief Controller in this behalf:

Provided further that a licence, which has been granted by the District Magistrate, may be renewed without any alteration by a Sub-Divisional Magistrate or an Executive Magistrate duly authorised by the District Magistrate in this behalf.

(4) Every application for the renewal of a licence shall be made so as to reach the licensing authority or the authority empowered to renew the licence on or before the date on which the licence expires.

(5) If the application for renewal reaches the renewing or licensing authority on or before the date of expiry, the licence shall be deemed to be in force until such date as the licensing authority renews the licence or until an intimation that the renewal of the licence is refused has been communicated to the applicant.

(6) The same fee shall be charged for the renewal of a licence for each year as for grant thereof:

Provided that if the renewal application together with complete documents is received by the licensing authority after the date of expiry but not later than six months from the date of expiry; and if the licensing authority is satisfied that such delay is beyond the control of the licensee, the licence may, without prejudice to any other action that may be taken in this behalf, be renewed on payment of penalty fee which is equal to one year's licence fee.

(7) In case of an application for the renewal of the licence for a period of more than one year at a time, the fee prescribed under proviso of sub-rule (6), if payable, shall be paid only for the first financial year of renewal.

(8) Every licence granted under these rules other than a licence granted for a specified period shall be renewable for a maximum period of five years where there has been no contravention of the Act or these rules framed there under or of any condition of the licence so renewed.



(9) Where a licence renewed for more than one financial year is surrendered before its expiry, the renewal fee paid for the unexpired portion of the licence shall be refunded to the licensee:

Provided that no refund of renewal fee shall be made for any financial year during which-

(a) the licensing authority received the renewed licence for surrender;

(b) any explosive is received or stored on the authority of the licence.

(10) No licence shall be renewed if the application for renewal is received by the licensing or renewing authority after three months of the date of its expiry. An application for revalidation received after three months of the expiration of the licence shall be considered as an application for a new licence.

(11) When a licence is renewed by the Chief Controller or a Controller, an intimation to that effect shall be sent to the District Magistrate concerned and when a licence is renewed by the District Magistrate, intimation to that effect shall be sent to the Controller having jurisdiction.'

Rule 118 reads as follows:-

118. Suspension and revocation or cancellation of licence.-(1) Every licence granted under these rules shall-

(I) stand cancelled, if-

(a) the licensee has ceased to have any right for the lawful possession over the licensed premises;

(b) the licensee is convicted and sentenced under any criminal offences or ordered to execute under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974), a bond for keeping peace for good behaviour.

(II) stand cancelled, if the no-objection certificate is cancelled by the authority issuing the same or District Magistrate or the State Government in accordance with rule 115.

(III) be liable to be suspended or cancelled by an order of the licensing authority for any contravention of the Act or these rules or of any condition contained in such licence, or by order of the Central Government, if it is satisfied that there are sufficient grounds for doing so:

Provided that before suspending or cancelling a licence under this rule, the holder of the licence shall be given an opportunity of being heard.

(2) The suspension or cancellation shall take effect from the date specified therein.

(3) An order of suspension or revocation of a



licence shall be deemed to have been served if sent by post to the address of the licensee entered in the licence.

(4) The suspension of a licence shall not debar the holder of the licence from applying for the renewal.

(5) Notwithstanding anything contained in sub-rule (1), an opportunity of being heard may not be given to the holder of the licence before his licence is suspended or cancelled in cases—

(i) where the licence is suspended by a licensing authority as an interim measure for violation of any of the provisions of the Act or these rules or of any conditions contained in such licence and in his opinion such violation is likely to cause imminent danger to the public:

Provided that where a licence is so suspended, the licensing authority shall give the holder of the licence an opportunity of being heard before the order of suspension is confirmed; or

(ii) where the licence is suspended or cancelled by the Central Government, if that Government considers that in the public interest or in the interest of the security of the State, such opportunity should not be given.

(6) A licensing authority or the Central Government suspending or cancelling a licence shall record its reason for so doing in writing."

10. Rule 103 clearly contemplates that the licensee must show lawful possession of the site. Of course Rule 112 which deals with renewal of license does not refer to it. Referring to the same, one cannot come to the conclusion that the character of possession need not be taken into account at the of renewal. This is because Rule 118 categorically states the license will be cancelled if the licensee has ceased to have any right for the lawful possession over the licensed premises.

11. Now the question that arises is what is lawful possession and whether the petitioner's possession over the licensed premises can be considered as lawful. This issue is no longer *res integra*. As early as in the year 1974, the Hon'ble Supreme Court in the decision reported in (1974) 1 SCC 48 (M.C. Chockalingam V. V. Manickavasagam) held as follows:-

"Turning to Rule 13, even in the first part if the applicant for the licence is the owner of the property he has to produce before the licensing authority the necessary records not only relating to his ownership but also regarding his possession. It is implicit, that the owner having a title to the property,



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if he can satisfy the licensing authority with regard to his possession also, will indeed be in 'lawful possession', although the word 'lawful' is not used in the first part. It is in that context that the word 'possession' is even not necessary to be qualified by 'lawful' in the first part of Rule 13. If, however, the applicant for the licence is not the owner, there is no question of his showing title to the property and the only requirement of the law is to produce to the satisfaction of the authority documentary evidence with regard to his lawful possession of the property. The word 'lawful', therefore, naturally assumes significance in the second part while it was not even necessary in the first part. The fact that after expiry of the lease the tenant will be able to continue in possession of the property by resisting a suit for eviction, does not establish a case in law to answer the requirement of lawful possession of the property within the meaning of Rule 13. Lawful possession cannot be established without the concomitant existence of lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it. This Court in *Lalu Yeshwant Singh's case* (supra) had not to consider whether juridical possession in that case was also lawful possession. We are clearly of opinion that juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession. "

12. This decision has been consistently followed. The Hon'ble Supreme Court in the decision reported in (2006) 1 SCC 228 (*C.Albert Morris V. K.Chandrasekaran and others*) reiterated the position in law. The Hon'ble Division Bench of this Court relied on it in the decision reported in 2018 (1) CTC 593 (*V.Geetha V. Superintending Engineer, Thanjavur Sub-Division Office*).

13. Since the petitioner continues to be in possession, she can be called as tenant holding over. That would not make his possession lawful. Therefore, the authorities have rightly declined to consider the request of the petitioner. When the landlord has refused to extend the lease, the petitioner's possession ceased to be lawful for the purpose of the Explosives Act and Rules framed thereunder.



14. The case of the lessor is that the petitioner's lease was in force up to 2016 and the subsequent document furnished by the petitioner is a fabricated one. I do not want to go into this controversy. This is because it is not necessary for giving disposal to the issue raised in this writ petition.

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15. I sustain the impugned order. This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar(CS)

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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 Hon'ble Secretary,
Home Department, Fort St. George,
Chennai - 600 009.
2. The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai - 600 005.
3. The District Revenue Officer-
cum-Additional District Magistrate,
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Rep. by its Secretary,
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363, Thattumettu Street,
Sattur Road, Sivakasi,
Virudhunagar District.



+1 CC to M/s.SPL GP (SR-4671[F] dated 12/02/2021)

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-4566[F] dated 11/02/2021)

+1 CC to M/s.G.THANGAVEL, Advocate (SR-4531[F] dated 11/02/2021)

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W.P. (MD) Nos. 14999 & 16141 of 2020

10.02.2021

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SSS (CO)

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