



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) .No.16635 of 2021

and

W.M.P (MD) .No.13505 of 2021

Malaiyaiyan

... Petitioner

Vs.

1.The Secretary,
Thanjavur Market Committee,
Thanjavur,
Thanjavur District.

2.The Market Committee Superintendent,
Market Committee,
Pattukottai,
Thanjavur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, call for the records of the impugned notice of the first respondent issued to the petitioner in Na.Ka.No.Aa2/3749/2021, dated:02.09.2021 and quash the same as illegal.

For Petitioner : Mr.MA.Gouthaman
For Respondents : Mr.S.Shanmugavel,
Additional Government Pleader.

ORDER

The Writ Petition has been filed on 14.09.2021. It has been filed in the nature of Certiorarified Mandamus seeking records of a notice of the first respondent/ The Secretary, Thanjavur Market Committee, Thanjavur, Thanjavur District in Na.Ka.No.Aa2/3749/2021 dated 02.09.2021 and to interfere with the same.

2. The matter came up for consideration before my learned predecessor as reflected in the Court records on 17.09.2021. On that particular date, the respondents had already taken possession of the shop of the petitioner. The order of my learned predecessor is extracted in entirety as follows:

"The petitioner challenges a notice dated 02.09.2021 on the basis that the earlier order of



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this Court dated 16.08.2021 in W.P(MD).No.14309 of 2021 was not complied with.

2. Mr.P.Subbaraj, learned counsel for the State, accepts notice on behalf of both the respondents. On instructions, he submits that the Thanjavur Market Committee took possession of the relevant shop on 14.09.2021 and the said shop has been locked and a seal has been affixed.

3. Learned counsel for the petitioner seeks time to obtain instructions from his client.

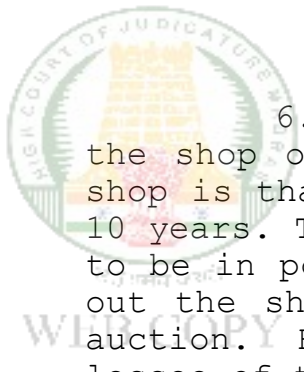
4. Let the matter appear on September 21, 2021. Until the next date of hearing, the respondents are directed not to take any further steps pursuant to the taking over of possession.

17.09.2021"

3. A reading of the said order very clearly shows that the learned counsel for the petitioner did not voluntarily disclose to the learned Single Judge that three days prior, on 14.09.2021, the possession of the shop had already been taken by the respondents. To that extent, there was suppression of a material fact before the learned Single Judge. This fact was brought to the notice of the learned Single Judge only by the learned counsel for the State who stated that Thanjavur Market Committee had taken possession of the relevant shop on 14.09.2021 and the shop had been locked and a seal had been affixed.

4. A further relief to open the lock to permit the petitioner to be given re-possession of the shop has not been sought by the petitioner herein since 17.09.2021 when at least the learned counsel for the petitioner and the petitioner through the learned counsel came to know a fact which they already knew namely that the possession had been taken on 14.09.2021 itself. On the other hand, counters have been filed, rejoinder has been filed and an additional counter has been filed. These might not be of any help to the petitioner.

5. The learned counsel for the petitioner during the course of the arguments pointed out an earlier order issued by the second respondent dated 02.08.2021. In that particular order, it had been very clearly stated that the respondents had an intention to let the shop on auction and therefore, prior to that, the shop has to be cleaned, maintained and renovated and for that purpose, the shop must be vacated. In effect, the respondents had very clearly stated that the shop must be vacated prior to the shop being let out on auction.



6. The only reason that the petitioner claims possession of the shop or that the Court should grant forever possession of the shop is that he has been in possession as a lessee for nearly about 10 years. That does not give any right to the petitioner to continue to be in possession. If the respondents take a decision to auction out the shops, the petitioner can at the most participate in such auction. He cannot dictate terms to the respondents. He is only a lessee of the shops.

7. The order of the second respondent dated 02.08.2021 had been questioned by the petitioner herein in W.P(MD).No.14309 of 2021. An order have been passed by the learned Single Judge of this Court on 16.08.2021. Paragraphs 5, 6 and 7 of the said order are extracted below:

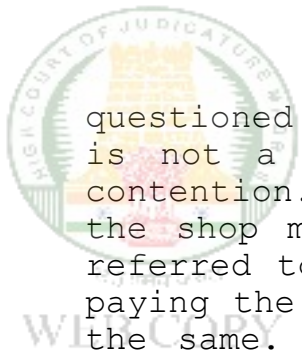
"5. In the above facts and circumstances, there is no doubt that the rental agreement between the petitioner and the respondents has expired. Therefore, the petitioner does not have any legal right to continue to occupy and run the shop in question. Nonetheless, since the petitioner appears to have been running such shop for a period of 10 years and keeping in mind that no fresh auction has taken place as on date, the respondents may consider the petitioner's request for an extension of the rental agreement.

6. Accordingly, without going into the merits of the matter, the respondents herein are directed to consider the petitioner's request dated 04.08.2021, for extension of the rental agreement and to pass a reasoned order thereon within a period of thirty (30) days from the date of receipt of a copy of this order.

7.W.P(MD).No.14309 of 2021 is disposed of on these terms without any order as to costs."

8. The learned Single Judge had very clearly stated in paragraph 5 that the petitioner does not have any legal right to continue to occupy and run the shop in question. An assertion and a specific finding by the learned Single Judge is that the petitioner does not have any legal right to continue to occupy the shop or even to run the shop. It should be kept in mind, however, the learned Single Judge had thereafter stated that since the petitioner had given a request or a representation for extension of the rental agreement, a "reasoned" order must be passed by the respondent. That order is now put into test by this Writ Petition. That order is dated 02.09.2021.

9. Learned counsel read out that particular order and stated that it was an exact replication of the earlier order



questioned in the earlier Writ Petition. He stated that this order is not a reasoned order. I do not agree with that particular contention. The reason is this. The respondents have stated that the shop must be vacated because it must be renovated. They had referred to the earlier order also and they have stated that after paying the entire arrears, the shop must be vacated. The reason is the same. There cannot be two different reasons. They want to auction the shop and prior to auctioning the shop, it has to be renovated. The repairs will have to be made and then only, it can be auctioned. They cannot create a new reason. If a fresh reason had been given in that particular order, the petitioner would only question that stating that the said reason was not given in the earlier order.

10. In a Writ Court, judicial review will not lie on the nature of the order passed. The procedure alone will be examined. The representation had been considered. An order had been passed immediately. The possession had also been taken and as stated above, that fact was suppressed before the learned Single Judge on 17.09.2021. When the matter came up for admission, no other relief has been sought by the petitioner herein.

11. The learned counsel stated that the rejoinder affidavit must be examined by this Court. In the rejoinder, the petitioner had stated that the respondents have no due respect to the orders of this Court and had acted as per their whims and fancies and defeated the purpose of the petitioner's grievance. I am not able to understand that particular contention because a party who comes to Court and suppresses the material fact about taking over of possession cannot turn around and point a finger at the respondents. If possession had been taken on 14.09.2021, the petitioner normally would have immediately contacted his advocate and would have certainly stated that possession had been taken. If that information had been passed on to the learned counsel and the learned counsel had again thought it prudent to suppress it from this Court, then I cannot come to the rescue of either to the party or address the arguments put forth by the learned counsel. The fact is possession has been taken and no other relief has been sought.

12. In view of the same, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

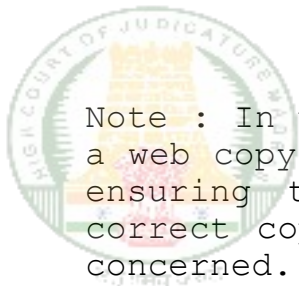
Sd/-

Assistant Registrar (CS-II)

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/ /2022

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 Secretary,
Thanjavur Market Committee,
Thanjavur,
Thanjavur District.
- 2.The Market Committee Superintendent,
Market Committee,
Pattukottai,
Thanjavur District.

+1 CC to M/s.MA.GOUTHAMAN, Advocate (SR-40496[F]
dated 27/12/2021)

+1 CC to M/s.SPL GP (SR-40466[F] dated 27/12/2021)

W.P. (MD) .No.16635 of 2021
23.12.2021

SK(CO)
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