



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2021

CORAM

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD)No.17495 of 2020

and

W.M.P. (MD)Nos.14641 and 14643 of 2020

WEB COPY

J.Raju

: Petitioner

Vs.

1.The Principal Secretary /

Revenue Administrative Commissioner,  
Chepauk, Chennai - 600 005.

2.The District Collector,

Kanyakumari District at Nagercoil.

3.The District Revenue Officer,

Kanyakumari District, Nagercoil.

4.The Sub Collector,

Sub Collector Office, Nagercoil,  
Kanyakumari District.

5.The Tahsildar,

Agastheeswaram Taluk,  
Nagercoil, Kanyakumari District.

6.Sri Mutharamman Sri Nadarajar Swamy Koil Trust (SMN Trust),  
represented by its Present President,

S.Nagalingam Asari, Nagercoil,  
Kanyakumari District.

: Respondents

PRAYER :- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3<sup>rd</sup> respondent in மு.மு.சு/27947/2019 dated 06.12.2019 and the impugned appeal order passed by the 1<sup>st</sup> respondent in Na.Ka.No.வநி.5(2)/860/2020, dated 05.11.2020, quash the same and consequently, direct the 3<sup>rd</sup> respondent to grant renewal of the license to the petitioner as per the petitioner's application dated 28.03.2019, till the competent Civil Court disposes of the case in O.S.No.21 of 2019 on the file of Principal District Munsif Court, Nagercoil and Regulation of Landlord and Tenant Original Petition in RLTOP No.8 of 2020 filed before the Principal District Munsif Court, Nagercoil.



For R1 to R5

:Mr.M.Rajarajan

Additional Government Pleader

For R6

:Mr.R.J.Karthick

**ORDER**

Heard the learned Counsel appearing on either side.

2.The petitioner became a tenant under the 6<sup>th</sup> respondent religious trust. The 6<sup>th</sup> respondent had permitted the petitioner to run a shop for selling fire crackers. The petitioner obtained a licence under the Explosives Act, 1984 and the Rules framed thereunder, on 13.10.2017. The licence was valid upto 31.03.2019. Unfortunately, for the petitioner, the lease period expired on 31.05.2019 and the landlord declined to extend the lease period. The landlord also had serious objection, as regards the manner in which, the petitioner was carrying on his business activities. The specific allegations of the 6<sup>th</sup> respondent is that contrary to the licence condition, the petitioner had committed encroachment on an adjacent property and was stocking the fire crackers there. By then, the time for renewing the licence came.

3.Both the Writ Petitioner as well as the 6<sup>th</sup> respondent moved the jurisdictional Civil Court for relief. The petitioner had filed O.S.No.21 of 2019 on the file of the Principal District Munsif Court, Nagercoil, for restraining the landlord from dispossessing him, except in the manner known to law.

4.When the District Revenue Officer, Nagercoil, is the authority competent to renew the petitioner's licence, the licensing authority took note of the fact that the petitioner's possession has ceased to be lawful and rejected the petitioner's request for renewal. Aggrieved by the same, the petitioner moved the first respondent. The first respondent also, by the impugned order, dated 05.11.2020, rejected the petitioner's appeal. Challenging the same, the present Writ Petition came to be filed.

5.The petitioner's Counsel reiterated all the contentions set out in the affidavit filed in support of this Writ Petition and wanted me to set aside the impugned order and allowed the Writ Petition. He would also place considerable reliance on the order, dated 05.07.2016 passed by the Honourable Supreme Court in the case of Civil Appeal No.5435 of 2016.

6.The learned Counsel relying on the said decision would contend that the licensing authority could have granted renewal notwithstanding the objection and opposition of the landlord. I am afraid that the said decision may not come to the rescue of the petitioner. Because, the said decision turned on the interpretation of Section 492 (3) of Kerala Municipality Act,



1994. The Honourable Supreme Court had extracted the said provision, which reads as follows:

*"(3)When any person intending to obtain a licence or permission for the first time and where the applicant is a person other than the owner of the premises in question, he shall, along with the application produce the written consent of the owner of the premises and the period of the licence shall not exceed the period, if any, specified in the consent."*

7.A careful reading of the above, the Honourable Supreme Court held that the statutory provision expected the applicant to obtain the consent of the owner, only when the licence is sought in the first instance and that the provision pertaining to renewal did not contain any such stipulation. But, in the case on hand, the statutory position is completely different. As rightly contended by the learned Counsel for the 6<sup>th</sup> respondent, the licensee will have to be in lawful possession throughout.

8.Rule 103 of the Explosives Rules, 2008, mandates that the Licence Authority, on receipt of the application, shall make verification of the antecedents of the applicant and also the lawful possession of the site. Of-course, Rule 112, which deals with renewal of licence, does not incorporate a similar condition. But, then, Rule 118 states that every licence granted under this Rules shall stand cancelled, if the licensee has ceased to have any right for the lawful possession over the licensing premises.

9.Therefore, I concur with the contentions of the learned Counsel for the 6<sup>th</sup> respondent/landlord that the moment the licensee's possession over the site in question ceased to be lawful, the licence is liable to be cancelled. When the District Revenue Officer, Nagercoil, was to pass orders on the renewal application, the possession of the petitioner over the site in question ceased to be lawful.

10.The distinction between the lawful possession and litigious possession is well settled (***C.Albert Morris vs K.Chandrasekaran, reported in (2006) 1 SCC 228***). Therefore, I have no hesitation to come to the conclusion that the authorities rightly declined the petitioner's request for renewal of the licence. The impugned orders are sustained.

11.At this stage, the learned Counsel for the petitioner states that the petitioner has stocked fire crackers and that he may be given reasonable time to dispose of the same to the lawful buyers. The appellate authority has granted time upto November'2021 to do so. Since, on account of the pendency of the ~~Writ Petition~~ and on account of the refusal of the 5<sup>th</sup> respondent



to grant permission, the petitioner could not avail the said concession given by the appellate authority, taking note of the petitioner Counsel's contention and the facts on record, I grant time till 31.05.2021 to the petitioner to clear the stock. The petitioner through his Counsel gives an undertaking that the petitioner will not engage in any more purchase of fire crackers and the concession given by this Court is limited to clearing the stock.

12. Subject to this permission to clear the existing stock, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I)

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/ /2021

Sub Assistant Registrar (CS)

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To

1. The Principal Secretary /  
Revenue Administrative Commissioner,  
Chepauk, Chennai - 600 005.

2. The District Collector,  
Kanyakumari District at Nagercoil.

3. The District Revenue Officer,  
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4. The Sub Collector,  
Sub Collector Office, Nagercoil,  
Kanyakumari District.

5. The Tahsildar,  
Agastheeswaram Taluk,  
Nagercoil, Kanyakumari District.

+1 CC to MR.F.DEEPAK, Advocate ( SR-3654[F] dated 08/02/2021 )

+1 CC to MR.R.J.KARTHICK, Advocate ( SR-3451[F] dated 05/02/2021 )

W.P.(MD)No.17495 of 2020

04.02.2021

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