



W.P. No. 29577 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 29577 of 2022

Surana Tyres
Prop. Uttam Chand
No.28, Whites Road
Royapettah
Chennai - 600 014.

... Petitioner

-VS-

1. The Commissioner
Greater Corporation of Chennai
Rippon Building
Chennai - 600 003.
 2. A/m. Sri Rathina Vinayagar and
Sri Durai Amman Thirukoil
Represented by its Executive Officer
No.49, Whites Road
Royapettah, Chennai - 600 014.
- Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Second Respondent to remove the lock and seal on the premises at bearing Old No. 28, New No.44, Whites Road, Royapettah, Chennai - 600 014.



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For Petitioner : Mr. S.Arivazhagan

For Respondents : Mrs. P.T.Ramadevi (For R1)

Mr. A.K.Sriram

For M/s. A.S. Kailasam Association (For R2)

ORDER

Heard Mr. S.Arivazhagan, Learned Counsel for the Petitioner, Mrs. P.T.Ramadevi, Learned Counsel for the First Respondent and Mr. A.K.Sriram, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the materials placed on record.

2. The Writ Petition has been filed for directing the Second Respondent to remove the lock and seal on the premises that was in the occupation of the Petitioner at Old No. 28, New No.44, Whites Road, Royapettah, Chennai – 600014 placing reliance on the order dated 23.09.2022 in W.P. No. 22519 of 2022 passed by the Court in respect of another tenant, viz., Deepak, in respect of the same building, which is owned by the Temple of the Second Respondent.

3. It is borne out from the materials placed on record that the decree for eviction of the occupants in the entire property has been passed by this Court



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pursuant to a comprise entered between the parties as recorded on 21.02.1977

in S.A. No. 1775 of 1974 arising out of O.S. No. 6831 of 1968 on the file of the City Civil Court, Chennai, in which the lessee of the property, viz., J.Mangilal, had agreed to vacate from that property after the expiry of the lease period. It is not in dispute that the Petitioner had come into occupation of the portion of the property through the said J.Mangilal only in the year 2009 after the aforesaid decree was passed by this Court, though proper details in that regard have not been disclosed by him. In this context, it would also be necessary to refer to the observations of this Court in the order dated 23.09.2022 in W.P. No. 22519 of 2022 in respect of the said Deepak referred by the Petitioner as extracted below:-

“8. The Petitioner has not produced even a scrap of paper to indicate payment of any amount towards rent or lease amount to the Temple. The Petitioner in the affidavit states that rent is paid to corporation towards property tax due. Due to complex facts, this Court need not go further, except observe that the liability of encroacher towards damages for use and occupation of vacant land cannot be disputed. In such circumstances, this Court directs the second respondent to



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de-seal the premises on condition that the Petitioner shall pay a sum of Rs.5,00,000/- [Rupees Five Lakhs Only] towards damages for use and occupation. The Respondents shall open or de-seal the premises only upon the receipt of payment of Rs.5,00,000/-.

9. *It is now admitted that the Petitioner himself is in possession of an extent of 300 Sq.ft. of land and building in Whites Road. The fair rent if assessed on the basis of the provisions under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, it will not be less than Rs.30,000/- per month under Section 78(5) of the Act, during the proceedings, the Joint Commissioner shall order the encroacher to deposit such amount as may be specified in consideration of the use and occupation of the premises. Hence, this Court in the instant case having regard to the admitted facts is inclined to allow this Writ Petition subject to terms indicated above. ”*

Though similar relief is sought by the Petitioner also, it is informed by Learned Counsel for the Second Respondent that in execution of the aforesaid decree passed by this Court, the Second Respondent has taken possession of the



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property through the bailiff of the Execution Court on 25.11.2022 and a memo dated 28.11.2022 has been filed to that effect, which is placed on record. In such circumstances, the question of extending the benefit which had been granted to the said Deepak in the order dated 23.09.2022 in W.P. No. 22519 of 2022 passed by this Court does not arise in this case.

4. Learned Counsel for the Petitioner lastly makes a fervent plea that some of goods of the Petitioner are still lying in the portion of the property occupied by him, which he may be permitted to remove from there. In response, Learned Counsel for the Second Respondent states that if the Petitioner makes any such written requisition, the Second Respondent would do the needful, and shall be fully videographed in that regard.

In the result, the Writ Petition is disposed on the aforesaid terms. No costs.

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Index: Yes/No

Note: Issue order copy by 04.01.2023.



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To

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P.D. AUDIKESAVALU, J.

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