



WEB COPY

W.P(MD).No.9633 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.05.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD).No.9633 of 2022

and

W.M.P(MD)No.6912 of 2022

Marikar (Motors) Limited
Nagercoil Branch,
Nagercoil Village,
Kanyakumari District,
represented by its Managing Director ...Petitioner

Vs.

1.The Superintendent of Police,
Kanyakumari District.

2. The Inspector of Police,
Vadasery Police Station,
Nagercoil,
Kanyakumari District.

3.Mohan Soloman

4.Chandran Solomon ...Respondents

(Respondents 3 & 4 rep. By their
Power Agent Dr.M.R.Moris

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents herein and their subordinates to provide adequate police protection for doing their business in the tenanted premises in Survey No.1382/806, measuring 20 cents in Nagercoil Village, Agasteeswaram Taluk, Kanyakumari District, and forbearing the respondents herein from in any manner interfering with the peaceful possession and enjoyment of the petitioner's tenanted premises in Survey No.1382/806, measuring 20 cents in Nagercoil Village, Agasteeswaram Taluk, Kanyakumari District, without following due process of law.

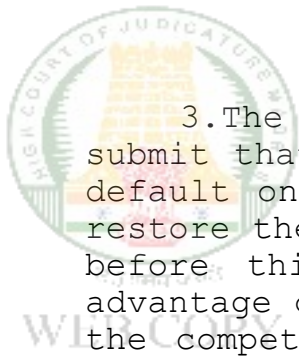
For Petitioner	:	Mr.Issac Mohanlal Senior Counsel For Mr.K.Suresh Kumar
For R1 and R2	:	Mr.K.Sanjai Gandhi Government Advocate (Crl.Side)



ORDER

This Writ Petition has been filed in the nature of Mandamus, seeking for a direction to the respondents herein and their subordinates to provide adequate police protection for doing their business in the tenanted premises in Survey No.1382/806, measuring to an extent of 20 cents in Nagercoil Village, Agasteeswaram Taluk, Kanyakumari District, and forbearing the respondents herein from in any manner interfering with the peaceful possession and enjoyment of the petitioner's tenanted premises in the said place, without following due process of law.

2.The petitioner is a tenant of the respondents 3 and 4 from the year 1970 for the vacant site measuring an extent of 20 cents, comprised in S.No.1382/806, Nagercoil Village, Agastheeswaram Taluk, Kanyakumari District and running an automobile showroom and a service centre all these years by putting up permanent concrete construction and providing necessary infrastructures therein. In the year 1983, the petitioner had approached the respondents 3 and 4 offering to purchase the said tenanted premises, in view of the permanent construction put up by them. However, the third and fourth respondents through their power agent had filed a suit in O.S.No.666 of 1983, on the file of the Additional District Munsif Court, Nagercoil, for recovery of possession. In the said suit, besides filing written statement, the petitioner had filed an application in I.A.No.1138 of 1983 and prayed to direct the respondents 3 and 4 to sell the suit property for the price fixed by the Court claiming the benefit under the City Tenants Protection Act. Thereafter, an Advocate Commissioner was appointed to estimate the value of permanent structure and other structures available in the suit property. The Architect had submitted a report stating that the value of the structure was approximately valued at Rs.1,80,000/- during the year 1983. Finally, the suit had been filed by the respondents 3 and 4 was allowed and application filed by the petitioner was dismissed vide common judgment and decree, dated 16.08.2004. As against which, the petitioner had filed an Appeal Suit in A.S.No.69 of 2005 before the learned II Additional Sub-Judge, Nagercoil and also filed C.M.A.No.15 of 2005 against the dismissal of I.A.No.1138 of 1983 and the same were also dismissed on 22.10.2008, as against which, the petitioner had filed a Second Appeal before this Court in S.A.(MD)No.632 of 2009. This Court, initially granted stay for the operation of the judgment and decree, dated 22.10.2008 in A.S.No.69 of 2005, on the file of the Additional Sub Judge, Nagercoil. However, during the Pandemic period, the said Second Appeal was dismissed for non-appearance of the learned counsel. Taking advantage of the said situation, on 05.05.2022, the respondents 3 and 4 erected fabricated iron metal sheets in front of the petitioner's rented portion and decided to demolish the entire property, thereby, the present Writ Petition has been filed.



3.The learned Senior Counsel appearing for the petitioner would submit that though the petitioner's Second Appeal was dismissed for default on 21.08.2019, the petitioner is taking effective steps to restore the second appeal to file and filed appropriate application before this Court and the same was not yet numbered. Taking advantage of the dismissal of the Second Appeal, without approaching the competent civil Court for execution of the decree obtained by the private respondents in the lawful manner, the private respondents erected a fabricated iron metal sheets and decided to demolish the property is not a sustainable one without following due process of law. The petitioner's possession was deprived of by the private respondents, is not a sustainable one. Further, he would state that though the First Appeal filed by the petitioner was dismissed, a Civil Miscellaneous Appeal filed by the petitioner is still pending.

4.Since no adverse order is going to be passed against the private respondents 3 and 4, notice to them is dispensed with.

5.Considering the above facts and circumstances of the case, even on a bare perusal of the prayer itself, it is clear that there is a dispute between the petitioner and the private respondents. Therefore, the Writ Petition is only maintainable as against state and state instrumentality and not against the private respondents. Hence the prayer sought for in this petition cannot be granted.

6.Accordingly, the writ petition stands dismissed. No costs. However, liberty is granted to the petitioner to work out the remedy before the competent civil Court, in the manner known to law. Consequently, the connected miscellaneous petition is also closed.

7.After dismissal of this petition, the learned Senior Counsel, on instructions, would submit that the petitioner is ready to hand over the premises to the land lord within a period of four weeks from the date of receipt of a copy of the order. He would further submit that this Court may issue direction to the land lord/plaintiff to pay a sum of Rs.50,000/- as ordered by the trial Court and this Court may issue direction to the Law Enforcing Agency to deliver the vehicle and other machineries, which was erected and stationed by the petitioner, in the mean time. Since the petitioner himself has agreed to hand over the vacant site to the private respondent/land lord, the land lord is directed to pay a sum of Rs.50,000/- as ordered by the trial Court within a period of two weeks from the date of receipt of a copy of the order and ensure the safety while handing over vehicles and other machineries to the petitioner, including other properties.

8.In view of the above, the respondent police is directed to hand over the vehicle, machineries and other



properties to the petitioner. This exercise shall be completed within a period of four weeks from the date of receipt of a copy of the order.

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Sd/-

Vacation Officer/
Assistant Registrar (CS-I)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

lr

To

1.The Superintendent of Police,
Kanyakumari District.

2. The Inspector of Police,
Vadasery Police Station,
Nagercoil,
Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.SURESH KUMAR, Advocate (SR-23650[F] dated 11/05/2022)

W.P (MD) .No.9633 of 2022
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NSN (CO)
GC (18.05.2022) 4P 5C