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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	20.04.2022
DELIVERED ON	29.04.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CR.P.(MD)No.1712 of 2021

and

C.M.P.(MD)Nos.1151 & 9165 of 2021

The Secretary,
Tanjore Union Club,
81, Gandhiji Road,
Thanjavur.

...Revision Petitioner/Appellant/Respondent

Vs.

The Estate Officer,
Thanjavur City Municipal Corporation,
Thanjavur.

...Respondent/Respondent/Petitioner

PRAYER: Civil Revision Petition under Section 115 of the Civil Procedure Code, to call for the records relating to the order dated 07.10.2021 in C.M.A.No.15 of 2021 on the file of the learned Principal District Judge, Thanjavur confirming the order dated 17.09.2021 in Roc.No.9706/2021/MCF3, passed by the Estate Officer, Thanjavur City Municipal Corporation, set aside the same and allow the present Civil Revision Petition.

For Petitioners	:Mr.A.R.L.Sundaresan Senior Counsel for A.L.Gandhi Mathi
For Respondent	:Mr.N.DilipKumar

ORDER

This Civil Revision Petition has been filed by the revision petitioner to set aside the order, dated 07.10.2021 in C.M.A.No.15 of 2021 passed by the learned Principal District Judge, Thanjavur confirming the order, dated 17.09.2021 in Roc.No.9706/2021/MCF3, passed by the Estate Officer, Thanjavur City Municipal Corporation.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The respondent herein/Petitioner/Municipal Corporation has issued an order under the Tamil Nadu Public Premises [Eviction of

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Unauthorised Occupant], Act, in ROC.No.9706 of 2021/MCF3 dated 17.09.2021 against the revision petitioner/appellant to evict the petitioner from the property as considering him as authorised occupants.

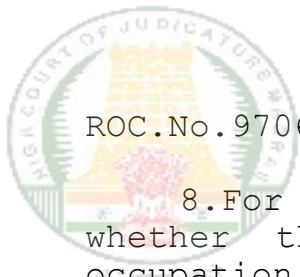
4. Against the same, the revision petitioners have filed an appeal in C.M.A.No.15 of 2021 and the same was also dismissed. Against the same, the revision petitioners are before this Court.

5. Heard on either side. Perused the material documents available on record.

6. This Civil Revision Petition is filed on the ground that the Court below ought to have seen that for the purpose of public benefit, the property has been allotted to the petitioner in the year 1874 and permission was also granted to the petitioner to put up constructions in the said property and the petitioner is in an interrupted actual possession of the said property and is not an unauthorised occupant. The Court below ought to have seen that for the past more than 150 years, petitioner is in possession and enjoyment of the property pursuant to a grant in respect of the said property. The Court below erred in observing that petitioner had not filed any documents to show that he is in possession and enjoyment of the said property. The Order passed by the Court below is liable to be set aside.

7. The case of the petitioner is as follows:

The appellant - Tanjore Union Club was commenced on 14.09.1872 as a Library within the Thanjavur Municipality Complex for the benefit of public. Thereafter, for the purpose of public benefit, the property in question as well as the property in T.S. No.991/part were allotted to the Tanjore Union Club in the year 1874. Subsequently, in the year 1875, the Tanjore Union Club building was constructed with the permission and approval of then Thanjavur Municipality. The properties are in absolute possession and enjoyment of the appellant for the past more than 150 years. Thereafter, different buildings were constructed by the club with the approval of the Thanjavur Municipal Corporation. As per this allotment, the appellant have been paying the property tax, water tax and electricity bills. The respondent send a notice dated 06.08.2021, stating that the appellant had unauthorizedly occupied the petition mentioned property by providing a recreation club and also demanding that the property is required for Smart City Development Activities. On receipt of the said notice, the appellant had issued a reply dated 13.08.2021 to the respondent. Then, the respondent had issued a notice dated 18.08.2021, calling upon the appellant for enquiry on 27.08.2021. At the time of enquiry, the appellant submitted a detailed statement with documents. After the enquiry, the respondent had chosen to pass an order of eviction of the appellant from the property by an order passed in



ROC.No.9706/2021/MCF3, dated 17.09.2021.

8. For Eviction proceedings under the Act, we have to ascertain whether the possession of the petitioner is an unauthorised occupation. The petitioner has claimed possession only through an allotment made by the respondent. But no document was filed by the petitioner to prove the said allotment.

9. There is no doubt that the premises is belonged to the Thanjavur Municipality. The petitioner has also admitted. The respondent has stated that the petitioner is an unauthorised occupation.

10. The paragraph Nos.8 to 11 in the impugned order are extracted hereunder:

"8. Notably Thanjavur Municipality passed a resolution No.904 dated 31.10.1989 and requested The Union Club of Thanjavur to surrender a portion of the property said to have been leased out to The Union Club for the public necessity to provide way to the bus stand. There were several communications written to The Union Club, Thanjavur more particularly on 26.2.1990. The Union Club never repudiated the resolution of the Municipality particularly the written explanation submitted by The Union Club admitted the fact and also admitted the surrender of possession.

9. There is no quandary that the subject property belongs to Thanjavur Municipal Corporation and The Union Club was permitted to have possession in the pre-independence period for some time. However, there is no document produced by The Union Club to prove its claim of lawful possession and enjoyment of the Municipal property at the present. They have not produced any document to show the extension or renewal of lease or any proceeding authorizing their occupation during the present period. Surprisingly The Union Club has not shown any document for payment of any lease amount. Admittedly The Union Club is not paying any lease amount to Thanjavur Municipal Corporation at the present.

10. The subject property is surrounded by Municipal lands. The possession of The Union Club is nothing but unauthorized. Their status can only be that of a rank trespasser.

11. The claim of The Union Club that by



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running a play area of various games, they are catering to service of the general public and hence it is a public enjoyment property cannot be countenanced and it is without any substance. The enjoyment of the club and its benefits by its members can never be a justification to unauthorizedly occupy Municipal lands".

11. So, the petitioner is occupying the property as lessee as admitted by the Estate Officer of the Thanjavur Municipality. So, there is no unauthorized occupation by the petitioner. The club/Revision petitioner is in possession from 1874 which is not denied by the respondent.

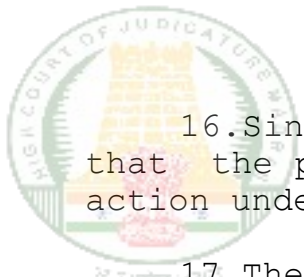
12. If it is so the respondent cannot take action against the petitioner under the Tamil Nadu Public Premises Act, 1975. Definitely the Municipal Corporation having records for the lease. They also requested the Union club to surrender portion of land said to have been leased out.

13. The respondent has to proceed the matter by way of filing suit for eviction and not under the Tamil Nadu Public Premises Act, 1975.

14. The petitioner has claimed lost grant which cannot be considered since it was not raised in appeal.

15. The relevant portion of the Judgment reported in **2003 1 SCC 478, The Proprietors of Mathurasagar Bareja and Another Vs. Tulsi Ram and Others**, is extracted hereunder:

.....
"A. Grants - Lost grant - Held, cannot be presumed to exist or have been made in favour of an indefinite and indeterminate body of persons, whose number may increase or decrease over time, just because they inhabit an identified and particular place - Where there had been in existence an arrangement between proprietors of Mathurasagar, a group of five irrigation tanks, and a fishing community (Dhimars of Ramtek), since 1862 and arrangement had been repeatedly renewed at time of settlement, and ultimately owners filed suit for injunction against appellants to prevent them catching fish, held on facts, appellant representatives of the fishing community could not claim a right to fish in the tanks on basis of a lost grant."



16. Since the respondent has admitted in the impugned notice that the possession of the petitioner is legal, they cannot proceed action under the said Act.

17. The respondent has admitted the possession as lease, only it has to prove for when the lease was ended and from when the possession become unauthorised. Without considering the admission in the impugned order, the Appellate Court is erred in dismissing the C.M.A.No.15 of 2021.

18. Finally, this Civil Revision Petition is allowed by setting aside the order, dated 07.10.2021 in C.M.A.No.15 of 2021 passed by the learned Principal District Judge, Thanjavur confirming the order, dated 17.09.2021 in Roc.No.9706/2021/MCF3, passed by the Estate Officer, Thanjavur City Municipal Corporation. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Cs-III)

// True Copy //

/ /2022

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

The Principal District Judge, Thanjavur.

Copy to

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.AL. GANTHIMATHI, Advocate (SR-23108[F] dated 02/05/2022)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-23140[F] dated 02/05/2022)

C.R.P.(MD)No.1712 of 2021
29.04.2022

NSN(CO)

KB(16.05.2022) 5P 6C

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