



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.01.2022

DELIVERED ON: 25.01.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE **C.V. KARTHIKEYAN**

W.P.[MD].No.22335 of 2021

W.M.P.[MD].Nos.18896 & 18897 of 2021

M.Sunitha

... Petitioner

Vs.

The Branch Manager,
Tamil Nadu Small Industries Corporation Limited,
SIDCO Pettai,
Tirunelveli District.

...Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice issued by the respondent vide Na.Ka.No.403/A/2021 dated 07.12.2021 and quash the same as illegal and consequently, direct the respondent not to interfere the business activities of the petitioner in the name of Ayaa Aqua in the plot No.12 of Nagercoil Industrial Estate situate in Re.Sy.No.J-1-20 of Nagercoil Village.

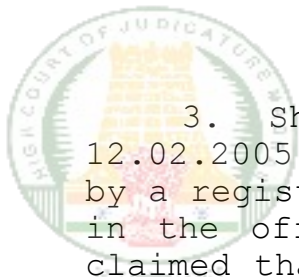
For Petitioner : Mr.K.P.Narayana Kumar

For Respondent : Mr.T.Sakthi Kumaran

O R D E R

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking interference with a notice issued by the respondent/Branch Manager, Tamil Nadu Small Industries Corporation Limited, Tirunelveli, dated 07.12.2021 in Na.Ka.No.403/A/2021 and directing the said respondent not to interfere with the business activities of the petitioner.

2. The petitioner, M.Sunitha, claiming to be the owner of the property situated at Old Survey No.2713, Re-survey No.J-1-20 in Nagercoil Village, Vadakukonam Industrial Estate measuring 15.50 cents, has filed the present writ petition seeking protection of her business activities in the name of Ayaa Aqua being run at the aforesaid Industrial Estate.



3. She stated that she purchased the said property on 12.02.2005 from Krishna Kumar, Proprietor of Vijay Marine Products by a registered sale deed bearing Document No.395 of 2005 registered in the office of Sub-Register, Nagercoil on 12.02.2005. She also claimed that she had obtained Patta No.8770 in her name. Her vendor namely Krishna Kumar had purchased the property from the respondent on 19.01.1993 vide Document No.106/93. There was a condition that he should not deal with the property for a period of five years and after that, if he were to deal with the property, he should inform the respondent.

4. The petitioner had purchased the property in 2005, after 12 years. She obtained permission from Nagercoil Municipality to construct a building for industrial purposes. She started a business in plastic pipes. In 2016, she started a small level Aqua water Unit in the name of Ayya Aqua and installed machineries. She drew raw ground water, purified the same and packaged them in bottles. She obtained necessary permission for drawing the ground water from the Water Resources Department. She also obtained certificate from the Bureau of Indian Standards Institution. The water was also tested by an Authorised Laboratory. She has been conducting such business for the past six years.

5. On 10.02.2021, the officials of the respondent pasted the impugned notice in the Unit of the petitioner mentioning the name of her vendor and further stating that permission had been granted only to conduct fish net Unit, but the property had been sub-leased to run Aqua Water Unit. It was stated that the petitioner should close down the business by 15.02.2021, failing which, possession will be taken. Questioning that particular notice, the present Writ Petition has been filed.

6. Counter has been filed by the respondent, wherein, it had been stated that when Nagercoil Industrial Estate had been developed and plot No.12 was allotted to M/s.Kumar Industries, which was on change of name called M/s.Vijay Marine Products. A sale deed was also executed in 1993 in favour of M/s.Vijay Marine Products. Among the conditions of the sale deed was that the property should not be transferred or dealt with for a period of five years and after five years, if it is to be dealt with, information must be given to the respondent. It is stated that the purchase of the petitioner had not been informed to the respondent. It was therefore contended that the petitioner is an encroacher in the property. It was also stated that the business of Aqua Water Unit is illegal and is not considered as an Industrial Activity. The respondent stated they cannot permit the petitioner to continue to be in occupation. It was stated that the petitioner is to be evicted under the *Tamil Nadu Public Premises [Eviction of Unauthorized Occupants] Act, 1975*. It had been stated that a show cause notice had been issued to the original allottee, since the petitioner is not considered as being a lawful occupant.



It was stated that no reply was given. It was also stated that the petitioner has an appellate remedy against the impugned order and the writ petition should be dismissed.

7. Heard arguments advanced by Mr.K.P.Narayana Kumar, learned counsel appearing for petitioner and Mr.T.Sathi Kumaran, learned Standing counsel appearing for respondent.

8. A perusal of the records reveal that the property in question had been conveyed by a sale deed dated 19.01.1993 under a registered document No.106/1993 registered in the office of Sub-Register, Nagercoil, to M/s. Vijay Marine Products represented by its partners Pon Vijaya Raghavan and P.Krishna Kumar. The said plot was a portion of the larger area of SIDCO Industrial Estate of Connam, Nagercoil. It was called Connam Industrial Estate. It was specifically provided in the sale deed that the purchaser shall not transfer, sale or mortgage the property for a period of five years, without approval of the vendor. After the period of five years, they may deal with the property, but, they must inform the respondent herein. It is also stated that the property should be used only for the purpose of running an Industry. It was claimed that the said Industry was a fish Net Unit. The petitioner herein had purchased the property, from which, she is sought to be evicted by a sale deed dated 12.02.2005 from the partnership firm, M/s.Vijay Marine Products.

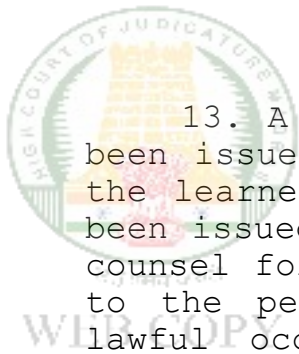
9. It is the contention of the respondent that this purchase had not been informed to them. The fact that the petitioner is running a business in drawing ground water and packaging the same in bottles, cannot be disputed. She has obtained necessary license for running the said Unit. But the issue is whether she is in lawful possession or whether she can be termed as "encroacher". The respondent claim that she is an encroacher.

10. The Statute which governs is the *Tamil Nadu Public Premises [Eviction of Unauthorised Occupants] Act, 1975*.

11. Section 2[g] defines "unauthorized occupation" as follows:

"Unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

12. Section 4 contemplates issuance of notice to show cause against an order of eviction.



13. A perusal of the impugned order shows that such notice had been issued to M/s.Vijay Marine Products. It had been contended by the learned counsel for the petitioner that the petitioner had not been issued any notice. This stand had been disputed by the learned counsel for the respondent, who stated that notice cannot be issued to the petitioner, since the petitioner is not recognized as a lawful occupant. The lawful occupant is only M/s.Vijay Marine Products. They had sold the property to the petitioner, without informing the same to the respondent. It is therefore contended that the petitioner is in unlawful occupation. It is also contended that the provisions of the aforesaid enactment will apply to the petitioner and that the petitioner is in unauthorized occupation.

14. A perusal of the sale deed reveals that the aforesaid conditions are given in the sale deed itself. As a matter of fact, even in the sale deed through which the petitioner purchased the property, it had been mentioned that her vendor cannot sell the property for a period of five years. But sale was justified on the ground that it was conducted after five years. The second clause is that even if sale is to be conducted after five years, the respondent must be informed.

15. This condition had been ignored by the parties. They cannot claim any exception to such clause. They are aware of the terms and conditions, under which, M/s.Vijay Marine Products purchased the property from the respondents. If M/s.Vijay Marine Products were not interested in continuing business in that particular plot, the respondent would have allotted the same to any other deserving Small Scale Manufacturing Unit. That decision vests only with the respondent. A allottee cannot transfer the property as they wish. They must inform any transaction to the respondent. The entire area is an Industrial Estate under the control of the respondent. It was meant for the benefit of small and Medium Industries and plots are allotted to put Factory or Industrial Unit. Therefore, the occupation of the petitioner is not lawful. The petitioner cannot also claim any legal right over the property.

16. A perusal of the sale deed in favour of the petitioner shows that there is an indemnity clause. At the most, the petitioner can claim to enforce such indemnity clause against her vendor, M/s.Vijay Marine Products and its partners. But, viewed from the eyes of the respondent, she is an encroacher.

17. A further examination of the provisions under the Act shows that if notice is served under Section 4, then opportunity of hearing must be given under Section 5. Notice was issued to M/s.Vijay Marine Products. They had not informed the petitioner about the receipt of notice. If they had done so, the petitioner would have explained the issues before the respondent. Therefore, this again gives the petitioner a cause to seek necessary relief from the respondent.



18. With respect to the order of eviction, an appeal is provided under Section 9 of the Act and the Appellate Officer shall be the District Judge of the District, in which the public premises is situated. In the instant case, the entire Industrial Estate comes under the respondent/Tamil Nadu Small Industrial Corporation Limited and is the public premises. The petitioner being in unlawful occupant of a public premises, will have to seek relief only under the aforesaid enactment. The jurisdiction of the Writ Court is very narrow and once an appeal remedy is available, the petitioner should seek remedy from that forum alone. The petitioner cannot be categorized as a person having locus standi to question the impugned order before this Court. She can raise all contentions before the Appellate Authority. This Writ Petition is dismissed. No costs. Connected miscellaneous petitions are closed.

19. If the petitioner seeks to file an appeal under Section 9 of the Act, then the date on which the present writ petition had been filed namely 13.12.2021, till this date, can be excluded, if at all the period of limitation is put against the petitioner.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

ssb

To

The Branch Manager,
Tamil Nadu Small Industries Corporation Limited,
SIDCO Pettai,
Tirunelveli District.

+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-2509[F] dated 25/01/2022)

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-2625[F] dated 27/01/2022)

**W.P. [MD] .No.22335 of 2021
25.01.2022**

RK(04/02/2022) 5P 4C