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W.P.No.5806 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.5806 of 2023
and WMP No.5793 of 2023

V.L.Srinivasan

... Petitioner

-Vs-

1. The commissioner
HR and CE Dept.
Nungambakkam High Road
Chennai - 600034.
2. The assistant Commissioner
HR and CE Dept.
No. 128 Yadhavar Street
Padi, Chennai - 600 050.
3. The Executive Officer
Arulmigu Gangadeeswarar Temple
Puraswalkam
Chennai - 600 084.
4. The Tahsildar
Purasawakkam Taluk
Chennai District.

(R4 suo motu impleaded vide order dt. 27.02.2023
made in WP.No.5806/2023 by NSKJ)

.. Respondents



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Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the third respondent to de-seal the lock imposed by the third respondent on the petitioner premises bearing Door No.111 and 115 Purasawalkam High Road Chennai - 600 007, comprised in R.S.No. 231 and hand over the same to the petitioner herein without any delay.

For Petitioner Mrs.V.Aishwarya
for M/s.R and P Partners

For Respondents Mr.K.Karthikeyan
Government Advocate (HR & CE)
for R1 to R3

Mrs.S.Mythreye Chandru
Special Government Pleader
for R4

ORDER

When the writ petition came up for hearing on 27.02.2023, this Court passed the following order:

This writ petition has been filed to direct the third respondent to de-seal the lock imposed by the third respondent on the petitioner's premises bearing Door Nos.111 & 115, Purasawakkam High Road, Chennai 600 007, comprised in R.S.No.231 and hand over the same to the petitioner, without any delay.

2. Heard Mr.M.S.Murali, learned counsel for the petitioner.

3. Mr.N.R.R.Arun Natarajan, learned Special Government Pleader (HR & CE) takes notice for the respondents 1 and 2.

4. Learned counsel appearing for the petitioner submitted that the petitioner is in continuous possession and enjoyment of the property, at Door Nos.111 and 115, Pursaswakkam High Road, Chennai. When the matter stood thus, third respondent, without issuing notice to the petitioner has unauthorisedly



sealed the premises. The petitioner has approached the third respondent and explained about the title to the property. But the third respondent is not willing to accept the request of the petitioner. Hence the petitioner has come forward with the instant writ petition praying for the relief as stated supra.

5. Learned counsel appearing for the petitioner submitted that he had purchased the property in the year 1979, under a registered sale deed dated 31/3/1979.

6. Learned Special Government Pleader on instructions submitted that though the petitioner had purchased 380 sq.feet, now, he has extended the construction, by encroaching the temple land.

7. Whereas it is the contention of the learned counsel for the petitioner that in respect of other two shops, he is a lessee and there is no encroachment in respect of the temple land.

8. Learned Special Government Pleader produced the photographs and the same would indicate that some construction has been made in the back portion of the property. In such a view of the matter, this Court is of the view to appoint an Advocate Commissioner.

9. Accordingly, Mr.K.Hariharan (485/1992), 295 New Additional Law Chambers, Madras High Court, Chennai 104 (Contact No.9444326306), is appointed as an Advocate Commissioner, to inspect the above said property with the aid of Taluk Surveyor. He shall be paid an initial remuneration of Rs.30,000/- (Rupees Thirty thousand only). The expenses of his travel shall be defrayed by the petitioner. The Advocate Commissioner shall take the assistance of Taluk Surveyor, deputed by the Tahsildar of Purasawakkam Taluk, Chennai District, and file a report along with the photographs, by 10/3/2023. Based on the report filed by the Advocate Commissioner, desealing of the premises will be decided.

10. The Tahsildar of Purasawakkam Taluk, Chennai District is suo motu impleaded as one of the party respondents. He is directed to depute Taluk Surveyor to assist the Advocate Commissioner while inspecting the said property.



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2.Pursuant to the above order, the Advocate Commissioner appointed by this Court submitted his report. The Advocate Commissioner had conducted the survey with the help of the Taluk surveyor. As per the report, there is encroachment to the extent of 484.05 sq.ft.

3.The 4th respondent has also filed a report and he has also stated that the petitioner is in occupation of Shops at Door Nos.111 and 115 and there is an encroachment to an extent of 485 sq.ft by encroaching the tank bund, belonging to the Temple.

4.The petitioner has filed objections to the report of the Advocate Commissioner and has taken a stand that the measurements were not properly taken and there is no encroachment by the petitioner in the Temple land insofar as the two Shops that are in possession of the petitioner. The petitioner also took a stand that he is a tenant holding over under the third respondent Temple for an extent of 525 sq.ft.

5.When the matter came up for hearing on 12.04.2023, this Court passed the following order:

The objections have been filed by the petitioner for the report submitted by the Advocate Commissioner along with documents. The Tahsildar has also filed a report.

2. During the course of hearing, it was brought to the notice of this Court that the petitioner is trying to reach a compromise with the temple. Pursuant to the same, some discussions have been held with the Executive officer of the temple.



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3. Post this case under the caption for orders on 17.04.2023. Whatever settlement is arrived at between the parties shall be extracted in an affidavit to be filed by the petitioner during the next date of hearing.

6. When the matter was taken up for hearing today, the learned counsel for the petitioner filed the affidavit of the petitioner signed on 17.04.2023. For proper appreciation, the relevant portions in the affidavit are extracted hereunder:

4. I state that the third respondent has claimed that I have encroached upon certain lands owned by the temple authorities. The Advocate Commissioner appointed by this Hon'ble Court with the help of Taluk Surveyor has surveyed the land. The Taluk Surveyor has also filed a report stating an extent of 0.484.05 sq.ft. has been encroached by a textile shop. The subject property which is a textile shop by name M/s. M.M.Dresses as stated in the report is not an encroachment as claimed by the third respondent and it is a land to an extent of 525 square feet leased out to me by the third respondent temple authorities vide a lease deed dated 1.7.2005 executed between myself and the third respondent and I am a tenant holding over with the third respondent and I am paying the rents upto date to the third respondent temple authority.

5. I submit that I have discussed with the third respondent and the third respondent asked me to relinquish an extent of 385 square of land area out of 525 square of land leased out to me which is protruding from the leased textile shop premises to the temple tank and I accepted his request to give up such extended portion in the temple tank and I requested him to allow me to continue to carry on business in the front portion of the shop measuring 7 feet frontage from main to road and 20 feet (140 square feet) on either side like other similar shops in the same alignment without any hindrances. The third respondent agreed for the same and accordingly I hereby agree to relinquish a portion of the land claims to be protruding in the temple tank area which is in my occupation as a tenant within 10 days to the third respondent in order to enable the third respondent to do renovation of temple tank work.



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7.A copy of the affidavit was also served on the learned Government Advocate appearing on behalf of the respondents. The Executive Officer of the Temple was also present at the time of hearing and he also went through the affidavit filed by the petitioner.

8.The petitioner has now agreed to relinquish an extent of 385 sq.ft of land area and retain the balance in order to run his textile shop. The said proposal is acceptable to the 3rd respondent. Whatever remaining extent of property in the possession of the petitioner can be considered for grant of fresh lease in favour of the petitioner by the 3rd respondent with the concurrence of the Commissioner of HR and CE Department. The possession of the remaining portion of the property that has now been given up by the petitioner can be taken over by the 3rd respondent and all the encroachments shall be removed **within a period of ten days from today**. If the petitioner does not remove the encroachment, within the time stipulated, the 3rd respondent shall remove the encroachment and it goes without saying that whatever cost is incurred for the removal of encroachment, shall be borne by the petitioner. The process of entering into a fresh lease with the petitioner for the portion of the property in which the petitioner is running the textile shop shall be completed by the 3rd respondent with the concurrence of the 1st respondent within a period of **eight weeks** from the date of receipt of the representation from the petitioner in this regard.

9.The Advocate Commissioner was only paid the initial remuneration. Considering the nature of work undertaken by the Advocate Commissioner, the petitioner is directed to pay additional remuneration of Rs.20,000/- to the Advocate Commissioner forthwith.



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10. In the result, this writ petition is disposed of in the above terms. No costs.

Consequently, connected miscellaneous petition is closed.

17.04.2023

KP

Internet : Yes/No

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

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N.ANAND VENKATESH, J.

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