



W.P.No.5968 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.03.2023

C O R A M

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.5968 of 2023

and

W.M.P.Nos.5977 & 5979 of 2023

M/s.Balamurugan Agency,
Rep.by its Proprietor,
Mr.S.Karthikeyan,
S/o.Sivasubramaniam,
No.69, Ambalathadayar Madam Street,
Puducherry-605 001.

... Petitioner

Vs

1. The Deputy Controller of Explosives
Petroleum and Explosives Safety Organisation (PESO)
A & D, Wing Block 1-8,
II Floor, Shastri Bhavan,
26, Haddous Road,
Chennai-600 006.

2. S.Kumaravel

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any other writ or order or direction to call for the records pertaining to the impugned suspension order dated



W.P.No.5968 of 2023

23.02.2023 issued vide G/CS/PY/06/35 (G17093) by the first respondent suspending the storage License No.G/SC/PY/06/35 for 90 days and cancellation order vide G/SC/PY/06/35 (G17093) cancellation the storage Licence No. G/SC/PY/06/35 granted to the petitioner to store Gas cylinders in the petitioner premises at Plot No.236/3, Odiampet Post, Villianur Village, Puducherry with immediate effect and quash the same as illegal, ultra vires, non-est, null and void.

For Petitioner ... M/s. R.Sreedhar

For Respondents ... M/s.ARL.Sundaresan,
Additional Solicitor General

... Assisted by Mr.Rajesh Vivekananthan,
Standing Counsel for R1.

... Mr.R.Natarajan for R2

ORDER

This Writ Petition has been filed seeking to quash the impugned order dated 23.02.2023 which came to be passed by the 1st respondent herein canceling the storage license pertaining to storage of gas cylinders in the petitioner's premises at Plot No.236/3, Odiampet Post, Villianur Village, Puducherry.



W.P.No.5968 of 2023

2. According to the petitioner, originally the subject property of 15 Ares

in Re-survey No.236/3 was leased out to one P.A.Sankar by one P.Shanmugasamy, who is the father of the 2nd respondent vide the lease deed dated 01.12.1994 in which, the business under the name and style of “Murugan & Co” is being run for storage and possession of gas cylinders pursuant to a licence granted by the 1st respondent to P.A.Sankar, the original lessee. However, in the year 2005, even prior to expiry of the said lease deed, the lessor P.Shanmugasamy had executed a family arrangement deed dated 16.02.2005 in favour of P.Anandabaskaran who is the father of the lessee, viz., P.A.Sankar.

3. However, the family arrangement, when sought to be registered, the said Shanmugasamy desisted from registering the document, which resulted in the filing of O.S. No.1 of 2009 by Anandabaskaran before the III Addl. District Judge, Puducherry for specific performance. Pending the said suit, the said Ananthabaskaran executed a lease deed in favour of Murugan & Co on 10.09.2012 for a period of 10 years and, thereafter, Murugan & Co., transferred the lease in favour of the petitioner.



W.P.No.5968 of 2023

4. It is the further case of the petitioner that a show cause notice was issued by the 1st respondent on the ground that a suit in O.S. No.49 of 2001 has been filed before the Principal Sub Judge, Pondicherry, by Shanmugasamy, alleging that the property belonging to him had been sold by Ananthabaskaran to one K.Jayaraman. It is further avewrred by the petitioner that pending the suits, Shanmugasamy settled the property in favour of his son, viz., the 2nd respondent and the 2nd respondent had sent a letter to the 1st respondent alleging that he is the owner of the property and without disclosing the aforesaid facts, the petitioner had transferred the licence in his name. The above letter of the 2nd respondent resulted in the 1st respondent calling explanation from Murugan & Co., to which reply was submitted. However, the explanation not found to be satisfactory, the 1st respondent directed the partner of Murugan & Co., to appear before the 1st respondent, which was complied with and it was informed by the 1st respondent that a perusal of the records, it was evident that the 2nd respondent was the owner of the property in which the subject godown is constructed and, therefore, necessary lease deed was directed to be submitted.



W.P.No.5968 of 2023

5. It is the further averment of the petitioner that the 1st respondent is not the authority to decide the title to the property and is not vested with any power under the Gas Cylinder Rules, 2016 to conduct enquiry to decide the title dispute. Challenging the said proceedings W.P. No.31567/2018 was filed and this Court, by order dated 14.9.2022 disposed of the petition observing that the proceedings shall be treated as show cause notice to which the petitioner was directed to give reply and the 1st respondent was directed to conduct enquiry and decide as to whether to renew the lease or not.

6. In spite of the reply submitted by the petitioner along with the letter of K.Jayaraman, who is alleged to have purchased the property from Ananthabaskaran, the 1st respondent, without applying his mind to the materials had held that the petitioner had suppressed facts and submitted false documents and, accordingly, suspended the licence of the petitioner in accordance with Rule 57 (1) of Gas Cylinder Rules, 2016. Aggrieved by the same the present petition is filed.



W.P.No.5968 of 2023

7. Learned counsel for the petitioner submits that based on the objections raised by the 2nd respondent, as against the grant of license in favour of the petitioner firm, the 1st respondent had issued a show cause notice dated 24.01.2023 on the petitioner, calling for explanation with regard to the documents submitted by the petitioner pertaining to transfer of license from “Murugan & Co”. However, without properly considering the materials submitted, the 1st respondent had cancelled the licence granted in favour of the petitioner firm vide the present impugned order, which is wholly unsustainable.

8. Learned Addl. Solicitor General appearing for the 1st respondent submitted that lease deed was initially entered into by the father of the 2nd respondent with one P.A. Sankar for a period of 15 years from 1.12.1994 and the said lease expired in the year 2009. However, the lease deed in and by which the petitioner claims possession is alleged to have been entered into between the father of the lessor of the petitioner in favour of Murugan & Co. On 10.09.2012 for a period of 10 years. However, on the date, when Ananthabaskaran entered into the lease, the said Ananthabaskaran was not in possession of any title to the property and claims title to the property on the



W.P.No.5968 of 2023

basis of a deed of agreement, alleged to have been entered into between the said Ananthabaskaran and the father of the 2nd respondent and the suit instituted against the same is pending. In such circumstances, the lease deed, alleged to have been entered into by the petitioner with his lessor is wholly a manipulated document, prepared only for the purpose of maintaining the licence and also with an ulterior motive to create a link between Ananthabaskaran and the subject property. However, the 1st respondent, based on the above document and on the basis of misrepresentation of the petitioner, had granted the fresh licence to the petitioner without cancelling the licence, which was already granted in favour of Murugan & Co. On coming to know of the fraud played by the petitioner, the 1st respondent, had rightly issued the suspension order by invoking Rule 57 (1) of the Gas Cylinder Rules, 2016 and the same order is wholly sustainable. Accordingly, he prays for dismissal of the present petition.

9. This Court heard the learned counsel appearing on either side and perused the materials available on record.



W.P.No.5968 of 2023

10. It is an admitted fact that initially lease was entered into between the father of the 2nd respondent and one A.P.Sankar for a period of 15 years, which comes to an end in the year 2009. The whole genesis of the case of the petitioner lingers on an agreement deed alleged to have been entered into between his lessor, viz., Ananthabaskaran and the father of the 2nd respondent, viz., Shanmugasamy. However, it is also the admitted case of the petitioner that against the said deed, a suit in O.S. No.1/2009 is pending in which Ananthabaskaran, his lessor, had sought the relief of specific performance. The above factum, as advanced by the petitioner, itself clearly reveals that no title vests with Ananthabaskaran as the suit with regard to specific performance is still pending. In the aforesaid backdrop, this Court is at a loss to understand as to the right of the lessor of the petitioner to enter into a lease deed with the petitioner.

11. Be that as it may. When the suit for specific performance is pending consideration in O.S.No.1/2009, Anandhabaskaran, who had filed the suit for specific performance had entered into another transaction with one Jayaraman and with regard to the said transaction, another suit has been filed by the



W.P.No.5968 of 2023

petitioner. Pending the aforesaid two suits, the lease is alleged to have been entered into by the petitioner. Further, on the strength of the lease, which has no legal sanctity, as it had been entered into with a person, who had no right or title to the property, the petitioner had obtained the license from the 1st respondent and has been running the business in the premises.

12. It is further to be pointed out that the strength on which the licence had been granted by the 1st respondent is the lease deed which has been submitted by the petitioner. When the lessor of the petitioner did not have any title to the said property on the date when the lease deed was entered into with the petitioner, the only conclusion that could be drawn from the above is that the lease deed is a fraudulent document, created for the purpose of getting licence from the 1st respondent and at the same time usurping the property belonging to the 2nd respondent.

13. The Sequential encumbrance being created on the property by the very many transactions could be inferred only to mean that the parties to the encumbrance wanted to siphon off the property from the 2nd respondent, who on



W.P.No.5968 of 2023

the date when the suit was filed was having valid title to the property. In fact, the title of the 2nd respondent to the property is not disputed by Anandhabaskaran, but only the said Ananthabaskaran had sought for specific performance. The above inference is drawn by this Court from the suit filed by the lessor of the petitioner, which suit is for specific performance against the father of the 2nd respondent. Therefore, the 2nd respondent has rightly put the 1st respondent on notice with regard to his ownership and title over the property, which though disputed, however, as on date, stands in the name of the 2nd respondent. Therefore, the fraud played by the petitioner along with his lessor is writ large and is nothing but an act to shield the eyes of the 1st respondent for having the licence renewed in favour of the petitioner.

14. When the above act of the petitioner was brought to light, the 1st respondent after affording due opportunity to the petitioner and perusing all the materials, had rightly cancelled the licence, which cannot be said to be perverse or illegal. The act of the 1st respondent is wholly sustainable and does not deserve any interference. However, the act of the petitioner in playing fraud on the 1st respondent as well as the 2nd respondent by creating documents in



W.P.No.5968 of 2023

collusion with his lessor, not only for the purpose of obtaining the licence, but also for other clandestine purposes, to aid his lessor in the suit filed for specific performance, is not but an act, which is also an attempt to obtain favourable orders from this Court and this act definitely warrants imposition of heavy cost, as the petitioner has come before this Court with unclean hands and has claims relief at the hands of this Court. This Court, as the temple of justice, cannot aid the cause of persons, who play fraud and wants by appealing to the mercy of this Court under the guise of seeking justice. When the act of the parties is to gain undue advantage by playing fraud on the Court for ulterior reasons definitely, this Court has to come heavily upon those said persons, otherwise the trust reposed by the citizens on the Judiciary would be belittled. The fraudulent act of the petitioner deserves to be dealt with, with iron hands and this Court is inclined to proceed by imposing heavy costs.

15. Accordingly, this writ petition stands dismissed with costs of Rs.2,00,000/- (Rupees Two Lakhs only) of which Rs.1,00,000- (Rupees One Lakh only) shall be paid to the Prime Minister's relief fund and Rs.1,00,000/= (Rupees One Lakh only) shall be paid to the Chief Minister's Relief Fund. Copy of the order is directed to be communicated to the appropriate authority



W.P.No.5968 of 2023

so as to enable the said authorities to collect the costs, if the petitioner does not pay the same as directed by this Court. Consequently, connected miscellaneous petition also stands dismissed.

28.03.2023

Index: Yes/No

Internet: Yes

NHS

To

The Deputy Controller of Explosives
Petroleum and Explosives Safety Organisation (PESO)
A & D, Wing Block 1-8,
II Floor, Shastri Bhavan,
26, Haddous Road,
Chennai-600 006.



WEB COPY



W.P.No.5968 of 2023



WEB COPY



W.P.No.5968 of 2023

M.DHANDAPANI, J.

NHS

W.P.No.5968 of 2023

28.03.2023