



W.P.(MD)No.276 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.276 of 2021

and

W.M.P.(MD)Nos.215 & 216 of 2021

1.Yoseppu

2.J.Manuel Raj

... Petitioners

Vs.

1.The District Collector,
Tenkasi,
Tenkasi District.

2.The Assistant Director,
Town Panchayats,
Tirunelveli.

3.The Executive Officer,
Alangulam Selection Grade Town Panchayat,
Alangulam Taluk,
Tenkasi District.

4.The Inspector of Police,
Alangulam Police Station,
Tenkasi District.

5.R.Suyambulingam

... Respondents



W.P.(MD)No.276 of 2021

WEB COPY

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance a *Writ of Certiorarified Mandamus*, calling for the records pertaining to the impugned proceedings of the third respondent in Na.Ka.No.55/2019/A1 dated 30.11.2020 and quash the same and consequently direct the respondents 1 to 4 to restore the petitioner's business in Shop No.65 of Thaiyal Nayagi Market at Alangulam Selection Grade Town Panchayat, Tenkasi District by granting appropriate damages to the petitioners for the loss caused by the fifth respondent.

For Petitioner	: Mr.R.J.Karthick
For Respondents 1 to 3	: Mr.R.Suresh Kumar Additional Government Pleader
For Respondent No.4	: Mr.K.Sanjai Gandhi Government Advocate (Crl. Side)
For Respondent No.5	: Mr.S.Kumar

ORDER

This writ petition is filed for Writ of Mandamus directing the respondents to quash the impugned order, dated 30.11.2020 and also seeking consequential direction to restore the petitioner's business in Shop No.65 by granting appropriate damages for the office of the petitioner caused by the 5th respondent.



W.P.(MD)No.276 of 2021

WEB COPY

2. Heard M/s.R.J.Karthick, the Learned Counsel appearing for the Petitioner, Mr.R.Suresh Kumar, the Learned Additional Government Pleader appearing for R-1 to R-3, Mr.K.Sanjai Gandhi, the Learned Government Advocate appearing for R-4, Mr.S.Kumar, the Learned counsel appearing for R-5 and perused the material documents available on records.

3. The petitioner is doing coconut business in the Shop No.65 belonging to the 3rd respondent Selection Grade Town Panchayat since 1990. Initially, the vacant site was allotted, thereafter the petitioner had put up superstructure with the permission of the 3rd respondent. Recognizing the coconut business, the 3rd respondent has received the lease rent for the ground alone and not for superstructure. Further the petitioner is paying professional tax and daily entry fee along with lease amount without any fault. It is a usual practice for the 3rd respondent to receive annual lease rent at the end of every financial year under the Account No.3011. When the petitioner tendered the annual rent on 05.03.2020 the 3rd respondent had refused to receive the lease amount citing the pendency of



W.P.(MD)No.276 of 2021

WEB COPY

the writ petition in W.P.(MD)No.1098 of 2020, which was filed for Writ of Mandamus directing the 3rd respondent to hand over the Shop No.65 in favour of the 5th respondent. The petitioner appeared in the said writ petition through Counsel. Thereafter, it came to the petitioner's knowledge that during the subsistence of lease in respect of Shop No.65 the respondents 3 & 5 have collusively executed lease agreement in favour of the 5th respondent, dated 09.11.2019. In order to evict the petitioner without following due process of law, the respondents were taking hectic steps to vacate the petitioner. During the pendency of the above writ petition, the 3rd respondent filed a petition to implead the 4th respondent herein for eviction on the basis of the complaint preferred by the 5th respondent. The contention of the petitioner is during the subsistence of the lease period and admittedly during the possession and enjoyment of the Shop No. 65 the respondents 2 to 5 had attempted to evict the petitioner forcibly.

4. On 06.03.2020, at about 11.00 a.m., the Sub-Inspector of Police, namely, Subramaniam along with 5th respondent herein and his men illegally trespassed into the Shop and forcibly evict the petitioner and caused huge damage to the shop and superstructure. Apart from that they have threatened the petitioner



W.P.(MD)No.276 of 2021

WEB COPY

and his wife and daughter with dire consequences and threatened to vacate and hand over the possession. When the petitioner resisted their attempt to attack the petitioner, they forcibly taken the coconut for worth of Rs.50,000/- weighing machine and other shop materials from the shop and they forcibly took the petitioner to the Police Station by threatening that the petitioner's wife and daughter would be charged under Immoral Traffic Act. The above narrated illegal and highhanded activities were videographed by the petitioner's brother namely Salamon Raja in his mobile phone having Mobile No.7200285923, but unfortunately the subordinate of the 4th respondent forcibly took the mobile phone and returned after 5 p.m., by deleting the above videos. Further, the police released the petitioner from police station in the evening after lodging a false case in Crime No.65 of 2023, dated 06.03.2020 under Sections 294(b), 353 and 506(ii) of IPC, on the basis of the false complaint given by the 5th respondent. Immediately, on the same day, the petitioner has preferred a complaint to the Superintendent of Police, Tenkasi and the Deputy Superintendent of Police, Tirunelveli, through “Whatsapp” and they instructed the petitioner to prefer complaint in person. On 07.03.2020, the petitioner has preferred a fresh complaint to the said officials and prayed the 1st respondent herein to take



W.P.(MD)No.276 of 2021

WEB COPY

appropriate action against the 5th respondent by directing them to return back the coconut load worth of Rs.50,000/- along with weighing machine and to restore the possession of the petitioner.

5. The petitioner submitted representation along with a Demand Draft in D.D.No.323022, dated 09.03.2020 drawn in Tamil Nadu Mercantile Bank Limited, Alangulam Branch through registered post to receive the lease amount for a period from 2019-2020 but all the requests were declined. Since the 5th respondent in collusion with the 3rd respondent was taking steps to forcibly evict by causing huge loss to the petitioner, left with no other remedy the petitioner had filed W.P(MD)No.5648 of 2020 for Writ of Mandamus to direct the respondents to take appropriate action. Pending of the said writ petition, on 15.07.2020 the 5th respondent herein had withdrawn the writ petition filed in W.P(MD)No.1098 of 2020. When the said writ petition in W.P(MD)No.1098 of 2020 was dismissed as withdrawn, this Court on 09.10.2020 had passed an order in W.P(MD)No.5468 of 2020 wherein directed the petitioner to submit a fresh complaint and directed the respondents to take action as per law. The respondents through the impugned order had confirmed the lease granted to the 5th respondent, but failed to conduct



W.P.(MD)No.276 of 2021

WEB COPY

any enquiry and the respondents did not issue any notice to the petitioner. Hence the petitioner is before this Court in the present writ petition.

6. The respondents have not filed any counter. However, on instructions, the Learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that the petitioners are encroachers. Original lease was granted to one Yosappa, who is the 1st petitioner herein and the 2nd petitioner is the person who is occupying the said place.

7. The contention of the petitioners is that the said Yoseppa is the lease holder and he has given rights to occupy the place and the 2nd petitioner is doing Coconut business. The petitioners are relying on the receipts issued by the respondents, wherein the respondents have issued receipts in the name of the 2nd respondent Manuel Raj, Receipt No.3819 dated 29.02.2008. The Panchayat has also issued notice for lease amount recoverable to the tune of Rs.2,240 dated 28.02.2013, wherein the name of the 1st respondent was entered. The petitioner has also produced the electricity receipts which stands in the name of the Alangulam Panchayat. The respondents have also issued professional tax receipt



W.P.(MD)No.276 of 2021

WEB COPY

and the same stands in the name of the 1st respondent for the year 2016-2017.

The respondents have further issued license receipt, dated 20.03.2019, wherein it is stated license was granted for the year 2018-2019, which stands in the name of the 1st respondent. The specific contention of the petitioner is when the said license fee was received on 20.03.2019 granting license for the period from 2018-2019. When the lease is subsisting the respondents have entered an agreement with the 5th respondent on 09.11.2019 without the knowledge of the petitioners and without intimating the same to the petitioners and also without canceling the license issued to the petitioners.

8. The facts stated by the petitioner is vehemently opposed by the 3rd respondent that the lease was granted to the 1st respondent. However, the petitioner is occupying the place which would indicate the 1st respondent has sublet the property to the 2nd respondent, which was not brought to the knowledge of the 3rd respondent. Lease can never be transferred or sub-let to other persons or the lessee cannot permit the other person to occupy the said leased out place. The 2nd petitioner has not shown any proper agreement entered into between the respondents 2 and 3.



W.P.(MD)No.276 of 2021

WEB COPY

9. After hearing the arguments this Court is of the considered opinion that the 2nd petitioner is simply relying on the receipts issued by the 3rd respondent to the 1st petitioner. Therefore, it can be safely concluded and that there is no proper agreement between the 3rd respondent and the 2nd petitioner. It is evident that the 1st petitioner had sub-let to the 2nd petitioner. When the 2nd petitioner is not having any agreement then the 2nd petitioner cannot seek protection as a lessee.

10. Having said so that the petitioner is not having any proper lease agreement, then the 3rd respondent is having every right to take action against the 2nd petitioner. In other words, when it was brought to the knowledge of the 3rd respondent that the 2nd petitioner is in occupation of the said place without any proper lease agreement, the 3rd respondent ought to have initiate proceedings to evict the 2nd petitioner as per law. When the 2nd petitioner is not having proper lease agreement, then he has to be considered as encroacher or trespasser. Even an encroacher or trespasser is entitled to notice before evicting from the said place. When enquired whether the 3rd respondent had issued any notice to the 2nd petitioner, the answer is “No”. Therefore, it is clear that the 3rd respondent has



W.P.(MD)No.276 of 2021

WEB COPY

failed to issue notice the 2nd petitioner before evicting the 2nd petitioner from the said premises. Hence this Court is of the considered opinion that the eviction of the 2nd petitioner from the said place is clearly not by following due process of law and there was forcible eviction of the 2nd petitioner from the said premises by the 3rd respondent, which is totally illegal. Therefore, the petitioners may not be entitled to the said premises and the prayer to grant re-possession is declined, but the petitioner is entitled to compensation.

11. The petitioner has stated in the affidavit that all the Coconuts were taken away and the weighing machines and other articles were thrown out. Therefore, the 2nd petitioner is entitled a sum of Rs.1 Lakh, as compensation. The eviction was at the instance of the 5th respondent. Therefore, the respondents 3 & 5 are directed to compensate the 2nd petitioner by paying Rs.1 Lakh (Rs. 50,000/- each). The payment shall be disbursed, within a period of Four weeks from the date of receipt of a copy of the Order.



W.P.(MD)No.276 of 2021

WEB COPY

12. Accordingly, this writ petition is partly allowed. No Costs.

Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
ksa

08.08.2023

To

- 1.The District Collector,
Tenkasi,
Tenkasi District.
- 2.The Assistant Director,
Town Panchayats,
Tirunelveli.
- 3.The Executive Officer,
Alangulam Selection Grade Town Panchayat,
Alangulam Taluk,
Tenkasi District.
- 4.The Inspector of Police,
Alangulam Police Station,
Tenkasi District.



WEB COPY



W.P.(MD)No.276 of 2021

S.SRIMATHY, J

KSA

**Order made in
W.P.(MD)No.276 of 2021**

08.08.2023