



W.P.(MD).No.16411 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.08.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.16411 of 2017

C.Bhagavathi

... Petitioner

Vs.

1.The Joint Commissioner,
HR & CE Department,
Susindram,
Kanyakumari District.

2.Amshaveni

3.Lekshmi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the first respondent forthwith to restore the possession of the petitioner in the shop at No.1/14C, Sannathi Street, Kanyakumari.

For Petitioner

: Mr.R.Pon Karthikeyan

For R1

: Mr.M.Saravanan



W.P.(MD).No.16411 of 2017

WEB COPY

ORDER

This Writ Petition is filed for Mandamus, directing the first respondent forthwith to restore the possession of the petitioner in the shop at No.1/14C, Sannathi Street, Kanyakumari.

2. The petitioner's father namely Chellaih was allotted a shop admeasuring 16x8 feet by the first respondent Devasam Board in Door No. 1/14C, Sannathi Street, Kanyakumari and he has been running the shop for more than 40 years in the name and style of Bhagavathi Hand Looms. The petitioner's father died on 11.12.2001 leaving behind the petitioner, her mother and her sister as legal heirs. The petitioner's mother was shown as third respondent and her sister was shown as second respondent.

3. Subsequent to the demise of the petitioner's father, the said shop was partitioned into two portions among themselves. In one portion, the petitioner's sister / second respondent was running a shop and subsequently sublet her portion to one Ayyappan. The petitioner was running a travel agency under the supervision of her relative namely, Kuruthalingam, in her portion. While that



W.P.(MD).No.16411 of 2017

being so, the second respondent has started to demand the petitioner's portion of the shop and has developed quarrel with the petitioner. The contention of the petitioner is that the second respondent canvassed their mother and both of them had begun to demand the petitioner's portion in the said shop. In the meanwhile, the petitioner's mother filed a suit in O.S.No.149 of 2017 on the file of Principal District Munsif, Nagercoil against the petitioner, her husband and her relative namely Kuruthalingam, seeking relief of permanent injunction. Likewise, the said Kuruthalingam has also instituted a suit in O.S.No.152 of 2017 on the file of Additional District Munsif Court, Nagercoil. Both the suits are pending. After filing of suits, there was a dispute between the petitioner and her sister, sister's husband and her mother. It is also to be noted that the petitioner's husband and her sister's husband are brothers. Both sisters have married the brothers. On 13.08.2017, the second respondent attempted to assault the petitioner. Therefore, the petitioner approached the Kanyakumari Police Station with regard to the assault. But the police grabbed the shop key from the petitioner and handed over the same to the first respondent. The first respondent, in turn, handed over the keys to the second respondent and orally allotted the entire shop to the second and third respondents. Further contention of the petitioner is that the first respondent even without affording adequate



W.P.(MD).No.16411 of 2017

opportunity of hearing and without conducting an enquiry, has vacated the petitioner. On the strength of the same, the second respondent has opened the petitioner's portion and taken away the office hold properties worth about Rs.75,000/- and converted the shop into one shop. Hence, the petitioner preferred a representation to the respondents to consider her claim. Since no action was taken, the petitioner has come before this Court by way of filing this Writ Petition.

4. The respondents have filed counter stating that the averments stated in affidavit are not fully correct. The petitioner submitted a representation on 17.08.2017 and the respondent conducted the enquiry through Superintendent, Nagercoil Devaswom Division. The third respondent submitted representation on the same day i.e. on 17.08.2017, but the first respondent had handed over the key to the third respondent on 25.09.2017. Neither the respondent herein nor anybody under the first respondent disturb the possession or dispossess the petitioner at any point of time as stated in the petition. The petitioner has not exhausted available remedies and approached this Court with a view to harass the first respondent.



W.P.(MD).No.16411 of 2017

5. This Court had issued court notice to the second and third respondents, but the notice returned with an endorsement "refused". Based on the facts and circumstances of the case, the refusal of notice by the second and third respondents, adverse inference ought to be taken against the second and third respondents.

6. Heard Mr.R.Pon Karthikeyan, learned counsel for the petitioner and Mr.M.Saravanan, learned counsel for the first respondent and perused the records.

7. Admittedly the shop belongs to the first respondent HR & CE Department. The petitioner's father was a lessee for over 40 years. On the death of the petitioner's father, the lease would come to an end. The first respondent without cancelling the lease has allowed the petitioner and second and third respondents to continue the shop. It is seen that both the petitioner and the second & third respondents have sublet the premises, in such circumstances it is against the terms of lease, then the first respondent is duty bound to terminate the lease and ought to have evicted the premises. But the first respondent has acted in favour of the second and third respondents, but against the petitioner.



W.P.(MD).No.16411 of 2017

Literally the first respondent has conducted “Katta Panchayat”. More interestingly the first respondent has acted against the rights of the temple. Once the lease period is over, the shop should be reverted back to the first respondent and the first respondent ought to have conducted fresh auction and grant the shop to the successful bidder. Therefore, the first respondent without carrying out his duty as per law prescribed under the Act or prescribed under any law, the first respondent has over stepped and has conducted Katta Panchayat between the petitioner and the second and third respondents. Also, the first respondent has handed over the keys to the second and third respondents, which can never be accepted at all.

8. Therefore, the first respondent is directed to pay Rs.5,000/- (Rupees Five Thousand only) to the petitioner and the same shall be paid within a period of two weeks from the date of receipt of the copy of the order. The first respondent is also directed to vacate the second and third respondent from the said premises and conduct a fresh auction and the successful bidder shall be granted the said shop. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.



W.P.(MD).No.16411 of 2017

WEB COPY 9. With this direction, this writ petition is allowed. There shall be no order as to costs.

17.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Sml/Nsr

To

The Joint Commissioner,
HR & CE Department,
Susindram,
Kanyakumari District.



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W.P.(MD).No.16411 of 2017

S.SRIMATHY, J.

Sml/Nsr

W.P.(MD).No.16411 of 2017

17.08.2023