



WEB COPY



W.P. Nos. 3416 and 3609 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 3416 and 3609 of 2024

and

W.M.P. Nos. 3676 and 3898 of 2024

Abdullah
2024

... Petitioner in W.P. No. 3416 of

Munavar Khan
2024

... Petitioner in W.P. No. 3609 of

-VS-

1. The District Collector,
Tiruvannamalai District,
Tiruvannamalai - 606 604.

2. The Executive Officer,
Chengam Town Panchayat
Chengam Town 606 701.

3. The Assistant Director,
Panchayats,
Rural Development Collectorate,
Vellore.

... Respondents in both W.P.s

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the entire records pertaining to the Na.Ka.No.132/2023/A2 dated 10.11.2023 passed by the 2nd



W.P. Nos. 3416 and 3609 of 2024

respondent and quash the same.

WEB COPY

For Petitioner : Mr. M.Mariappan

For Respondents : Mr. P.Ganesan,
Additional Government Pleader

COMMON ORDER

Heard Mr. M.Mariappan, Learned Counsel for the Petitioners and Mr. P.Ganesan, Learned Additional Government Pleader, who takes notice for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. It is the case of the Petitioners that they are in occupation of the shops in the market building in Natham Survey No. 418/12, Old Police Line Street, Main Road, Chengam Selection Grade Town Panchayat, Tiruvannamalai District belonging to the Second Respondent and that the said building is structurally sound and does not require any demolition, but the Second Respondent was contemplating with *malafide* intention to evict them from there so as to allocate the new shops to their own nominees. In that backdrop, the Petitioners had made a representation dated 13.07.2023 not to demolish the market building, which was directed by this Court by order dated 07.08.2023 in W.P. No. 23113



W.P. Nos. 3416 and 3609 of 2024

of 2023 filed by them to be considered and final orders passed on merits and in accordance with law within a period of four weeks from the date of receipt of its copy. In furtherance to the said order, the Second Respondent by Proceedings in Na. Ka. No. 132/2023/A2 dated 10.11.2023 referred to the Resolution No. 333 dated 10.11.2023 of its Council and other connected documents of the decision taken to demolish the existing dilapidated building of the market and re-construct a new shopping complex there and the Petitioners were called upon to vacate from the respective premises in their occupation within three months from the date of receipt of its copy, which is challenged in these Writ Petitions.

3. It is not in dispute that the existing arrangement between the Petitioners and the Second Respondent necessarily leads to inference that the legal character of the Petitioners' possession of the respective shops had to be attributed to the jural relationship of Lessor and Lessee between them arising out of lease created by oral agreement accompanied by delivery of possession, falling within the purview of second para of Section 107 of the Transfer of Property Act, 1882 (hereinafter referred to as 'the TP Act' for short), as declared in the authoritative pronouncement of the Hon'ble Supreme Court of India in ***Anthony -vs- K.C.Ittoop & Sons*** [(2000) 6 SCC 394], which holds the field.

This would obviously mean that in terms of Section 106 of the TP Act, the lease



W.P. Nos. 3416 and 3609 of 2024

(except for agricultural or manufacturing purposes) shall be deemed to be from month to month terminable, on the part of either lessor or lessee, by 15 days notice.

4. Having regard to the aforesaid legal position coupled with the fact situation of this case, the impugned Order in Na. Ka. No. 132/2023/A2 dated 10.11.2023 issued by the Second Respondent to the respective Petitioners would have to be treated as termination of their leases on the expiry of three months from the date of receipt of the same by the concerned Petitioners, which satisfies the requirements of Section 106 of the TP Act. Consequently, the dispute raised by the Petitioners relating to the structural stability of the building would be irrelevant for termination of the monthly lease of the shops and they cannot have any grievance in that regard.

5. The next question arises as to the manner in which the Petitioners would have to be evicted from the premises on their failure to hand over possession to the Second Respondent. In this context, reference may be made to the dictum laid down by the Full Bench of this Court in **Ramaraju -vs- The State of Tamil Nadu** [2005 (2) CTC 741], which is reproduced below:-



W.P. Nos. 3416 and 3609 of 2024

38(6) If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the procedure contemplated in law, namely, either by taking recourse to the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral force.

Further Rule 319 of the Tamil Nadu Urban Local Bodies Rules, 2023, provides as follows:-

319. Occupation of a municipal land or building or of a land or building vested in the municipality without a licence or lease.— If the occupation of a municipal land or building or of a land or building vested in the municipality is without a licence or lease or continues beyond the period of the said licence or lease, the occupant shall be liable to be evicted under provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (Tamil Nadu Act 1 of 1976).



W.P. Nos. 3416 and 3609 of 2024

As per Section 2(g) of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, 'unauthorised occupation' 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 been determined for any reason whatsoever. This would reflect that the Second Respondent has to resort to the aforesaid procedure for evicting the Petitioners from the respective shops occupied by them.

In the upshot, the Writ Petitions are disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

16.02.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 31.05.2024.

gsa

To

1. The District Collector,
Tiruvannamalai District,
Tiruvannamalai - 606 604.



W.P. Nos. 3416 and 3609 of 2024

2. The Executive Officer,
Chengam Town Panchayat
Chengam Town 606 701.
3. The Assistant Director,
Panchayats,
Rural Development Collectorate,
Vellore.



WEB COPY



W.P. Nos. 3416 and 3609 of 2024

P.D. AUDIKESAVALU, J.

gsa

W.P. Nos. 3416 and 3609 of 2024

16.02.2024