



WEB COPY



W.P.No.12482 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2024

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.12482 of 2024

and

W.M.P.No.13635 of 2024

Mr.N.Raja Mohammed
S/o.Mr.Nainar Mohammed,
Proprietor,
M/s.HNR Fruits Company,
No.T/A-1, Anna Fruit Market,
Koyambedu, Chennai-600 107.

... Petitioner

Vs.

1.The Chief Administrative Officer/DRO,
Market Management Committee,
C.M.D.A., Koyambedu Wholesale Market,
Koyambedu, Chennai-600 107.

2.Mr.M.Gowri Shankar,
S/o.Mr.Munusamy,
Proprietor,
M/s.MR & Sons,
D-95, Periyar Market, Koyambedu,
Chennai-600 107.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records under



W.P.No.12482 of 2024

proceedings No.TNIKU/A1/0164/2016, dated 24.04.2024 passed by the first respondent and quash the same.

For Petitioner : Mr.T.Thiageswaran
For R1 : Mr.P.Veena Suresh
Standing Counsel
For R2 : Mrs.Chitra Sampath
Senior Advocate
for Mr.R.Subramanian

ORDER

The present writ petition is filed for a writ of certiorari to quash the order passed by the first respondent in Proceeding No. ANIKU/K1/0164/2016, dated 24-4-2024.

2. The factual aspect in the present writ petition is that the petitioner claims to be a tenant under the second respondent from the year 2008 in respect of the fruit shop bearing Door No. T/A1, Anna Fruit Market, Koyambedu, Chennai – 600 107 by paying monthly rent of Rs.90,000/- to the 2nd respondent and an advance of Rs. 40.00 Lakhs.

3. The case of the petitioner is that the second respondent



W.P.No.12482 of 2024

WEB COPY

purchased the portion of shop from Nabi Khan, who was the original allottee of the CMDA shop. The petitioner's father was a tenant under the said Nabi Khan from the year 2006. The petitioner claims that the second respondent has attorned the tenancy in favour of the petitioner's father and after his father's demise in the year 2010 the petitioner has been continuously carrying on the business in the said shop. Based on the occupation, he has obtained a certificate for carrying on the business under the Legal Metrology Act, the electricity connection and paying electricity charge from the year 2008. He would further contend that the 2nd respondent illegally attempted to dispossess the petitioner from the shop. He was constrained to file O.S No. 7291 of 2019 on the file of 9th Assistant City Civil Court, Chennai for permanent injunction restraining the second respondent, his servants, agents or anybody else claiming under him from in any manner dispossessing the petitioner from the shop situated at No.T/A-1, Anna Fruit Market, Koyambedu, Chennai-600 107 except due process of law and he has obtained a decree in his favour by judgement dated 4-1-2022. He has also filed an application in I.A. No. 4 of 2021 under section 94-E and 151 CPC to deposit a sum of



W.P.No.12482 of 2024

Rs.2,70,000/- being the rent for the month from November 2019 till February 2020 at the rate of Rs. 90,000/- per month.

4. The Assistant City Civil Judge by order, dated 4-1-2022 allowed the petition and permitted the petitioner to deposit a sum of Rs.3,60,000/- being the monthly rent for the month from November 2019 till February 2020 and also permitted the petitioner to deposit the future rents into Court at the rate of Rs.90,000/- per month before 10th of every month along with arrears to the credit of the suit in O.S. No.7291 of 2019. The petitioner had a decree in his favour, when the 2nd respondent trying to disposes using unlawful means the complaint seems to have been lodged to the Inspector of Police K10 Police station, Koyambedu wherein, the police official referred the matter with 1st respondent. Pursuant to which, the 1st respondent sealed the shop on 4-6-2023. The petitioner further claims that the action initiated by the 1st respondent without any prior notice, the petitioner filed W.P.17879 of 2023 for a mandamus directing the 1st respondent to consider the representation of the petitioner and desealed the shop. This Court by order, dated 11-6-



W.P.No.12482 of 2024

2023 directed the 1st respondent to consider the representation dated 9-6-2023 and pass orders in accordance with law.

5. The petitioner was also directed to make a fresh representation along with concerned document. Pursuant to which, the petitioner made representation dated 20-6-2023. Thereafter, on considering the representation, the 1 respondent passed an order dated 17-8-2023 and handed over the possession to the 2nd respondent. Challenging the above proceeding, once again, the petitioner filed W.P No.24972 of 2023. This Court by order, dated 21-11-2023 while setting aside the order passed by the first respondent, dated 17-8-2023 issued certain guidelines to the first respondent and directed the first respondent to pass the recent order dealing with each of the contention raised on merits in accordance with law and the decision taken should be communicated under written acknowledgement.

6. The learned counsel for the petitioner further contended that the first respondent, after receipt of the order passed by this Court in



W.P.No.12482 of 2024

W.P. No.24972 of 2023, had mechanically passed the order dated 24.4.2024 which is the order impugned in the present writ petition. The petitioner contented that the first respondent without considering the Judgment and Decree passed in O.S. No.7291 of 2019, wherein which, the petitioner had obtained favourable order of permanent injunction restraining the second respondent from interfering the peaceful possession and enjoyment of the shop situated in the Koyambedu Market.

7. The second respondent has filed a detailed counter contending that the second respondent purchased an extent of 1140.50 sq.ft. out of a total extent of 1988.6 sq ft. Ever since, he has been in continuous possession and he has been using the space for fruit vending by obtaining appropriate permission from the first respondent. The petitioner, who used to perform unloading the fruits from the truck in places not designated used to unload the fruit baggage in front of the second respondent's shop. However, the petitioner while doing unloading the fruit arriving in the truck, the petitioner utilized the small portion in front of the second respondent's shop and utilizing the same, now, the



W.P.No.12482 of 2024

petitioner has started claiming right of tenancy with the entire property of the second respondent and that of this adjacent owner. The second respondent further claims that he was never inducted the petitioner as a tenant and he never received any such amount neither as rent nor any amount towards advance from the petitioner as he claimed in the City Civil Court. As against the Judgment and Decree made in O.S. No. 7291 of 2019, the second respondent has further stated that he had filed the First Appeal in A. S. No. 225 of 2023, on the file of the VI Additional City Civil Court, Chennai.

8. He would further contend that when the petitioner try to encroach upon the second respondent's shop, it was informed to the 1st respondent to take action against the petitioner which caused law and order problem which warranted intervention of the K-10 Police Station, on complaint lodged by the second respondent. The first respondent after due enquiry, who initially sealed the 2nd respondent's shop on 4-06-2023 and later handed over the shop to the second respondent on 17-8-2023. In view of the stay order passed by this Court, the second respondent has



W.P.No.12482 of 2024

taken the premises under use. In fact, taking advantage of the stay order, the petitioner engaged rowdy elements to break open the second respondent's shop and tried to take illegal possession of the shop which was also reported to the K-10 Police Station on 18-11-2023. The 2nd respondent contended that at no point of time, the petitioner had been a tenant under the second respondent and documents in the name of the petitioner are all fabricated falsely obtained behind the back of the second respondent. Though, on several occasion, time was obtained for filing counter on behalf of the first respondent, the first respondent intentionally did not file counter in the present case. Warranting adverse inference to be drawn as against the first respondent. In fact, the counsel on record for the first respondent also did not take any initiative in assisting the Court by filing necessary counter to the writ petition. However, came forward to argue the case based on the records available.

9. Heard the learned counsel appearing for the petitioner and the respondents and perused the materials available on record.



W.P.No.12482 of 2024

10. Mr. Thiyageshwaran, learned counsel appearing for the petitioner would contend that the first respondent's order dated 24.4.2024 did not comply to the direction issued by this Court in W.P. No.24972 of 2023. The learned counsel further contended when there is a Civil Court Judgement and decree in favour of the petitioner, a permanent injunction restraining the second respondent from the peaceful possession of the petitioner, the first respondent ought to have taken the Judgment and Decree in favour of the petitioner. The action of the 1st respondent amounts to contempt for willful disobedience of the orders passed by the City Civil Court.

11. The learned counsel further contended that when the petitioner was in possession much earlier to the inception of the second respondent in 2006 prior to which, the petitioner's father was carrying on the business of fruit vending wholesale under Nabi Khan from whom the second respondent purchased the shop in 2006. After the demise of the petitioner's father in the year 2010, the petitioner had been in continuous possession and usage of the shop which is attorned by the second



W.P.No.12482 of 2024

respondent by receiving Rs.90,000/- per month as rent and Rs.40,00,000/- as advance. The learned counsel further contended that the learned City Civil Court has passed a Judgment and Decree which is a contested case by adducing oral and documentary evidence as against which no appeal is filed by the second respondent.

12. This Court considered the arguments put forth by all the counsels. It is not the dispute that the said shop bearing Door No. P / A - 1 Anna Fruit Market, Koyambedu, Chennai -107 belongs to the second respondent.

13. It is seen from the records that originally the said shop was allotted to one Nabi Khan which is an extent of 1988.6 sq.ft. from whom, the second respondent has purchased an extent of 1140.50 sq.ft. as early as 2006. Record shows that according to Section 21 of Tamil Nadu Specified Commodities Markets (Regulation of Location) Act 1996 (Act 24/1996), a proper license has been issued to the second respondent on his application after he had purchased 1140.5 sq ft. from and out of

10/17



W.P.No.12482 of 2024

1988.6 sq.ft. which originally allotted to Nabi Khan. As per the above provision, it is clear that nobody can carry any wholesale trading in specified commodity in market area unless and until, the license is issued by the appropriate authority. There is no record furnished by the petitioner as to any of the license issued by the authority under the act permitted him to carry on the wholesale trading in the demised shop that belongs to the second respondent. This license is not transferable. However, if the holder of the license has contravened any of the terms and conditions under the which the license is issued shall be subjected to penalty or further license to be cancelled under this act or even suspend the license.

14. As far the present case is concerned, the writ petitioner who claims to have the Judgement and Decree in his favour in O.S. No 7291 of 2019 has stoutly contends that he should be put in possession by virtue of the same. The learned counsel for the petitioner furnished additional typeset, in which the copy of the plaint in O.S. No. 7291 of 2019 was annexed. On perusing the schedule of the property filed in O.S. No. 7291



W.P.No.12482 of 2024

of 2019 all the piece and parcel of the shop situated at No.T/A01, Anna Fruit Market, Koyambedu, Chennai-600 107 measuring an extent of about 1900 square feet. North by Subrabha Hotel at No. T/A142, South by K.K. Foods at No.T/A1B, East by S.S. Foods at No.T/A4 and West by Market Road. Within the registration District of Chennai Central and Sub-Registration District of Anna Nagar, within the jurisdiction of this Court.

15. The petitioner seems to have approached the City Civil Court seeking permanent injunction as against the 2nd respondent herein for an extent of 1900 sq ft of shop, whereas the 2nd respondent himself is in possession and enjoyment only an extent of 1140.50 sq.ft. which he claims to have purchased under the registered sale deed dated 6-9-2006 registered as Document No.3452 of 2006 on the file of SRO, Anna Nagar. It is not clear when the extent of shop which originally was 1988.6 sq ft. allotted to Nabi Khan as early as 6-4- 2005, the petitioner in his suit filed before the Assistant City Civil Court in O.S.No.7291 of 2019 has claimed the injunction as against 1900 sq ft. arraying the second respondent as



W.P.No.12482 of 2024

defendant to the suit. This clandestine assertion before the City Civil Court by the petitioner would clearly established that neither in possession nor carrying on trade at the demised shop belonging to the second respondent. Though, it is a matter of appeal filed by the second respondent in A.S.No. 225/2023 which is pending on the file of VI Additional City Civil Court, Chennai, this Court refrain from expressing any opinion other than this as far the appeal is concerned. Reverting back to the present impugned order which is passed by the first respondent pursuant to the order passed by this Court in W.P No 24972 of 2023, dated 21-11-2023. It is clear from the records that the first respondent has complied all the directions issued in W.P.No.24972 of 2023. The license issued under section 21 of the Act which is existing as on dated in the name of the second respondent as well as the original allottee S. Nabi Khan which is not rebutted by the petitioner and the petitioner is not in a position to establish the license issued by the first respondent. In fact, the first respondent has also asserted that no such license has been issued in favour of the petitioner. This court is of the opinion that the Judgment and Decree rendered by the XI Assistant City Civil Court, Chennai will



W.P.No.12482 of 2024

not bind the first " respondent from passing any order pursuant to the direction issued by this Court in the earlier writ petition. Apart from this, the petitioner has not made the first respondent herein as a party to the suit in O.S.No.7291 of 2019 to ascertain the binding of Judgment and Decree as against the first respondent.

16. It is a clear case where the petitioner trying to attempt the first and second respondent by using men power which is clearly established by his act of breaking the shutter of the shop after that being sealed by the 1st respondent. It is seen from the records that the petitioner has no locus-standi to claim to run the shop merely because he has a Judgment and Decree in his favour to which, the first respondent has not been made as a party. On perusing the impugned order, this Court do not find any infirmity as claimed by the petitioner. The petitioner has not made out any good grounds warranting interference to the impugned order passed by the first respondent.

17. In fine, the writ petition is dismissed with a direction



W.P.No.12482 of 2024

directing the first respondent to forthwith handover the shop at TA-1, Anna Fruit Market, Koyambedu, Chennai-600 107 to the 2nd respondent. No costs. Consequently, connected miscellaneous petition is closed.

.09.2024

Index : yes/no
Internet : yes/no
am

To

- 1.The Chief Administrative Officer/DRO,
Market Management Committee,
C.M.D.A., Koyambedu Wholesale Market,
Koyambedu, Chennai-600 107.
- 2.Mr.M.Gowri Shankar,
S/o.Mr.Munusamy,
Proprietor,
M/s.MR & Sons,

15/17



W.P.No.12482 of 2024

D-95, Periyar Market, Koyambedu,
Chennai-600 107.

WEB COPY

3. The Public Prosecutor
High Court, Madras
Chennai.



WEB COPY



W.P.No.12482 of 2024

V.BHAVANI SUBBAROYAN, J.

am

W.P.No.12482 of 2024

.09.2024