



W.A.(MD) No.1069 of 2011

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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M/s.Vicnivaas Agency
289-D, Sivanthakulam Road
Tuticorin-628 003
rep.by its Partner
T.P.S.Ponkumaran

... Appellant

-VS-

- 1.N.K.Raghupathi, I.A.S.,
Now working as Additional Secretary
Financial Adviser
Department of Consumer Affairs
Food & Public Distribution
Krishi Bhavan, New Delhi-110 001
Residing at C-II/ 80, Bapa Nagar
New Delhi-110 001
- 2.The Union of India
rep.by Secretary to Government
Department of Shipping
(Ports Wing)
Ministry of Shipping
Road Transport and Highways
Parivahan Bhawan
1, Parliament Street
New Delhi-110 001



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3.V.O.C.Port Trust
formerly Tuticorin Port Trust
rep.by its Chairman
Thoothukudi

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 20.07.2011, passed in W.P.(MD) No.5859 of 2008, on the file of this Court.

For Appellant : Mr.N.Shanmugaselvan

For Respondents : Mr.V.R.Shanmuganathan for R1
Mr.B.Rajesh Saravanan for R2
Mr.S.Yashwanth for R3

J U D G M E N T

[Judgment of the Court was made by A.D.JAGADISH CHANDIRA, J.]

This intra-court appeal has been filed by the writ petitioner against the order of the learned Single Judge, dated 20.07.2011, passed in W.P.(MD) No.5859 of 2008.

2. The appellant / writ petitioner had sought for a writ in the nature of declaration, to declare that the actions of the first respondent (the then Chairman of Port Trust) taken against him, namely, demolishing of their



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property and suspension of stevedoring license are unlawful, ultra vires, mala fide, arbitrary, unreasonable, unjust, perverse and vindictive and therefore violative of Articles 14, 19 & 21 of the Constitution of India. The appellant had further prayed that the orders passed by the first respondent are in contravention to the All India Service (Conduct) Rules 1968 and thereby, the appellant had consequently sought to direct the first respondent to pay Rs.3,00,00,000/- (Rupees Three Crores only) with interest to the appellant – firm for causing monetary loss, harassment, mental agony, and hardship and further to direct the second respondent to take appropriate steps with the concerned Government Departments for payment of the amount claimed to the appellant from the first respondent's account for misuse of the office, and abuse of power, and for infringing the fundamental rights of the petitioner.

3. The learned Single Judge had found that earlier, the appellant filed W.P.Nos.1247 & 1248 of 2004 seeking allotment of land and that the said writ petitions were dismissed, as it raised disputed questions of fact. After dismissal of the writ petitions, the appellant was ordered to be evicted under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 on 19.05.2005. The appellant had preferred an appeal against the said order, but, no interim order was granted in his favour. Thereafter, the



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appellant had approached this Court by moving a civil revision petition in C.R.P.No.514 of 2005 and during pendency of the said civil revision petition, the matter was settled between the parties, as the respondent, on receipt of the monthly rent in respect of total area of 16,000 Sq.mts., allotted area measuring 6,485 Sq.mts with effect from 01.11.2005 for a period of eleven months and thereafter, the licence granted in favour of the appellant pursuant to the settlement expired on 30.09.2006. Thereafter, the appellant made a request for renewal of the licence, but the licence was not renewed, and he was directed to remove the temporary shed, and other superstructures put up by him. Against the said order, the appellant had filed W.P.(MD) No.933 of 2007 seeking for renewal of licence. However, subsequently, the appellant, on realising that the necessary relief to challenge the order was not claimed, filed W.P.(MD) No.999 of 2007, for issuance of a writ in the nature of certiorari, to quash the order, refusing the renewal, and the order directing removal of the materials from the site. Both the writ petitions were disposed of by a common order dated 07.08.2007. The relevant portion of the said order is extracted hereunder:

"8.Heard Mr.K.Srinivasan, learned counsel for the petitioner and Mr.V.T.Gopalan, Additional Solicitor General appearing for the respondents.



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9. De hors the narration of facts indicated above, the sole dispute raised in both the writ petitions, narrows down to the action of the respondent in not granting renewal of the license to the petitioner in respect of the land of an extent of 6,485 Sq.mts with effect from 01.10.2006. According to the petitioner, the respondent acted arbitrarily in not granting renewal of the license to the petitioner alone, though the respondent had granted renewal in favour of other exporters similarly placed like him.

10. Upon considering the averments and entire set of documents filed on both sides, I am of the considered view that the respondent does not appear to have acted arbitrarily. This conclusion is inevitable on account of two communications sent by the petitioner.

11. By a letter dated 19.07.2006 the petitioner sought for renewal of the license with effect from 01.10.2006. But unfortunately by two subsequent letters dated 21.08.2006 and 22.08.2006, the petitioner had given up his right to seek renewal of the license. The letter dated 21.08.2006 sent by the petitioner to the respondent reads as follows:

"21.08.2006
The Traffic & Estate Manager,
Tuticorin Port Trust,
Tuticorin.
Dear Sir,



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SUB:LICENSED AREA - 6485Sq.mt - SURRENDER - REG.

REF:LICENSE NO.T-31/19/2003-04/C/D.2029 DT. 05.11.2005

We are willing to surrender the said licensed area as we have less handling of goods meant for export at present. When the situation improves. We shall be pleased to approach your goodselves for allotment of the said licensed area to us. Kindly oblige.

*Thanking you,
Yours faithfully,*

For VICNIVAAS AGENCY"

The letter dated 22.08.2006 sent by the petitioner to the respondent reads as follows:

"22.08.2006

*The Traffic & Estate Manager,
Tuticorin Port Trust,
Tuticorin.*

Dear Sir,

*SUB:SURRENDER OF LICENSED AREA -
STRUCTURES AS STORAGE SHED - REG.*

Further to our letter dt. 21st instant, we hereby inform your goodselves our no objection for the new allottee to utilize our structures used as storage shed. We request you to kindly allow us to take possession of the same upon vacation by the new allottee. Please oblige.

Thanking you,

*Yours faithfully,
For VICNIVAAS AGENCY"*

12.The above two letters dated 21.08.2006 and 22.08.2006 make it clear that the petitioner had actually gone back on his request made earlier for the renewal of the



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license, by his letter dated 19.07.2006. Therefore, this is not a case where the respondent passed an order rejecting the request of the petitioner for renewal of the license. The letters clearly indicate that the petitioner did not want the renewal of the license. This conclusion is inevitable on account of one more fact, namely, the respondent offered renewal of all licenses for a period of 30 years at one stroke. But the petitioner declined on the ground that he could not pay the entire rental amount upfront.

13.Mr.K.Srinivasan, learned counsel for the petitioner contended that the letters dated 21.08.2006 and 22.08.2006 have to be read and understood in the context of the discussions held between the petitioner and the officials of the respondent on 17.08.2006. According to him, an understanding was reached on 17.08.2006 whereby the Food Corporation of India was permitted to occupy the premises. But unfortunately the letters dated 21.08.2006 and 22.08.2006, do not reflect any discussion that took place on 17.08.2006. There is not even a reference to any such meeting held on 17.08.2006 in the letters dated 21.08.2006 and 22.08.2006. The contents of these two letters cannot be improved at this stage by the petitioner referring to discussions that allegedly took place between him and the representatives of the respondent. The license granted to the petitioner was under a contract. The terms of the contract and the request of the petitioner originally made in his letter dated



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19.07.2006 and subsequently, made in his letters dated 21.08.2006 and 22.08.2006, have to be read and understood only from their own contents and not from any extraneous factors to which there is no reference or whisper in the said letters.

14. In view of the aforesaid letters dated 21.08.2006 and 22.08.2006, I am of the considered view that the respondent did not actually refuse to renew the license. It is only the petitioner who surrendered the license by virtue of those letters and hence, he is now estopped from taking a contrary stand.

15. The learned counsel for the petitioner contended that he had put up temporary shed and other superstructures at a very enormous cost and that those structures have been removed by the respondent hastily, causing heavy loss and damage. But the same is not the subject matter of the writ petition. It cannot also be the subject matter of the writ petition since the allotment orders themselves make it incumbent upon the petitioner to remove any temporary sheds put up by him. In any case if the petitioner is aggrieved by the action of the respondent giving raise to a claim for damages, this is not the forum where the petitioner can ventilate such a grievance. A claim for damages will have to be made only before the Civil court of competent jurisdiction.



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16. Therefore, both the writ petitions are dismissed. However, the learned counsel for the petitioner submitted that the respondent has in their possession more than four lakh Sq.mts of land and still there is scope for the respondent to consider the request of the petitioner and allot either the same land or any other land. If that is so, it is always open to the petitioner to make any such request and such request may be considered by the respondent in accordance with law. No costs. Consequently, connected miscellaneous petitions are also dismissed."

4. Taking note of the above, the learned Single Judge finding that the appellant, who had earlier taken action against the Port Trust, had not sought for any relief against the first respondent in the writ petition and also finding that the appellant had not availed the right at the time of filing of the earlier writ petition, if not raised, would be deemed to have been waived, under Order 2 Rule Civil Procedure Code and also finding that the lapses alleged against the first respondent are all prior to the filing of the previous writ petition, on which a finding has already been recorded, and that the action of the first respondent were not arbitrary and liberty was given to the appellant to claim damages, if any, in the Civil Court and that in spite of the specific previous order, the appellant has chosen to file the present writ



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petition and also finding that the writ petition is not maintainable, had dismissed the writ petition. Challenging the same, the present intra-court appeal.

5. Learned counsel for the appellant would submit that though the suit has been filed by the appellant claiming damages before the Civil Court, he has not impleaded the first respondent as a party respondent and no relief has sought for against the first respondent and thereby, the writ petition cannot be barred on the ground of *res judicata* and thereby, he would seek for allowing the writ appeal.

6. Learned counsel for the first respondent would submit that the first respondent was the Chairman of the Port Trust during 2004-2007. During the said period, the appellant was allotted a land on lease basis for putting up a shed for his business purposes and thereafter, the licence was not extended. The appellant had thereafter filed W.P.Nos.1247 & 1248 of 2004 seeking allotment of land and the writ petitions were dismissed by this Court. Subsequently, the Port Trust took action against the appellant for eviction under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 on 19.05.2005. The appellant was ordered to be



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evicted, against which, he preferred an appeal, however, no interim order was granted in the said appeal. Subsequently, he approached this Court by filing C.R.P.No.514 of 2005 and during such time, there was a settlement between the parties and the lease was extended for a specific period of eleven months only and the lease got expired on 30.09.2006. Subsequently, the appellant had also made a request for renewal of licence, but the same was not renewed and the appellant directed to remove the temporary shed and other superstructures put up by him. Against the same, the appellant had once again filed W.P.(MD) No.933 of 2007 and also W.P.(MD) No.999 of 2007 and both the writ petitions were dismissed by a common order dated 07.08.2007 and in these writ petitions, the appellant had not made any allegations as against the first respondent. The learned Single Judge finding that the lapses alleged against the first respondent were all prior to filing of the previous writ petition, on which the finding has already been recorded, thereby, the action of the first respondent were not arbitrary, had dismissed the writ petition. However, liberty was given to the appellant to file a civil suit. The appellant has not filed any civil suit, thereby, he would pray for dismissal of the writ appeal.



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7. Heard the learned counsel on either side and perused the materials available on record.

8. We have also perused the earlier common order dated 07.08.2007, passed in W.P.(MD) Nos.933 and 999 of 2007. The learned Single Judge finding that the appellant having failed to avail the right, which was available at the time of filing of the writ petition, if not raised, would be deemed to have been waived under Order 2 Rule 2 of the Code of Civil Procedure, had dismissed the writ petition. Further, since the lapses alleged against the first respondent were all prior to the filing of the previous writ petition, on which a finding had already been recorded that the action of the first respondent were not arbitrary and liberty was given to the appellant to claim damages, if any, in the Civil Court. The learned Single Judge had also found that in view of the earlier decisions of this Court, it was not competent nor permissive to go into the disputed questions of fact, to determine the damages, especially when in the previous writ, directions have been issued to the appellant to approach the Civil Court, if so advised.



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9. We do not find any infirmity in the order passed by the learned Single Judge, which warrants no interference from this Court and this intra-court appeal is, therefore, liable to be dismissed.

10. Accordingly, the writ appeal is dismissed. No costs.

[A.D.J.C., J.] [K.R.S., J.]

22.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:
The Secretary to Government,
Department of Shipping (Ports Wing),
Ministry of Shipping, Road Transport and Highways,
The Union of India,
Parivahan Bhawan,
1, Parliament Street,
New Delhi-110 001.



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A.D.JAGADISH CHANDIRA, J.
AND
K.RAJASEKAR, J.

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