



WP(MD)No.1723 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 01.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.1723 of 2024
and
WMP(MD)No.1763 of 2024

B.Kanakasababathi

.. Petitioner

v.

- 1.Estate Officer,
Waqf House,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.
- 2.Nawab Wallajah Sahib Pallivasal,
Rep. by its Secretary,
No.31, Cheranmahadevi Road,
Pettai, Tirunelveli – 627 004.
- 3.The Inspector of Waqf,
O/o.The Superintendent of Waqfs,
No.51/80, Khader,
Avulia Darga and Pallivasal (KAP Complex),
Kulavanigarpuram,
Palayamkottai,
Tirunelveli – 627 002.



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4.The Superintendent of Waqfs,
No.51/80, Khader,
Avulia Darga and Pallivasal (KAP Complex),
Kulavanigarpuram,
Palayamkottai,
Tirunelveli – 627 002.

5.The Inspector of Police,
Pettai Police Station,
Cheranmahadevi Road,
Pettai, Tirunelveli – 627 004.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus restraining the respondents from taking any evasive or coercive action of evicting the petitioner from the premises situate in non-residential shop portion bearing D.No.6, Cheranmahadevi Road, Pettai, Tirunelveli – 627 004, admeasuring 1245 sq.ft., based on the order in Case No.PP.239/TNV/2022, dated 28.12.2023 passed by the first respondent.

For Petitioner : Mr.Swarnam J.Rajagopalan

For Respondents : Mr.N.Mohideen Basha for R.1

Mr.K.Navaneetha Raja for R.2

Mr.M.Vaikkam Karunanidhi,
Government Advocate (Crl. Side) for R.5



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ORDER

The petitioner is a tenant of the respondents Waqf and he is running a shop namely, M/s.Sarathy Hotel, in the shopping complex at Tirunelveli owned by the second respondent Pallivasal. He entered as a tenant through the then Muthavalli of the second respondent Pallivasal, two decades back, for a monthly rent of Rs.175/-. The Waqf Board took over the commercial complex from the Pallivasal authorities and the second respondent has revised the rent as Rs.2000/- per month in the year 2010. However, the second respondent has not issued any receipts nor the rental agreements were renewed. This led to a commotion, followed by the registration of a criminal case in Cr.No.137 of 2010 on the file of the fifth respondent Police. On the intervention of the revenue officials, a peace committee meeting was convened and it was resolved that the second respondent has to issue rental receipts and to renew the rental agreements. However, the second respondent failed to honour the resolutions passed in the peace committee meeting, instead, in the year 2017, revised the rent as Rs.3500/- and threatened the petitioner to vacate the premises.



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WEB COP 2. Aggrieved, the petitioner has filed a suit in O.S.No.135/2017 before the Waqf Tribunal, Tirunelveli, to declare the revision of rent as null and void. The suit was transferred to the file of Waqf Tribunal, Chennai, in O.S.No.307 of 2019 and it was dismissed for non-prosecution on 30.11.2023. The petitioner is taking steps to restore the suit. Pending the suit, the second respondent filed an application before the first respondent / Estate Officer under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, wherein, the first respondent has issued a notice on 08.03.2023 and passed the impugned order dated 28.12.2023, directing the petitioner to vacate the premises within one month. Challenging the same, the petitioner has filed an appeal before the District Court, Tirunelveli, in A.S.SR.No.1725 of 2024 on 22.01.2024 along with an interim application and the same are yet to be numbered. Since the respondents are attempting to evict the petitioner from the subject premises, the petitioner has filed this writ petition for a mandamus restraining the respondents from taking any action to evict the petitioner based on the order dated 28.12.2023.



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3.Learned Counsel for the petitioner submitted that the petitioner has already filed an appeal as against the order passed by the first respondent / Estate Officer dated 28.12.2023 before the District Court, Tirunelveli, along with an interim application. Till a decision is taken by the District Court, he prayed for some interim protection as against the eviction order.

4.Learned Counsel for the respondents submitted that there are 75 shops in the shopping complex and petitioner is one of the tenants. Excepting the petitioner and six others, all other tenants have agreed the revised rent and are paying the same without any default. The petitioner, instead of paying the fair rent, is dragging on the proceedings by filing petition after petition.

5.Learned Counsel for the respondents claims that the petitioner is liable to pay a sum of Rs.2,00,692/-, as rental arrears and to this effect, he has also filed a calculation memo, however, it was disputed by the petitioner that he is liable to pay only a sum of Rs.1,26,000/- as rental arrears.



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6.This Court paid it's anxious consideration to the rival submissions made on either side and to the materials placed on record.

7.The first respondent / Estate Officer has already passed an order on 28.12.2023, after providing due opportunity of hearing to the petitioner. The petitioner claims that he has preferred an appeal as against the order of the first respondent before the District Court, Tirunelveli, in A.S.SR.No. 1725 of 2024 on 22.01.2024, along with an application for interim protection and the same is yet to be numbered.

8.Considering the facts and circumstances of the case and the quantum of rental arrears, this Court is issuing the following directions:-

a) The learned District Judge, Tirunelveli, shall number the appeal filed by the petitioner in A.S.SR.No.1725 of 2024, if the same is otherwise in order and shall decide the interim application, on merits and in accordance with law, as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order.



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b) The respondents Waqf shall take notice in the appeal filed by the petitioner and file their response within a period of two weeks, enabling the District Court to dispose of the interim application.

c) The petitioner shall deposit the rental arrears of Rs.2,00,692/-, as claimed by the respondents Waqf, within a period of two weeks from the date of receipt of a copy of this order, before the District Court, Tirunelveli, to the credit of the pending appeal. On such deposit being made, the respondents shall not take any coercive action to evict the petitioner till the interim application filed by the petitioner in A.S.SR.No.1725 of 2024 is decided by the District Court, Tirunelveli.

d) It is made clear that the District Court, Tirunelveli, shall decide the appeal as well as the interim application filed by the petitioner purely on its own merits and in accordance with law, uninfluenced by any of the findings / orders of this Court providing interim protection.

e) If the petitioner fails to deposit the rental arrears, as directed by this Court, it is open to the respondents to take necessary further action, in accordance with law.



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WEB COPY In the result, this writ petition stands disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

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

01.02.2024

Note:

- Mark a copy of this order to
The District Judge,
Tirunelveli.

- Issue order copy by **02.02.2024**

To

1.Estate Officer,
Waqf House,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.

2.The Inspector of Waqf,
O/o.The Superintendent of Waqfs,
No.51/80, Khader,
Avulia Darga and Pallivasal (KAP Complex),
Kulavanigarpuram,
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B.PUGALENDHI, J.

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