



W.P.(MD)No.21001 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD)No.21001 of 2024
and
W.M.P.(MD)Nos.17787 and 17788 of 2024**

1.S.Chithra
2.Sanjeevi

... Petitioners

-VS-

The Executive Officer,
Andipatti Town Panchayat,
Theni District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relates to the impugned eviction notice in Na.Ka.No. 812/2024/Tha.A, dated 30.08.2024, issued by the respondent and quash the same as it is illegal.

For Petitioners : Mr.R.Suirya Narayanan

For Respondent : Mr.P.Thilakkumar
Government Pleader



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ORDER

[Order of the Court was made by R.SUBRAMANIAN, J.]

The challenge in this Writ Petition is to the proceedings of the Executive Officer of Andipatti Town Panchayat, Theni District, under Section 128(1) and (2) of the Tamil Nadu Urban Local Bodies Act, 1998 [hereinafter referred to as "the Act"], requiring the petitioners to remove the encroachment made by them in the bus stand.

2. It is the contention of the petitioners that they were permitted to occupy the area in question as per resolution of the Town Panchayat, dated 27.08.2009, on a monthly rent of Rs.900/- and they were also permitted to energize the said shop. Pursuant to the same, it has been in their occupation and they have been paying the rent regularly. During the year 2011, an attempt was made by the Town Panchayat to evict the petitioners forcibly. This led them to approach the Civil Court seeking a decree for permanent injunction, restraining the Town Panchayat from evicting them except under due process of law. In the said suit, a contention was raised by the Panchayat that the permission granted to the petitioners was cancelled by a resolution dated 30.01.2011 and the same was intimated to them by a notice dated 05.04.2011.



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3. The fact that the permission expired only on 31.03.2011 was taken note of by the Civil Court and it was held that since the permission was in subsistence till 31.03.2011, it was deemed that the resolution dated 31.01.2011, cannot be implemented. On the said premise, the Civil Court granted a decree for injunction. Thereafter, the Town Panchayat was receiving rent from the petitioners till the year 2020. When the petitioners attempted to pay the rent for the years 2020 to 2023 in one lump-sum, the same was returned by the Town Panchayat stating that there is no record to show that the petitioners are in occupation of any shop belonging to the Town Panchayat. This was done evidently without looking into the records. Finding that the contents of the letter dated 23.03.2023, ran counter to the records that have been placed before us, we directed the Executive Officer of the Town Panchayat to be present in person.

4. Fortunately or unfortunately, the Executive Officer, who signed the proceedings dated 23.03.2023, has since been transferred and a new incumbent has taken over. We must also point out that another writ petition was filed in W.P.(MD)No.10210 of 2024, seeking a direction to remove the encroachment contending that the shop in question is the hindrance to traffic and



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the public while using the bus stand. A coordinate Bench of this Court, by its order dated 26.04.2024, directed the Town Panchayat to take action to remove the encroachment. No doubt, the petitioners were not made as parties to that Writ Petition. In fact, this Court has taken care to observe that the Town Panchayat will decide on eviction after giving opportunity of hearing to the petitioners and the third respondent therein [O.Raja], who according to the petitioners, is a stranger. Be that as it may, the authorities have issued a notice to the petitioners purportedly under Section 128(1) and (2) of the Act.

5. It is the contention of the learned counsel for the petitioners that the petitioners being licensees, who have entered into possession legally, cannot be termed as encroachers and therefore, the proceedings under Section 128 of the Act are without jurisdiction. It is also claimed that the petitioner in W.P.(MD)No. 10210 of 2024 [V.Arichandran] is a business competitor and the very Writ Petition was actuated by *mala fides*.

6. As regards the status of the petitioners, we are unable to conclude that the petitioners are the persons, who are in legal possession of the property.



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Admittedly, licence was granted only for a period of three years upto 31.03.2011.

There is nothing to show that it was renewed thereafter. In the suit for injunction, the Civil Court has only held that since the resolution was passed on 31.01.2011, cancelling the licence even prior to the expiry of the licence period is not acceptable. However, the licence period has expired long back on 31.03.2011. There is no extension. The mere fact that the Panchayat received the rents paid in lump-sum by the petitioners upto 2020, does not enable the petitioners to contend that the licence has either been renewed or they are lessees, who are continuing to occupy the property beyond the term of their lease. It should also be pointed out that the petitioners have not paid rents from 2020. Their attempt to pay rent from 2020 to 2023, did not fructify though due to wrong reasons. Therefore, we do not think that the petitioners can contend that their possession as of today is legal. The respondent was justified in invoking Section 128 of the Act for the purposes of removing the bunk shop treating the petitioners as encroachers.

7. It is seen that the authorities have followed the procedure prescribed under Section 128 of the Act and they have issued a notice, calling upon the petitioners to explain as to why the encroachments should not be



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removed within seven days from the date of receipt of the notice and after considering the objections submitted by the petitioners, the order dated 30.08.2024, has been passed, directing removal of the encroachment. We, thus, do not find any ground to entertain the Writ Petition. The Writ Petition fails and it is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

8. Considering the fact that the petitioners have been running the business for all these years, we grant them eight weeks time to remove the encroachment on their own, provided that they pay the rental arrears up-to-date within a period of four weeks from today.

NCC : Yes / No
Index : Yes / No
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[R.S.M., J.] [L.V.G., J.]
04.09.2024

To:-

The Executive Officer,
Andipatti Town Panchayat,
Theni District.



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and
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