



W.P.No.30294 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders reserved on : 06.02.2025

Orders pronounced on : **18.02.2025**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.30294 of 2024
and W.M.P.No.32975 of 2024

Madras Gymkhana Club,
Represented by its Honorary Secretary,
No.1, The Island Grounds,
Anna Salai, Chennai - 600 002. .. Petitioner

Versus

1. The Government of Tamil Nadu,
Represented by its Secretary,
Revenue Department,
Fort St. George, Chennai - 600 009.
2. The District Collector of Chennai,
Singaravelar Maligai,
Rajaji Salai, Chennai - 600 001.
3. Revenue Divisional Officer,
South Chennai Division,
Guindy, Chennai - 600 032.



W.P.No.30294 of 2024

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4. The Tahsildar, Guindy Taluk,
No.370, Richardson Park,
Saidapet, Chennai - 600 015.

5. The Tahsildar,
Velachery Taluk,
No.113, V.V.Koil Street,
Tharamani, Chennai - 600 015.

6. The Special Commissioner &
Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai - 600 005.

7. The Department of Horticulture and Plantation Crops,
1, Wallaja Road, PWD Estate,
Chepauk, Chennai - 600 005.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus forbearing the respondents from causing any further damage to the Golf Course, Annex building and allied areas pending consideration of the representation of the petitioner, dated 25.09.2024.

For Petitioner : Mr.V.Raghavachari,
Senior Counsel,
for M/s.Viruksham Legal

For Respondents : Mr.J.Ravindran,



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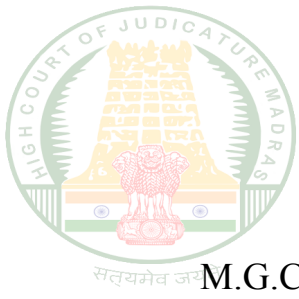
W.P.No.30294 of 2024

Additional Advocate General,
Asstd. by Mr.A.Selvendran,
Special Government Pleader

ORDER

This Writ Petition is filed for a mandamus forbearing the respondents from causing any further damage to the Golf Course, Annex building and allied areas pending consideration of the petitioner's representation, dated 25.09.2024.

2. The petitioner's case is that, at its inception, the petitioner was a society registered under the Societies Registration Act of 1860 and later obtained registration under the Tamil Nadu Societies Registration Act of 1975, bearing registration No.48 of 1910. In the Race Course at Guindy, a golf course established by the Madras Golf Club existed. The Madras Golf Club and the Madras Gymkhana Club merged in 1887, and the petitioner has maintained the golf course ever since. The Madras Gymkhana Club -

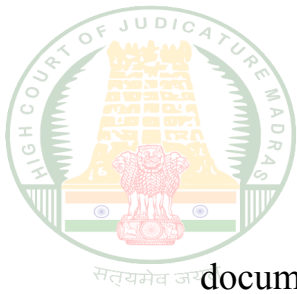


W.P.No.30294 of 2024

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M.G.C Golf Annex, Guindy, established in 1887, is the third oldest golf course in the country. The records available to the petitioner indicate that members of the petitioner and the Madras Race Club played the first seven holes at the golf course in Island Grounds before traveling on horseback to the golf course at Guindy to play four holes, then returning to the Island Grounds Golf Course to play the remaining seven holes to complete a total of 18 holes, which was the practice until the turn of the 20th century.

3. Additional details regarding the development of the game and the establishment of a full-fledged Golf Course are also provided. The petitioner constructed a Club House in 1951 at its own expense, which includes kitchen, dining, recreation, and bar facilities. It is located on the first floor of the building housing the race jockeys and measures approximately 4,000 square feet. There are 50 staff members employed, and nearly 400 to 500 members use the Golf Course on a regular basis. The history of golf play and the various events conducted over the years are all



W.P.No.30294 of 2024

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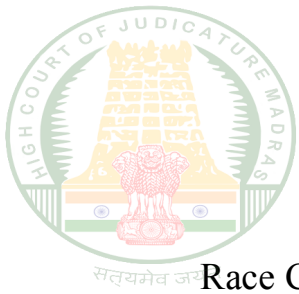
documented. The petitioner asserts that it has been in possession, management, and enjoyment of the Guindy Golf Course for over 140 years, maintaining the said land at significant costs to meet international standards. The petitioner club celebrated its 125th year of golf in 2002 and is set to celebrate its 150th anniversary in 2027. Paragraph No.13 of the affidavit reads as follows:-

" 13. I submit that the petitioner has established the following rights by efflux of time over hundred years viz.,

- To maintain the golf course with 18 holes for the benefit of its members and to non member golfers on payment of the green fee.
- In furtherance of the above, to assure the golfers to gain entry through Gate No.5.
- To maintain a golf club house with club facilities such as bar and restaurant.
- To the unfettered use of the lawn near the golf club house.
- To uninterrupted supply of electricity, water for drinking as well as for irrigating.
- To use of adequate parking facilities for cars near the golf club house and within the race course walls.
- To conduct various golf tournaments and training sessions."

4. While the respondents issued G.O.Ms.No.343, dated 06.09.2024,

this was related only to the termination of the lease made with the Madras



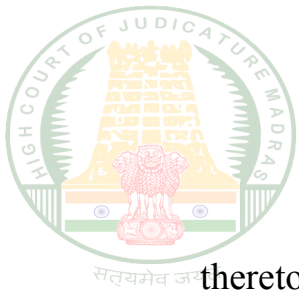
W.P.No.30294 of 2024

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Race Club, and no notice or Government Order was served on the petitioner before they proceeded to seal Gate No.5 of the petitioner's club, barring entry to its members. The respondent Nos. 1 to 5 entered the petitioner's premises, including the Golf Course. No opportunity was given, and no procedure established by law was followed by the respondents. It has been reported in the newspapers that the Golf Course premises were transferred to the seventh respondent for the construction of an eco-park.

5. If any work is started, it will cause grave prejudice to the petitioner.

The petitioner submitted a detailed explanation to the Revenue Divisional Officer's communication, dated 12.09.2024, directing the petitioner's club to furnish supporting documents regarding the claims made by the petitioner's club. Even the Government authorities issued fire licenses, etc. FL2 license was also given by the Tamil Nadu Excise Department. Therefore, by the said representation, dated 25.09.2024, the petitioner highlighted its possession for over 140 years and sought to reopen Gate No.5. Pursuant



W.P.No.30294 of 2024

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thereto, the third respondent called the petitioner for an in-person enquiry along with supporting documents on 07.10.2024.

6. In the meantime, since the access to the Golf Course and Annex building was prevented, the petitioner was constrained to file a suit in the Original Side of this Court. Application No.5131 of 2024 in C.S.Sr.No.132555 under Section 80(2) of the Code of Civil Procedure, seeking for the dispensing with the statutory notice to be issued to the defendants, was listed for hearing on 03.10.2024. While so, on 14.10.2024, the respondents entered into the Golf Course area with machinery, including J.C.B and dug a trench to the size of 50 meters x 20 meters. From the action of the respondents, it is clear that it acted in a manner to overreach the jurisdiction of the Court and to frustrate the petitioner's civil remedy by avoiding to answer the claim of the petitioner.

7. The petitioner is informed that the same is undertaken to create a

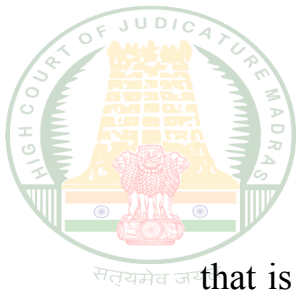


W.P.No.30294 of 2024

WEB COPY

water body to collect rainwater during the ensuing monsoon season to ensure that the rainwater does not drain onto the five-furlong road. Already, a pond exists on the western side of the Golf Course. There are two existing tanks on the western side, which are also recently deepened by the Madras Race Club. The respondents, in a surreptitious manner, are attempting to alter the nature of the Golf Course permanently to nullify the petitioner's longstanding rights to use the Golf Course. The damages caused to the petitioner would be close to Rs.50,00,000/-. The petition submitted by the petitioner is pending enquiry. The particulars as to the proceedings that were filed to the Madras Race Club regarding these disputes are also mentioned. On the said premises, the prayer is made.

8. The Writ Petition is resisted by filing a counter-affidavit. It is stated that the petitioner does not hold right, title or interest over the demised premises. The entire land measuring 160.86 acres was leased out only to the Madras Race Club. There seems to be an unlawful permission

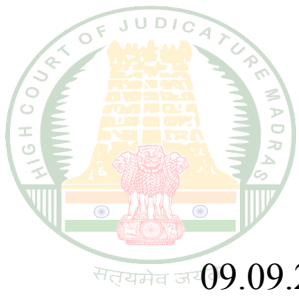


W.P.No.30294 of 2024

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that is granted by the Madras Race Club in favour of the petitioner, and the respondent authorities are not privy to the same. The petitioner also filed similar suits with similar prayers, and by the order, dated 19.10.2024, the application to dispense with Section 80 notice was dismissed, in which it was categorically mentioned that there exists no relationship between the respondents and the petitioner, and his application now stands dismissed. The Government, through G.O.Ms.No.343, dated 06.09.2024, had terminated the lease agreement in favour of the Madras Race Club. The proceedings concerning taking possession from the Madras Race Club are mentioned. Thereafter, except to permit the training of horses through Gate No.3A for 15 days, the possession of the entire area was taken.

9. The Madras Race Club also filed a suit in C.S.F.No.124968 of 2024 praying to institute the suit without serving a notice under Section 80. The said permission is granted by the Court, but the said entity did not number its suit to date. The Government resumed the demised lands in entirety on



W.P.No.30294 of 2024

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09.09.2024. Due process of law has been followed while taking possession from the said Madras Race Club. The petitioner obtained a certificate of registration on 19.02.1970. Its existence for over 147 years is denied.

Considering the specific need for water management, the following works are undertaken:-

"Short-Term Measures:

i. Conduct Scientific Studies:

- Carry out topographical and geological surveys using proper consultants such as Anna University and Indian Institute of Technology.

ii. Enhance Existing Infrastructure:

- Deepen existing ponds further and expand them as required.
- Excavate additional ponds with huge capacity at Madras Race Club to increase Ground Water Recharge and to avoid bailing out of rain water from Madras Race Club.

iii. Implement Reverse Pumping:

- Deploy additional high-capacity motors for reverse pumping into the Adyar River to discharge water at maximum possible capacity.

iv. Defunct Existing Internal Storm Water Drain (SWD):

- Cease the use of current internal Storm Water Drain (SWD) constructed in an unauthorised manner to avoid untoward incidents inconvenience to public and damage to public property due to flooding by bailing out of rainwater from Madras Race Club.

Long-Term Measures:

i. Conduct Comprehensive Studies:

- Utilize consultants from Anna University and Indian



WEB COPY



W.P.No.30294 of 2024

Institute of Technology to conduct thorough topographical and geological surveys, and implement their recommended solutions.

ii. Obtain Approval from Greater Chennai Corporation:

- Seek concurrence from Greater Chennai Corporation before executing any new plans. Construction of new Storm Water Drain (SWD) from Madras Race Club to Adyar with concurrence of Greater Chennai Corporation.

iii. Maximize Recharge Systems:

- Develop systems to maximize water recharge within Madras Race Club to achieve self-sufficiency and reduce reliance on Adyar River pumping."

10. In addition to the existing three ponds, four ponds with seven-meter depth are being established. The work of excavation of additional ponds is also completed. On account of the same, a large area that was suffering on account of inundation did not suffer water stagnation during the monsoon season in 2024. The water got stored in the ponds. Even in the rest of the area, horticulture gardens, public green spaces, etc., will be provided. The entire land is used for the greatest public good.

11. Heard *Mr.V.Raghavachari*, learned Senior Counsel for the petitioner and *Mr.J.Ravindran*, learned Additional Advocate General for the



W.P.No.30294 of 2024

respondents.
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12. *Mr.V.Raghavachari*, learned Senior Counsel for the petitioner, would submit that even before the Race Club came into existence, the petitioner Club was in occupation of the said lands. Thus, the possession of the petitioner preceded that of the Race Club. The petitioner Club is, thus, in settled, continuous and long possession of over 140 years, and therefore, the action of the respondents in taking possession from the petitioner without following any due process of law is, *ex facie*, illegal. Even if ponds are dug and the property is put into use, the illegality requires that this Court should restore the possession of the petitioner, and even if the respondents have any right, they have to follow the due process of law.

13. Even a trespasser or an encroacher is entitled to a notice. No legal process whatsoever under any law was followed while evicting the petitioner from the land as well as the building occupied by it. The entire

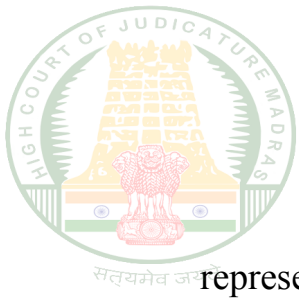


W.P.No.30294 of 2024

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action is high-handed and illegal. The organisation has been contributing to the sport for over a century, and it is a very reputed organisation, which can be seen from the various prestigious tournaments it has conducted. The writings of historians have described the same, the members are suddenly put to prejudice on account of the action. The possession of the petitioner is recognized by the Government themselves when they issued a fire license, FL2 license, etc., in respect of the bar that is maintained by the petitioner. Therefore, when the petitioner was in settled possession, the same could not have been taken without following due process of law.

14. Secondly, adverting to the Civil Suit, the learned Senior Counsel would submit that it is true that the Civil Suit was filed, but the permission to file the suit by dispensing Section 80 notice is refused. Therefore, nothing has been determined on merits by the Competent Court for the respondents to claim *res judicata*. The suit was filed for a different purpose, and this Writ Petition was filed that even when the petitioner made a



W.P.No.30294 of 2024

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representation and when the same was pending enquiry, when the possession is sought to be taken, the petitioner has no other go than to approach this Court.

15. The learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Padhiyar Prahladi Chenaji (Deceased) through Legal Representatives Vs. Maniben Jagmalbhai (Deceased) through Legal Representatives and Ors.***¹, more fully relying upon paragraphs Nos.26 and 27 to contend that the possession could not have been taken except by due process of law. For the same proposition, the learned Counsel would rely upon the judgment of the Hon'ble Supreme Court of India ***Rame Gowda (Dead) by LRs. Vs. M.Varadappa Naidu (Dead) by LRs. and Anr.***² more specifically upon paragraph No.8. He would submit that law will come to the aid of the person in peaceful and settled possession by injuncting even a rightful owner from using force or

¹ (2022) 12 SCC 128

² (2004) 1 SCC 769



W.P.No.30294 of 2024

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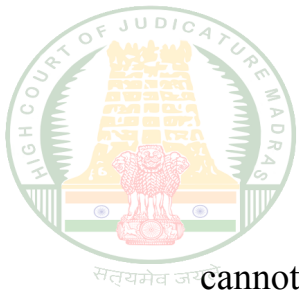
taking the law into his own hands and also by restoring him in possession even from the rightful owner. The learned Senior Counsel also relied upon the judgment of the Supreme Court in ***Krishna Ram Mahale (Dead) by his LRs. Vs. Shobha Venkat Rao***³ to contend that even a trespasser has to be issued with a notice, and due process of law has to be followed.

16. The learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Munshi Ram and Ors. Vs. Delhi Administration***⁴ to contend that even a true owner is not entitled to throw away a trespasser who is in settled possession. The principle of acquiescence would come in the way of the true owner claiming such rights. The learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***In Re: Directions in the matter of demolition of structures***⁵, more specifically relying upon paragraph No.90 onwards to contend that the structures cannot be demolished and even encroachers

3 (1989) 4 SCC 131

4 1967 SCC OnLine SC 80

5 2024 INSC 866



W.P.No.30294 of 2024

cannot be thrown out without following due process of law.

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17. Per *contra*, Mr.J.Ravindran, learned Additional Advocate General for the respondent Nos.1 to 7 would submit that firstly, the prayer in the Writ Petition has become infructuous since already the possession has been taken and the construction of ponds is also over. Secondly, he would submit that the main prayer is only to consider the representation, and the Government is willing to dispose of the representation within such time as may be directed by this Court. Thirdly, he would submit that the petitioner was never in possession, and the entire land was leased out only to the Madras Race Club. Possession has been duly taken from them, and they have also obtained leave to file a Civil Suit by getting an order of dispensing with Section 80 notice. Thereafter, they have not taken any further action.

18. As far as the petitioner is concerned, already, the petitioner filed a Civil Suit with a prayer to dispense with Section 80 notice. The said



W.P.No.30294 of 2024

WEB COPY

application was dismissed by the order dated 19.10.2024. On a perusal of the prayer in the said suit and the plaint, it can be seen that the very same cause of action is disclosed in the plaint and when, by the order, the Court has held that the petitioner does not even have *locus standi* and dismissed the suit, then, the same is binding on the petitioner and once again, claiming possession, the petitioner cannot maintain the present Writ Petition.

19. The petitioner cannot have two parallel remedies at the same time as it is averred that the petitioner has also filed an intra-court appeal against the said order, which is not yet numbered. The learned Additional Advocate General, placing the set of pictures detailing the nature of works undertaken in the entire land, would submit that already, four new ponds have been created, and by the rains during the monsoon, 2024, all the four ponds are brimming with water. The possession of the land has been resumed, and it has been handed over to the appropriate authorities in carrying out further development work. The works are in progress. The learned Additional



W.P.No.30294 of 2024

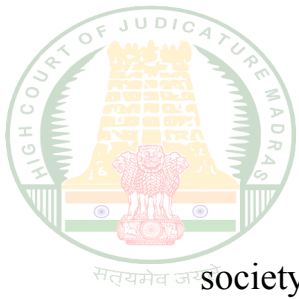
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Advocate General, pointing to the plight of the citizens of Chennai, especially, in Velachery area during the monsoon where large extent of residential area used to be submerged in water for months together starting from November, December and January, and submit that on account of these works, now, there was no inundation at all during the present year.

20. The learned Additional Advocate General would submit when the works are being carried out for such a pious and important public purpose that the prayer of the petitioner should not be entertained by this Court.

21. I have considered the rival submissions made on either side and perused the material records of the case.

22. At the outset, the petitioner claims that it is a society registered under the Societies Registration Act, 1860. The averment made in paragraph No.3 of the affidavit is that the petitioner at the inception was the



W.P.No.30294 of 2024

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society registered under the Societies Registration Act. It had subsequently registered under the Tamil Nadu Societies Registration Act, 1975, bearing registration No.48 of 1910. But the said registration number is 48/1970. The petitioner itself has filed the said certificate of registration along with a typed set of papers in page No.34, and the Serial No.48/1970 cannot be under the Tamil Nadu Societies Registration Act, 1975, which came into force later. The certificate itself reads that it is registered under the Societies Registration Act, 1860. If the petitioner had already registered itself as a society under the Societies Registration Act, then why it registered itself for the second time in the year 1970 is questionable. Therefore, the very claim of the petitioner society as if it is established in the late 1800 and is in existence for so many years by itself is not established before this Court, and the writ petition is to be dismissed on this sole ground.

23. Even considering that the petitioner society has existed from late 1880s, it is the claim of the society that it was using the particular piece of



W.P.No.30294 of 2024

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land for playing Golf. While so, it is the case of the petitioner society that it was prior user even to the Madras Race Club. If that be the situation, by a lease agreement, dated 08.03.1946, registered as Document No.1039/1946, it can be seen that it is the Madras Race Club which had applied to the Governor of Madras to lease out the entire land admeasuring 160.80 acres to it for recreation games and sports with a chief sport being Racing. The possession of the entire land, including what is said to be there in the possession of the petitioner, was handed over to the said Madras Race Club. Therefore, if at all any grievance that is there for the petitioner Club, the grievance dates back to 08.03.1946, whereby the land, to which it claims possession, was leased out, and the possession was handed over to the Madras Race Club. Even with the Madras Race Club, the lease deed was subject to the rights of the Government or the Collector of the Chengalpattu district to resume the premises if they require them for any public purpose.

24. The petitioner did not raise its little finger or make any claim at

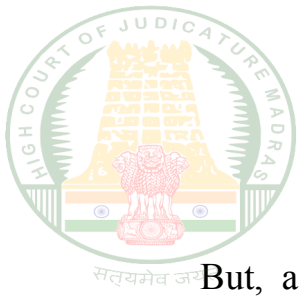


W.P.No.30294 of 2024

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the relevant point of time or at any time thereafter. Therefore, it cannot claim possession from 08.03.1946 or thereafter. The lease agreement in Clause IV categorically prohibits the Madras Race Club not to under-let or part with the possession of the demised premises. Therefore, the petitioner cannot claim that it is in possession of the premises, from 08.03.1946. The cause of action of the petitioner being dispossessed dates back to the year 1946. If at all the petitioner is said to be original Club, which was conducting the Golfing activity, no action whatsoever has been taken for these 90 years and now, it is too late in the day for the petitioner to claim itself to be in possession. More so when the petitioner is an entity that came into being by its registration only in the year 1970.

25. Further, it not only remained silent as its rights got extinguished by the Madras Race Club being put into possession of the entire extent, it seems that the petitioner also had some kind of an arrangement with the Madras Race Club. The petitioner claims that it has constructed a club.

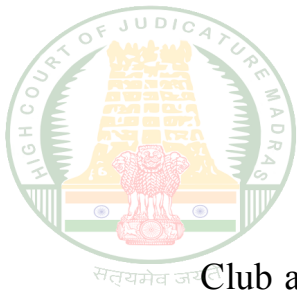


W.P.No.30294 of 2024

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But, as per the averment of the affidavit, it is on the first floor of the construction made by the Madras Race Club. Secondly, no sub-tenancy is pleaded. In the absence of any pleading relating to sub-tenancy, at best, it can be seen that it is a kind of permission/license from the Madras Race Club that was granted to the petitioner and thus, no possession can be pleaded.

26. The submissions made by the learned Senior Counsel regarding following of due process of law, issuing of notice, etc., would all arise if only the petitioner is in possession of the premises. The petitioner is not pleading that it is the real owner of the property. The petitioner is not pleading that it is a sub-tenant under the Madras Race Club. It is its specific pleading as to some permission to enter through Gate No.5 and its members being permitted to play golf and use the bar/club. Even assuming that to be correct, the only conclusion that can be made is that the petitioner was permitted to carry on certain activities as a licensee by the Madras Race



W.P.No.30294 of 2024

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Club and by the said permission, it cannot be said that the petitioner was in possession of the premises. In this regard, useful reference can be made to the judgment of the Hon'ble Supreme Court of India in *Associated Hotels of India Ltd. Vs. R.N. Kapoor*⁶, and paragraph No.28 of the said judgment reads as follows:-

"28. There is a marked distinction between a lease and a licence. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under Section 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor. Whereas Section 52 of the Indian Easements Act defines a licence. Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is, therefore, clear distinction between the two concepts. The dividing line is clear though sometimes

⁶ 1959 SCC OnLine SC 62
<https://www.mhc.tn.gov.in/judis>



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W.P.No.30294 of 2024

it becomes very thin or even blurred. ... "

(emphasis supplied)

Thus, all arguments relating to dispossession without due process of law stand rejected.

27. The petitioner also filed a Civil Suit. The prayer in the Civil Suit is as follows:-

"a) A declaration that the Plaintiff and its members have a right to the use and enjoy of the suit property, including the right to continue golfing activities, as has been peacefully exercised for the past 147 years.

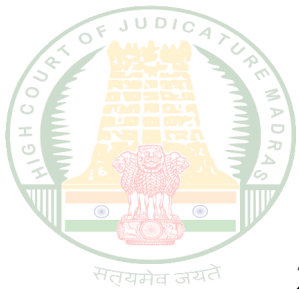
b) A declaration that the Defendant's act of locking Gate No.5 on 09.09.2024, thereby preventing access to the members of the Plaintiff Club, is illegal.

c) A permanent injunction restraining the Defendants from interfering with or obstructing the plaintiff and its members from enjoying the Suit Property for Golfing activity.

d) Mandatory injunction directing the Defendants to unlock Gate No.5 and permit access to the Suit Property as it was earlier to the closing and sealing of the Gates of the Plaintiff's Golf Club.

e) And pass such other order as this Hon'ble Court may deem fit in the interest of justice."

Thus, it can be seen that it is on the self-same cause of action.



W.P.No.30294 of 2024

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28. The suit was filed with an application under Section 80(2) of the Code of Civil Procedure to dispense with the issue of notice under Section 80. While considering the same, by the order dated 19.10.2024, the Court has found that the schedule-B property, which was claimed by the petitioner, is without any survey number of clear description. The situs of lis, being the Government land and the lessee, admittedly being the Madras Race Club and the lease was terminated, and the plea of applicant/plaintiff that they co-existed with M.R.C. does not confer any legal right or *locus standi*. On the said findings, the application was dismissed.

29. If it is left as final, the same adversely determines the right of the petitioner, and if the petitioner has left the same as final, then this Writ Petition is not maintainable. However, it is stated that the petitioner has stated an appeal is filed, and the same is yet to be numbered. If the petitioner is still pursuing the above suit remedies, the filing of this Writ Petition for the self-same cause of action and grievances is not entertainable.



W.P.No.30294 of 2024

Thus, the Writ Petition is liable to be dismissed.

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30. It is also pertinent to point out that at the end of the day, it is Government land. It was given for sporting purposes with a rider that even the Collector of Chengalpattu can enter if there is any public purpose involved. There is a grave need and dearth of water bodies in the city of Chennai. This property is located in the middle of the city with a humongous number of residential colonies and commercial buildings surrounding the same. It will now serve as an alternative for the rainwater to get stored, preventing inundation of many areas. It will improve the groundwater table. When such is the public purpose with which it is taken, it is for the members of the petitioner Club to ask themselves, can they not play Golf in the other Golf Clubs that are available, and can they not use any other premises for their recreational Club activities/bar?

31. Accordingly, finding no merits, this Writ Petition stands



W.P.No.30294 of 2024

dismissed. There shall be no order as to costs. Consequently, the connected

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miscellaneous petition is closed.

18.02.2025

Neutral Citation : yes

grs

To

1. The Secretary,
Revenue Department,
Fort St. George, Chennai - 600 009.
2. The District Collector of Chennai,
Singaravelar Maligai,
Rajaji Salai, Chennai - 600 001.
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W.P.No.30294 of 2024

Tharamani, Chennai - 600 015.

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6. The Special Commissioner &
Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai - 600 005.
7. The Department of Horticulture and Plantation Crops,
1, Wallaja Road, PWD Estate,
Chepauk, Chennai - 600 005.



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W.P.No.30294 of 2024

D.BHARATHA CHAKRAVARTHY, J.

grs

W.P.No.30294 of 2024
and W.M.P.No.32975 of 2024



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18.02.2025