

(2011) 12 MAD CK 0098

In the Madras High Court

Case No : Writ Petition (MD) No. 6139 to 6142 and 6240, 6254, 6255, 6257, 6308, 6322, 6380, 6403 to 6405, 7408 and 7609 of 2011 and Connected M.Ps.

B. Balathamburaj and Others

APPELLANT

Vs

Commissioner, Madurai Corporation, Madurai and Others

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Easements Act, 1882 — Section 61, 62
Madurai City Municipal Corporation Act, 1971 — Section 464
Specific Relief Act, 1963 — Section 6

Citation : (2012) 1 MLJ 920

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : M. Sureshkumar, B. Prasanna Vinoth, K. Govindarajan, M.P. Dhamodaran, K.K. Kantian, K.K. Senthil and T.K. Balasubramanian, for the Appellant; K. Chellapandian, Additional Advocate General for M. Ravishankar for Corporation K.P. Krishnadoss . Government Advocate, for State M. Alagudevan, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—The petitioners in all these writ petitions were allotted either vacant space or shops in the Mattuthavani Bus Stand owned by the Corporation of Madurai. In the second week of June 2011, the petitioners were evicted. Therefore, praying for similar reliefs, but couched in different words, the petitioners have come up with the above writ petitions. I have heard Messers. M. Sureshkumar, B. Prasanna Vinoth K. Govindarajan, M.P. Dhamodaran, K.K. Kantian, K.K. Senthil and T.K. Balasubramanian learned counsel for the petitioners, Mr. K. Chellapandian, learned Additional Advocate General appearing on behalf of Mr. M. Ravishankar, counsel for Madurai Corporation, Mr. K.P. Krishnadoss, learned Government Advocate for the State and Mr. M. Alagudevan, learned Special Government Pleader for Commissioner of Police.

2. In order to cut short the narrative with regard to facts, the particulars regarding (i) the name (ii) the space allotted (iii) the nature of the space whether shop or otherwise (iv) the date of the auction (v) the deposit made (vi) the monthly rent and (vii) the date of handing over possession, in respect of each of these cases, are presented in a tabular form as follows:

s. No.

W.P. No

Name of the petitioner

Shop No.

What was allotted was whether a shop or open space

Date of deposit auction paid

Rs.

Monthly rent Rs.

Date of handing possession

1

6139 of 2011

B. Balalhamburaj

3 in front of wailing hall

Shop

30.3.2010

1lakh

3,600

31.3.2010

2.

61-10 of 2011

Vellammal

1 in front of waiting hall

Shop

30.3.2010

1lakh

3,600

31.3.2010

3

6141 of 2011

S. Manickam

Platform No. 2, Shop No. 1

Shop

30.3.2010

1lakh

3,600

31.3.2010

4.

6142 of 2011

R. Saranya

Vacant place in front of cloak room

Open space

30.3.2010

1.50lakhs

4,500

31.3.2010

5

6240 of 2011

K.M. Mohammed Abdul kadhar

132

Shop

25.4.2008

3lakhs

25,000

24.2.2009

6.

6254 of 2011

Durairaj

Vacant place

Open space

25.8.2009

2lakhs

11,000

28.8.2009

7.

6255of 2011

Sivakumar

Vacant place

Open space

22.1.2008

2Lakhs

17,500

23.1.2008

8

6257 of 2011

R. Mohan

Vacant place

Open space

22.1.2008

2Lakhs

17,700

23.1.2008

9.

6308 of 2011

BalaTliambuRaj

6

Shop

30.3.2007

1lakh

4,500

30.3.2007

10.

6322 of 2011

P. Anbalagan

Vacant space near portico

Open space later an additional space of 60 sq. ft. Was also granted in November, 2010 without any public auction.

16.2.2009

1lakh

4,100

20.2.2009

11.

6380 of 2011

S. Sathyamurthy

96-A

Shop

27.7.2007

2lakhs

10,500

2.8.2007

s. No.

W.P. No.

Same of the petitioner

Shop No.

What was allotted was whether a shop or open space

Date of deposit auction paid

Rs.

Monthly rent Rs.

Date of handing possession

12.

6403 of 2011

P. Kalyanasundaram

Shop No. 2 in front of waiting hall

Shop

30.3.2010

1lakh

3,600

31.3.2010

13.

6404 of 2011

M. Poongodi

Platform No. 2, Shop No. 2

Shop

30.3.2010

1lakh

3,600

18.5.2010

14.

6405 of 2011

C. Sugumari

Platform No. 2. Shop No. 3

Shop

30.3.2010

1lakh

3,600

18.5.2010

015.

7408 of2011

BalaThambuRaj

6

Shop

30.3-2007

1lakh

4,500

March 2007

16.

7609 of 2011

B. Pandivelrajan

9

Shop

30.3.2007

-

4,563

March2007

3. It appears that Mattuthavani Bus Stand was developed by the Corporation of Madurai with a total of 188 shops. Apart from 188 shops, there were also rooms intended for use as dispensary, cloak room, rest room for traffic police etc. These rooms, were intended for public purposes and not intended to be let out for commercial purposes.

4. But, it appears that with the professed object of augmenting its financial resources, the Corporation put to auction (i) some of these rooms intended for public purposes and (ii) some of the vacant space in the corridors. The petitioners herein, participated in the auction and became the successful bidders. Therefore, they were allotted these shops/vacant space and they have been carrying on business, after making a deposit and paying the monthly rents.

5. It appears that on 4.6.2011 (Saturday), there was an inspection of the Bus Stand by the District Collector. A couple of fire accidents in the shops located in the Bus Stand, had been reported earlier, due to the unauthorised use of gas cylinders and stoves. Therefore, it is claimed that the Collector orally instructed the officials of the Corporation, during his visit, to take appropriate action. On 7.6.2010 (Tuesday), the District Collector appears to have sent a written communication in this regard to the Commissioner of the Corporation.

6. But it is claimed by the Corporation that on 6.6.2011 (Monday) itself, notices were affixed in the shops of the petitioners. The notices which are identically worded, called upon the petitioners to vacate and hand over possession within 24 hours on the ground that these shops had proved to be a hindrance to the public. After the clock stuck 24 hours, the petitioners were thrown out with police help. Some of them have been evicted on 8.6.2011 and some of them later. Aggrieved by their sudden dispossession, the petitioners have come up with the above writ petitions.

7. In one writ petition viz., W.P. No. 6240 of 2011, the petitioner was issued with a notice dated 13.6.2011, calling upon him to show cause as to why the license granted to him should not be cancelled. The reason stated in the notice is that in violation of the auction conditions, the petitioner was using gas cylinders, endangering life and property. Immediately upon receipt of the show cause notice, the petitioner filed this writ petition and it came up for admission on 15.6.2011. The petitioner appeared in person and the case was adjourned to 20.6.2011. But on 17.6.2011, the case was mentioned at 1.00 p.m., on the ground that the respondents were taking possession. Therefore, this Court passed an order on 17.6.2011 which reads as follows:

The learned counsel for the petitioner mentioned at 1.00 p.m., that when the matter is pending before this Court, the second respondent forcibly entered and took possession of the shop No. 132 in Mattuthavani Integrated Bus Stand. According to the learned counsel for the petitioner, the said shop is allotted to him for 3 years under license.

The learned counsel for the first respondent-Corporation stated that he would get instruction and requested to take the matter at 4.00 p.m.

When the matter was taken up at 4. P.M., he stated that was not able to secure full instructions.

Hence the matter could be taken up on 20.6.2011 as ordered by this Court on 15.6.2011. The first respondent shall file counter and produce the entire file on 20.6.2011. It is also made clear that if any illegality was committed by any of the respondents, the same could be rectified by this Court.

Call on 20.6.2011.

However, the respondents took possession.

8. Before proceeding to consider the rival contentions, two facts on which there is no dispute, are to be noted. They are (i) that the petitioners are out of possession for the past 6 months; and (ii) that the shops/space from which the petitioners were evicted, have not been let out to third parties. Wherever the place let out was part of a corridor or open space, the respondents have restored their usage to that of a corridor or open space. In cases where the place let out was intended for a dispensary or rest room for the police, the respondents have restored the usage to the same position. In other words, the respondents have

not put the shops/space from which the petitioners were evicted, into commercial use by letting them out afresh to third parties. I am obliged to take note of this fact, before considering the rival submissions, since it may have a bearing upon the relief to which the petitioners may be entitled, in the event of their success on merits.

9. Coming to the merits, the petitioners assail the action of the respondents, on the following grounds:

(i) that no notice was issued and no opportunity was given, before they were dispossessed from the shops/vacant space let out to them in pursuance of an auction duly conducted;

(ii) that for some of them, the period of lease had not even expired, while for others, there was scope for renewal, in terms of various Government Orders such as G.O. Ms. No. 92, Municipal Administration and Water Supply Department, dated 3.7.2007 and G.O. Ms. No. 78, Municipal Administration and Water Supply Department, dated 25.5.2009; and

(iii) that their dispossession was high handed, arbitrary and unfair, especially when the Corporation had taken amounts ranging from ` 1 lakh to 3 lakhs as non-refundable or refundable security deposits.

10. The response of the Corporation to the above contentions is-

(i) that notices were issued on 6.6.2011 and they were affixed on the outer wall of the places in which the petitioners were carrying on businesses, after they refused to accept the notices;

(ii) that the period of license granted to all but two of the petitioners, expired long ago, but they continued in possession unlawfully, without any renewal granted in their favour;

(iii) that eviction was carried out in terms of the auction notice and hence it cannot be termed as arbitrary or unfair; and

(iv) that the petitioners have an alternative remedy of appeal under the provisions of the Madurai City Municipal Corporation Act.

11. The contention regarding the availability of alternative remedy, is stated to be rejected outright. The respondents have taken a positive stand in the counter affidavits, justifying the eviction, even on merits. The respondents have also stated categorically that the places given to the petitioners are not intended to be let out, but are intended to be kept for public purposes. Therefore, I do not wish to drive the petitioners to an alternative remedy, just for the pleasure of making them hear the very same reply from another authority. Hence, the contention regarding alternative remedy is rejected.

12. The question whether the petitioners were issued with notices or not, has become a contentious issue. Except the petitioner in W.P. No. 6240 of 2011, all

other petitioners are categorical in their affirmation that no notice was ever served on them. The uniform stand taken by the respondents is that all notices were served by affixture. But apart from denying that there was any service by affixture, the petitioners also rely upon the provisions of Section 464 of the Madurai City Municipal Corporation Act. It reads as follows:

464. Method of serving Documents:

(1) When any notice or other document is required by this Act, or by any rule, by-law, regulation or order made under it to be served on or sent to any person the service or sending thereof may be effected -

(a) by giving or tendering the said document to such person; or

(b) if such person is not found, by leaving such document at his last known place of abode or business or by giving or tendering the same to his agent, clerk or servant or some adult member of his family; or

(c) if such person does not reside in the City and his address elsewhere is known to the Commissioner, by sending the same to him by registered post; or

(d) if none of the means aforesaid be available, by affixing the same in some conspicuous part of such place of abode or business.

(2) When the person is an owner or occupier of any building or land it shall not be necessary to name the owner or occupier in the document; and in the case of joint owners and occupiers it shall be sufficient to serve it on, or send it to, one of such owners or occupiers.

(3) Whenever in any bill, notice, form or other document served or sent under this Act, a period is fixed within which any tax or other sum is to be paid or any work executed or anything provided, such period shall, in the absence of the express provision to the contrary in this Act, be calculated from the date of such service or sending by registered post.

13. A careful reading of the provisions of Section 464 shows that affixture is to be by way of last resort. As seen from the sequence of events that have unfolded, the drive to evict the petitioners was mooted on 4.6.2011 (Saturday), when there was a visit by the District Collector. But, before the District Collector issued written instructions on 7.6.2011, the Corporation claims to have served notices by affixture on 6.6.2011 itself. Therefore, it is clear that the respondents were in a hurry to evict the petitioners. If they were not in a hurry, they could have sent the notices dated 6.6.2011, either by ordinary or registered post or by courier. They were also undoubtedly entitled to serve the notices personally on the petitioners and obtain their acknowledgements in the "delivery book". If the petitioners had refused to accept personal delivery, the respondents could have sent the notices by post, before taking recourse to affixture. But unfortunately, the respondents resorted to affixture even in the first instance, perhaps with a view to pre-empt the petitioners from approaching this Court and thwarting their

attempts.

14. I have no reason to believe that the petitioners would have refused to receive the notices. I have no reason also to believe that the petitioners went into slumber and did not take any action even after seeing the notices affixed in their shops. If there had been proper service of notices on the petitioners, they would have certainly approached this Court immediately before they were physically thrown out.

15. In any case, I need not even go by presumptions. The fact remains that the respondents resorted to service by affixture, even at the first instance. Even the notices gave only 24 hours time for the petitioners to vacate. The notices did not call upon the petitioners either to explain any illegal conduct on their part or to show cause as to how their very allotment was not illegal. Therefore, even if I assume for a minute that there was proper service of notice, what was served by affixture could not be taken to be a notice in the eye of law, as it did not give any opportunity to the petitioners either to show cause against any illegal action on their part or to show how a place which could not have been allotted, was allotted.

16. Irrespective of the controversies surrounding the grant of vacant spaces on license to the petitioners, there is no denial of the fact that the grants were made in pursuance of a public auction, conducted in terms of advertisements published in newspapers. At the most, the respondents may be able to contend that an illegality was committed, but after following the procedure prescribed by law. But unfortunately, the respondents have not even gone to the extent of terming the grants, as vitiated by fraud or any other illegality. The stand taken by the Corporation is that the eviction of the petitioners was within the terms of the auction. In other words, the Corporation is willing to wound and yet afraid to strike. Therefore, when the petitioners have participated in an auction conducted in pursuance of advertisements issued in newspapers and have taken the shops/vacant space on license, the respondents cannot throw them out by adopting dubious methods, such as serving the notices by affixture, especially when the notices gave 24 hours time to the petitioners to move out. Neither the petitioners were like critically ill patients in the ICU nor the respondents were like doctors giving 24 hours ultimatum for their final departure.

17. As stated earlier, apart from obtaining the grants in a public auction, the petitioners have also parted with huge amounts such as ` 1 lakh, ` 2 lakhs or ` 3 lakhs as refundable/non-refundable deposits. If the respondents at least take a stand that the whole process of auction was illegal and vitiated by fraud or other factors, the petitioners will have other remedies. But today, the deposits made by the petitioners are retained by the respondents, by sticking to the terms of the auction, without attacking the auction itself as vitiated. Therefore, the contention of the petitioners that they have been treated unfairly by the respondents, cannot be brushed aside.

18. It is true that places intended to serve as corridors and passages for the benefit of the public in a bus stand, ought not to have been let out in the first instance. But, the respondents have done so after following the procedure prescribed by law. In other words, what the respondents did earlier, was a wrong thing in the right way. But, what the respondents have done now, is the right thing in a wrong way. This is because of the fact that the respondents fight shy of taking a stand that the places intended for public purposes ought not to have been auctioned at all. Therefore, the eviction of the petitioners, without assailing the auction as wholly vitiated, is arbitrary, especially when the respondents have not followed due process of law.

19. The learned Additional Advocate General placed reliance upon Clause No. 11 of the order of allotment. It confers absolute powers upon the Commissioner of the Corporation to take any decision, if he thinks that the place is required. But, the power conferred by Clause 11 is not absolute and untrammelled. If it is recognised to be absolute, every licensee will be at the mercy of the Commissioner at all points of time. Every action of the Commissioner should be fair, reasonable and subject to the rule of law. Therefore, Clause 11 cannot save the 24 hours eviction order.

20. Once it is concluded that the eviction of the petitioners is not in accordance with law, then the next question to be decided is about the reliefs to which the petitioners are entitled. As pointed out earlier, the process of eviction has already been completed and the places once occupied by the petitioners have not been let out to anyone. They have been restored to the purpose for which these places/shops were originally earmarked. Therefore, the question of restoring possession to the petitioners may not arise. Though the learned counsel for the petitioner in W.P. No. 6240 of 2011 relied upon a decision of this Court to the effect that a person dispossessed during the pendency of a case, is entitled to restitution, I do not think that the ratio of the said decision would apply to the case on hand. While restoration of possession of the places to the petitioners may serve the private interests of the petitioners, the refusal to restore, may sub serve public interest, so long as the Corporation retains the open places as corridors and passages and retains the rooms as dispensary, rest room for police etc. Therefore, the petitioners cannot be granted the relief of restoration of possession.

21. The relief to which the petitioners may be entitled in the above circumstances, may have to be traced to the provisions of the Easements Act, 1882. The grant of an immovable property, such as a shop or open space, by a local body or the Government, would normally be by way of license, though many times, it is mistaken to be a lease. If it is a license, it can be revoked expressly or impliedly u/s 61 of the Easements Act, 1882. There are many circumstances enlisted in Section 62 of the Easements Act, 1882, under which a license will be deemed to be revoked. One of them is indicated in Clause (c) viz., that where a license is granted for a limited period, it is deemed to be revoked,

upon the expiry of the period.

22. Sections 63 and 64 speak of the licensee's rights on revocation and on eviction respectively. u/s 63, a licensee is entitled to a reasonable time to leave the property and to remove his goods, upon the revocation of the license. The time of 24 hours granted under the notices dated 6.6.2011, assuming that they were duly served on the petitioners, is certainly not a reasonable time within the meaning of Section 63. Therefore, it is clear that the petitioners have been treated unfairly.

23. u/s 64, where a license was granted for a consideration and the licensee was evicted, without any fault of his own, before he has fully enjoyed the right for which he contracted, he is entitled to recover compensation from the grantor. Therefore, the appropriate remedy for the petitioners is only to seek compensation and not re-possession, especially when the places granted to them are no more available for private licensing.

24. Even if what was granted to the petitioners is taken to be a lease, for the sake of argument, the petitioners may not be able to get re-possession. Section 6 of the Special Relief Act, 1963, prescribes the remedy for a person unlawfully dispossessed of immovable property. u/s 6(1), any person dispossessed of immovable property otherwise than in due course of law, is entitled to recover possession thereof by filing a suit. But under sub-section (2), a suit under sub-section (1) cannot be brought after the expiry of 6 months from the date of dispossession. Such a suit cannot also be brought against the Government. Therefore, in any case, the remedy open to the petitioners is only to file civil suits for compensation.

25. While I can direct the petitioners to go to a Civil Court to recover compensation for unlawful dispossession, it is not fair to drive them to go to the Civil Court even for recovery of the advance amount paid by them. As stated earlier, the respondents have termed the deposits of Rs. 1 lakh, Rs. 2 lakhs and Rs. 3 lakhs taken from the petitioners, either as non-refundable deposits or just as deposits. The cases of the petitioners fall under two categories viz., (i) those whose initial period of license had already expired and (ii) those whose initial period of license had not yet expired. The cases of the petitioners in W.P. Nos. 6240, 6254 and 6322 of 2011 fall under the second category. All the other cases fall under the first category. Out of the cases falling under the first category, a majority of them got allotments only in March/May 2010. Three other petitioners got allotments in 2007 and 2 persons got allotment in 2008. At least those who got allotments in 2007 and 2008 have enjoyed the licenses for more than 4/3 years. But, those who got allotment orders in March/May 2010 have enjoyed the licenses for less than 2 years. The huge deposits made by them was with the legitimate expectation that their licenses may be renewed. In fact, Clause 19 enables the petitioners to seek renewal of the licenses, every year in the month of February. Therefore, it will be highly unfair to drive the petitioners to the Civil Court even to recover the deposits made by them.

26. In view of the above, all the writ petitions are disposed of, with the following directions:

(i) The prayer for restoration of possession, made by all those petitioners, who were allotted vacant spaces or spaces earmarked for public purposes such as dispensary, rest room for police etc., is dismissed. But, if the shop allotted to any of the writ petitioners do not fall under this category, but has always been earmarked for letting out as shop, then those writ petitioners are entitled to be put back to possession, within two weeks from the date of receipt of a copy of this order, without prejudice to the right of the Corporation to take fresh action for eviction in accordance with law.

(ii) The places earmarked for public purposes such as corridors, passages, sit outs or rooms intended to be used as rest room for police, dispensary etc., shall not hereafter be let out by the Corporation.

(iii) To such of those petitioners, who enjoyed the license just for a period of less than two years, (to be calculated not from the date of the auction, but from the date of the Corporation handing over possession to them, upto the date of dispossession) the Corporation shall refund the entire deposit amount, after adjusting any arrears of rent, electricity charges or other dues. The refund shall be made irrespective of whether the deposit was termed as refundable or non-refundable.

(iv) To the petitioners in W.P. Nos. 6240, 6254 and 6322 of 2011, who were evicted even before the expiry of the term of license, the respondents shall refund the entire amount of deposit, irrespective of the nomenclature given to the deposit. But, if any of these persons is entitled to repossession, by virtue of Clause (i) above, the deposit need not be refunded, in view of the order for repossession.

(v) To such of those petitioners, who enjoyed the license for a period of more than two years, (to be calculated from the date of the Corporation handing over possession to them upto the date of dispossession) the Corporation shall refund 50% of the deposit amount (if the deposit had been indicated in the auction notice or allotment order to be non-refundable), after adjusting any arrears of rent, electricity charges or other dues. But, if the deposits made by these persons, had not been indicated as non-refundable deposits, in the auction notices or allotment orders, then they are also entitled to the refund of the entire amount of deposits, subject however to the adjustment of dues.

(vi) The refund of the amounts as aforesaid, to the petitioners who are eligible (other than those who are entitled to repossession) shall be made within 2 weeks of receipt of a copy of this order, without prejudice to the rights of the petitioners to file civil suits for compensation.

With the above directions, the writ petitions are disposed of. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed