

(2002) 07 MAD CK 0241
In the Madras High Court
Case No : Writ Petition No. 10698 of 1995

C.A. Balakrishnan

APPELLANT

Vs

Commissioner, Corporation of Madras

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226

Citation : AIR 2003 Mad 170

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : A. Sadanand, for the Appellant; P. Bagyalakshmi, for the Respondent

Final Decision : Dismissed

Judgement

A. Kulasekaran, J.—In this writ petition, the petitioner seeks for the issuance of writ of mandamus to the respondent to restore possession of the premises to the petitioner housing "Udipi Canteen", in the Rippon Building Compound, Madras 3 and also for an order awarding exemplary costs and damages computed at the rate of Rs. 500/-per day from 25-5-1995 till restoration of possession.

2. The case of the petitioner was that he was a lessee in respect of a canteen premises to an extent of 1839 sq. feet of land and building thereon comprised in R.S. 1269 PT located within Rippon Building complex for a monthly rent of Rs. 766.25. The said rent was fixed by the Corporation Special Officer in Resolution No. 4945/93 dated 16-12-1993 in modification of the earlier rent of Rs. 200/- fixed by Resolution 225/89 dated 14-3-1989. The lessee code number is 420. A demand notice dated 31-3-1989 was sent to the petitioner by the Corporation for payment of arrears totalling Rs. 36,780/- at the revised rate of Rs. 766.25 retrospectively from 1-4-1989. The petitioner has paid the said arrears in two instalments and to continue to pay the monthly rent periodically. The petitioner was running the said canteen under the name and style of "Udipi Canteen". Originally, one Seetharama Udappa was the lessee under the respondent,

subsequently, petitioner's father became the lessee. After his father, the petitioner was running the said canteen for about 16 years which catered the needs of the employees in the Rippon Building.

3. On 23-1-1995, the petitioner has applied for No objection certificate from the District Revenue Officer enabling him to obtain Police Licence for running the said canteen and the certificate dated 16-3-1995 was issued by the District Revenue Officer. The petitioner has also obtained necessary certificate from the Labour Officer of that area to engage workers not exceeding 20 persons for the said business. The receipts were issued by the respondent for rents paid by the petitioner in his name. When things are such, on 25-5-1995, at about 12.30 p.m. peak hours of lunch, the Junior Engineer of the respondent Corporation, without any notice or warning came to his canteen ordered the workers and the customers to leave. Eatables and Milk worth more than Rs. 6000/-, Tea, Coffee, Horlicks, Beetal nuts and other materials worth about Rs. 20,000/- were lying in the hotel, but the said person had arbitrarily locked the canteen and affixed seal on it. The petitioner has issued lawyer's notice dated 27-5-1995, to the respondent narrating the said illegal action of the Junior Engineer and demanded for restoration of possession and payment of damages. During the period, the High Court was on vacation, the petitioner has also filed suit in O.S. No. 3743 of 1995 before the City Civil Court for mandatory injunction and for restoration of possession. The City Civil Court by order dated 10-7-1995 ordered the delivery of movables without ordering restoration of possession. Later, the suit was also decreed as *ex parte* in favour of the petitioner.

4. Mr. A. Sadanand, the learned counsel appearing for the petitioner has submitted that resorting to a suit during vacation would not disentitle the petitioner in filing the writ petition as he sought for enforcement of guaranteed right and protection from arbitrary action of the respondent. It is argued by the learned counsel that the petitioner was a statutory tenant of the Corporation in accordance with the Tamil Nadu Lease and Rent Control Act, the illicit action according to the counsel which was commando action violative of fundamental rights guaranteed under the Constitution. Having been given No-objection certificate for obtaining Police licence, the respondent was estopped from dispossession the petitioner without any notice. According to the learned counsel, notice u/s 374 of the Madras City Municipal Corporation Act, has four modes each after exhausting the other in the serial order of Section 374(a) to (d), but, none of the four modes of service of notice was followed by the respondent before locking the premises. No inspection preceded the said commando action. The learned counsel submitted that no notice to the petitioner or to the previous licensee, Seetharam Udappa was issued prior to the action. Denial of natural justice vitiated the action of the respondent. The learned counsel also further canvassed under Tamil Nadu Public Health Act, 1939, a licence granted u/s 107(A) can be cancelled u/s 107(B) only after the notice. The learned counsel further submitted that there are two elements in the episode, namely, (i) Lessee's right, (ii) The licensee's right, both the rights are guaranteed by the

respective statutes, which was taken away by the respondent, flouting the provisions of the law.

5. Mrs. P. Bagyalakshmi, the learned counsel appearing for the respondent based on the counter argued that the petitioner has filed O.S. No. 3743 of 1995 on the file of the City Civil Court, Chennai in which he filed I.A. No. 8055/95 praying for removal of the lock put up and also for direction to supply the electricity and to hand over the possession back to the petitioner so as to run the canteen business was heard and dismissed. Another I.A. No. 8056/95 for direction to appoint an Advocate Commissioner to take the inventory of the entire articles which were lying inside the building has also been dismissed. Another application in I.A. No. 8054/95 seeking an injunction restraining the respondent from in any manner interfering with the petitioner's possession and enjoyment of hotel premises was also dismissed on 10-7-1995, but only ordered delivery of movables in the canteen. It is submitted by the learned counsel for the respondent that the said suit was later decreed *ex parte*. According to the learned counsel for the respondent that having resorted to invoke jurisdiction of a competent Civil Court, the writ under Article 226 of the Constitution of India for seeking the similar relief is not at all maintainable. According to the learned counsel that the petitioner is an unauthorised occupant of the premises in question. He was not a licensee to run the canteen or a lessee to occupy the premises, as such he had no right to remain in the premises. It is contended by the learned counsel that originally Seetharama Udappa is the licensee to run the canteen. u/s 357 of the City Municipal Corporation Act, the said Seetharama Udappa was granted licence up to the year 1996. The canteen was inspected by the Assistant Health Officer-3 and Zonal Officer-3 of the respondent Corporation on 15-5-1995 and found some defects as follows :

- (i) White Wash not done
- (ii) Residual chlorine was not found in the drinking water.
- (iii) Drainage system was not adequately provided and over flow of sewerage water in front of the canteen was noticed.
- (iv) Food handlers certificate for the workers were not obtained from the Medical Officer, Corporation of Madras.
- (v) Boiling water, sterilisation was not done, and
- (vi) The canteen and entire place was kept in an unhygienic condition.

In view of the said irregularities, a notice was issued to the licensee, Seetharama Udappa, u/s 379(A) of the Madras City Municipal Corporation Act which was refused to receive by the petitioner and hence the same was served by affixture on 26-5-1995, as the defects pointed out on 15-5-1995 were not rectified and hence the premises was sealed on 26-5-1995 and also the licence granted to Seetharama Udappa for the year 1995-1996 was also revoked. No licence was granted to the petitioner at any point of time, the revocation of licence has not

been challenged by the said Seetharama Udappa. The demand notice for the payment of arrears towards the monthly rent was made in the name of the petitioner by the Subordinate Official, the said demand made by the Subordinate Official is not on the basis of any orders of the Commissioner, Corporation of Madras as such the demand made by the Officials were unauthorised, therefore the petitioner cannot claim any right as a licensee to run the canteen or as a lessee of the premises. The Commissioner of Corporation has not issued any No-objection certificate to the petitioner. It was also denied by the learned counsel for the respondent that on 25-5-1995, at about 12.30 p.m. the Junior Engineer, Corporation of Madras locked and sealed the premises without notice or warning either to the petitioner or to Seetharama Udappa as incorrect. The said Seetharama Udappa has already been served with the notice, as he has failed to rectify the defects, the premises was sealed on 26-5-1995. At the time of closure, no eatables were kept inside the canteen. The No-objection certificate not issued by the Commissioner, Corporation of Madras, but only the District Revenue Officer (Land and Estate Department) who is not a competent authority to issue such a certificate. Hence, it did not bind the Corporation of Madras, since the petitioner was neither a licensee nor a lessee, the writ petition is unsustainable in law.

6. The prayer in this writ petition is for the issuance of a writ of mandamus directing the respondent to restore the possession of the premises to the petitioner and pass such further or other orders including an order awarding exemplary costs and damages at the rate of Rs. 500/- per day from 25-5-1995 till restoration of possession. It is the admitted fact that the petitioner herein has filed O.S. No. 3743 of 1995 for mandatory injunction of restoration of possession of the premises which is also the subject matter of the writ petition. It is also brought to the notice of this Court that the petitioner has filed I.A. No. 8055/95 for a interim relief of restoration of possession and for removal of the lock, I.A. No. 8056/95 to appoint an Advocate Commissioner to take inventory of the entire articles which were inside the canteen and I.A. No. 8054/95 restraining the respondents from interfering with the petitioner's peaceful possession. All the said interim applications were dismissed on 10-7-1995. However, the petitioner was permitted to take delivery of the movables kept in the canteen by an order dated 10-7-1995. Admittedly, the petitioner has not filed any appeal against the orders in the said IA's. The writ petition was filed by the petitioner on 1-8-1995. Even after filing the writ petition, the petitioner has not chosen to withdraw the said suit. Now, it is reported that the said suit was decreed ex parte in favour of the petitioner. In the given circumstance, the writ petition is maintainable or not; has to be decided as the same is raised by the respondent as preliminary objection. If the said objection is sustained, it is unnecessary to decide the other issues involved in this case.

7. Whether Order II, Rule 2, applies to the writ petitions or not? The principle underlying Order II, Rule 2 being based upon public policy. A person who files a suit seeking certain relief in respect of a cause of action and who is precluded

from instituting another suit for seeking other reliefs in respect of same cause of action under Order II, Rule 2, CPC. Now we have a look on Order II, Rule 2, C.P.C. :

"2. Suit to include the whole claim--(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim--Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs--A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs: but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation--For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."

It is evident from Order II, Rule 2, C.P.C. that the suit shall include the whole claim, the relinquishment of part of claim is not permissible and omission to sue for one several reliefs also prohibited. Hence, once a suit is filed for certain relief in respect of a cause of action, the person who has filed is precluded from instituting another suit for certain other reliefs with respect to the same cause of action. Hence, the same person cannot be allowed to invoke the writ jurisdiction of this Court for obtaining the very same reliefs. Indeed, if second suit is barred, a writ petition would equally be barred, public policy underlying Order II, Rule 2, CPC is attracted with equal vigour in this situation also.

8. Apex Court of India in *Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others*, , has held in page No. 1153 as follows :

"..... Consideration of public policy and the principle of the finality of judgments are, important constituents of the rule of law, and they cannot be allowed to be violated, just because a citizen contends that his fundamental rights have been contravened by an impugned order and wants liberty to agitate the question about its validity to agitate the question about its validity by filing one writ petition after another If constructive res judicata is not applied to such proceedings a party can file as many writ petitions as he likes and take one or two points every time. That clearly is opposed to considerations of public policy on which res judicata is based and would mean harassment and hardship to the opponent. Besides, if such a course is allowed to be adopted, the doctrine of finality of judgments pronounced by this Court would also be materially affected. We are, therefore, satisfied that the second writ petition filed by the appellant in the present case is barred by constructive res judicata."

The above said decision was followed by the Division Bench of the Andhra Pradesh High Court in K. Madhaeva Sastry Vs. Director, Post Graduate Centre, .

"11. Now, so far as the second situation is concerned here too there cannot be any doubt about the general principle that Order II, Rule 2 would apply. A person who files a suit seeking certain relief in respect of a cause of action and who is precluded from instituting another suit for seeking other reliefs with respect to the same cause of action, cannot be allowed to invoke the writ jurisdiction of this Court for obtaining the very same reliefs. Indeed, if a suit is barred, a writ petition would equally be barred, public policy underlying Order II, Rule 2, CPC is attracted with equal vigour in this situation as well."

"13. Another factor to be borne in mind is that by 1962, the Supreme Court had not even clarified the position about the applicability of the rule of constructive res judicata in writ proceedings. Indeed, the very applicability of the rule of res judicata in writ proceedings came to be raised and discussed from Daryao and Others Vs. The State of U.P. and Others, . It is only later that the Supreme Court clarified in Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others, that the rule of constructive res judicata also applies to writ proceedings. It observed (at p. 1153)."

9. In view of the above said decisions of the Apex Court as well as the Division Bench of the Andhra Pradesh High Court, the present writ petition is hit by Order II, Rule 2, CPC . For the reasons mentioned supra, the above writ petition is dismissed. It is open to the petitioner to proceed with the decree in O.S. No. 3743 of 1995 in a manner known to law. However, considering the circumstances of the case, there shall be no order as to costs.