

(2014) 01 MAD CK 0179

In the Madras High Court

Case No : Writ Petition (MD) No. 20892 of 2013

Kannan

APPELLANT

Vs

The State of Tamil Nadu and R. Senthilkumar

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Citation : (2014) 01 MAD CK 0179

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : R. Alagumani, for the Appellant; V. Pandi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—The present Writ Petition has been filed seeking issuance of a Writ of Mandamus directing the respondents 1 and 2 to provide adequate police protection to the petitioner to remove the machinery put in 20 x 80 square feet A.C.C. sheeted premise, possessed by the third respondent and consequently directing the respondents 1 and 2 to take custody of the machinery till the machineries were collected by the third respondent by considering the representation dated 29.11.2013. The learned counsel for the petitioner would submit that the third respondent is a tenant under the petitioner. The third respondent has already filed a civil suit for injunction not to evict him otherwise under due process of law and the said suit is pending. Pending the suit, the period of tenancy expired on 22.03.2012. Therefore, the third respondent has no right to continue in the premises. Hence, the petitioner has come forward with this writ petition for the relief as stated above.

2. The learned Government Advocate appearing for the respondents 1 and 2 would contend that pending suit, the mandamus will not lie because the statutory right of the tenant cannot be thrown away.

3. Heard both sides.

4. At the out set, it is the fittest case to be dismissed in limine since the petitioner wants to evict the tenant who is in lawful possession by hook or crook. His idea is to get order for police protection and then throw out the tenant from the premises. The petitioner has got every right to evict the tenant only by way of due process of law but not by way of seeking police protection to remove the tenant from the premises. Therefore, this writ petition cannot be entertained in view of the order passed by the Division Bench of this Court in M. Ingaci Vs. The Commissioner, Devekottai Municipality and Others, , to which I was also a party. In the said decision, following the Supreme Court decision, this Court has held that an application that could not even be considered, cannot be directed to be considered by the authority. Therefore, very strongly opposes the application of this nature and the maintainability of the application also. The Supreme Court in the case of A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others, , had observed as follows:-

19. There are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the court disposes of the petition with a direction to "consider", the authority grants the relief, taking shelter under the order of the court directing him to "consider" the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction to "consider" the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption into regular service is a species of cases, where there has been a large-scale misuse of the orders "to consider".

5. Following the Apex Court's judgment cited supra, a Division Bench of this Court, in M. Ingaci Vs. The Commissioner, Devekottai Municipality and Others, , had in para 8 observed:-

....

8. Why we are extracting this judgment in such detail is that we should be aware of the consequences of our order when we direct the authorities to "consider". In the aforesaid situation, if the learned Judge, before directing the authorities to

consider, had heard the petitioner herein, then the order of the Division Bench reprimanding the 5th respondent would have been brought to the notice of the learned Single Judge. Some time, we also come across cases where our directions is to an authority who cannot really pass an effective order and the effective order can only be passed by an authority superior to the one to whom we issue directions. Obviously, when the order is not complied with, since it cannot be complied with because of the hierarchy discipline, the officer has to face the contempt. All these can be avoided if we only bear in mind the guidelines given in the above case by the Supreme Court before we direct the respondent to "consider and pass orders".

In view of the above decisions, I am of the considered view that the writ petition is not at all maintainable and it has to be dismissed in limini. Accordingly, the writ petition is dismissed. No costs.