
(1995) 07 MAD CK 0001

In the Madras High Court

Case No : Writ Petition No. 3913 of 1983

Palace-de-Wales

APPELLANT

Vs

The State of Tamilnadu and Another

RESPONDENT

Date of Decision : 27-07-1995

Acts Referred:

Tamil Nadu Cinemas (Regulation) Rules, 1957 — Rule 13, 14(2), 42
Transfer of Property Act, 1882 — Section 106

Citation : (1995) 2 CTC 146

Hon'ble Judges : Jagadeesan, J

Bench : Single Bench

Advocate : S. Desikan, for the Appellant; V. Subbarayan, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Jagadeesan, J.—The case of the petitioner is that the petitioner firm is the owner of the theatre ""Palace-de-Wales"" at Tirunelveli Junction.

The petitioner got the lease of vacant site belonging to the second respondent in the year 1985 and constructed a permanent cinema theatre. The

theatre has been functioning all these years. The lease period lastly expired on 30.6.1967. Thereafter the second respondent refused to renew the

lease and filed the suit O.S.753/68 on the file of District Munsif, Tirunelveli for recovery of possession. The petitioner resisted the same mainly on

the ground that the suit was not maintainable for want of notice u/s 11 of Tamilnadu City Tenants Protection Act Ultimately the suit was dismissed

on 19.7.73. The second respondent preferred an appeal in A.S.195/74 on the file of Sub-Court, Tirunelveli and the same was dismissed on

5.7.76. The second appeal No. 1976/76 preferred by the second respondent before this court was also dismissed on 13.1.81.

2. Thereafter the second respondent issued notice u/s 11 of the City Tenants Protection Act and filed a fresh suit in O.S.No. 728/82. The

petitioner filed I.A. 1363/82 u/s 9 of the said Act. Neither the counsel for the petitioner nor the Government Pleader is in a position to say anything

with regard to the result of the suit.

3. When the petitioner approached for the renewal of ""C"" Form licence when the same was to expire on 31.5.82, the second respondent objected

to the renewal of the ""C"" Form licence on the ground that the petitioner's possession was unlawful. The District Collector, Tirunelveli by his order

dated 29.9.82 has granted renewal upto 30.11.82. The second respondent filed an appeal against the said order before the Commissioner of Land

Administration, Chepauk, Madras, who also confirmed the order of the Collector by his order dated 13.12.82 and the ""C"" Form licence was

renewed upto 30.11.83. The second respondent preferred a revision before the first respondent and the first respondent by his order dated

11.4.83. set aside the order of the Commissioner and the Collector, granting renewal. The petitioner has filed this writ petition challenging the order

of the first respondent.

4. The first respondent has filed counter. In the counter, it has been categorically admitted about the civil proceedings, that took place between the

petitioner and the second respondent. It is further stated that the Collector had renewed the licence after getting the opinion from the Government

Pleader. That the first respondent had set aside the order of the Collector and the Commissioner on the ground that the second suit filed by the

second respondent is pending and as such the petitioner is not in lawful possession. Unless the petitioner's possession is lawful, they are not

entitled for renewal of ""C"" Form licence. As the ejectment suit is pending, unless and until a finality is arrived at between the parties, the petitioner's

possession cannot be said to be lawful.

5. Though the second respondent was served, they have not chosen to engage any counsel. They also did not appear in person.

6. The only question involved in the present writ petition is that whether the petitioner's possession would become unlawful as the ejectment suit

filed by the second respondent is pending before the civil court? It is admitted between the parties that the earlier suit filed by the second

respondent in O.S.753/68 for recovery of possession was ended in favour of the petitioner. Subsequently the second suit has been filed by the

second respondent and the petitioner has also filed an application u/s 9 of the City Tenants Protection Act to enforce his right to purchase the site.

Though the petitioner's lease was not renewed subsequent to the last expiry on 30.6.67, the petitioner has to be considered as a person to be in

possession lawfully by holding over. It cannot be said that the petitioner's possession is unlawful merely because the lease has not been renewed.

7. In the recent judgment reported in Sri Hanuman Vahana Panchaparva Kattalai Attached To Sri Venkatachalpathi Perumal Temple v.

Subramanian 1994 H MLJ 239 this court has held that unless and until the landlord evicts the tenant by due process of law, the tenant's possession

cannot be considered to be unlawful. The learned Judge had distinguished the judgment reported in M.C. Chockalingam and Others Vs. V.

Manickavasagam and Others, and relied upon a judgement reported in Manickavasagam v. The Board of Revenue 86 LW 661 and held as

follows.

We may also note that in Manickavasagam v. The Board Of Revenue 86 LW 661, A Division Bench of this Court has stated that it cannot be laid

down as a general proposition that once there was a demand by the landlord for possession from the tenant whose lease had expired by efflux of

time, the continued possession in the hands of the erstwhile tenant would be unlawful or that he would be considered as a trespasser. The

continued possession in the hands of such a tenant is protected by law. Such possession is quite good against the entire world except the landlord

himself. The landlord will be entitled to evict him by the appropriate proceedings. Until then, the erstwhile tenant cannot be regarded as being in

unlawful possession. His possession is wrongful, but not unlawful. It is wrongful, because the erstwhile tenant continues in possession beyond

expiry of the period fixed in the lease. It is not unlawful, because the land lord cannot take the law into his own hands and evict him. He can evict

him only by proper procedure and that being the case, it cannot be said that the erstwhile tenant is in unlawful possession. Therefore, for the

purpose of the Madras cinemas (Regulation) Act, 1955 particularly Rule 13 of the Rules, merely because the lease period had expired, the tenant

who overstays cannot be considered to be in unlawful possession. In other words, even in such a situation, Rule 13 is satisfied and such a tenant will be entitled to a renewal.

A division Bench of this Court in the judgment reported in *Dhanalakshmi Ammal v. Government of Tamil Nadu* 1993 (2) LW 569 has discussed

about the difference between the litigious possession and the lawful possession. Of course the Division Bench arrives at the conclusion that the

appellants possession therein is lawful on the basis of the terms of the lease deed.

8. In the present case, though the second respondent has refused to renew the lease, still the petitioner claims a right to purchase the land, since

the petitioner has put up the superstructure. Until such right is decided, it cannot be said that the petitioner is in unlawful possession. More over, the

petitioner deemed to be a statutory tenant after the expiry of the lease, since the Tamil Nadu Buildings (Lease and Rent Control) Act is applicable

to the said premises. Hence the order of the first respondent cannot be sustained.

9. For the reasons stated above, the writ petition is allowed. However, there is no order as to costs.