

(2009) 04 MAD CK 0558
In the Madras High Court
Case No : Writ Petition No. 281 of 2004

Prasad Properties and Investments Private Ltd.	APPELLANT
Vs	
Hindustan Petroleum Corp. Ltd. and Ravi Agencies	RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 4 CTC 259

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : Ezhil Mani, for the Appellant; M. Vijayan, Advocate for Respondent No. 1 and Mr. V. Selvaraj, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned counsel appearing on behalf of the petitioner and the learned counsel appearing on behalf of the respondents. This Writ Petition has been filed praying for a Writ of Mandamus to direct the respondents to hand over possession of the schedule mentioned property to the petitioner.

2. It has been stated that the petitioner is the owner of the land measuring 6800 sq. ft. in Survey No. 111 at No. 45, Anna Salai, Guindy, Chennai. He had purchased the property by way of registered sale deeds, dated 23.3.1995 and 28.4.1995. It has also been stated that the second respondent is a dealer appointed by the first respondent-Corporation, which is a Public Sector Undertaking of the Government of India. The first respondent-Corporation is in the business of marketing petroleum products through a number of retail outlets. The first respondent-Corporation had approached the petitioner's predecessor-in-title and had obtained a lease of the schedule mentioned property for the setting up of a retail outlet, under an agreement of lease. Thereafter, the first respondent-Corporation had appointed the second respondent as a licensee to vend the products of the first respondent-Corporation. However, the licence had

been terminated before the said property had been sold to the petitioner. Thereafter, the first respondent Corporation had stopped paying the lease amount. However, the possession of the property had not been handed over to the petitioner. Once the lease was terminated it is obligatory on the part of the first respondent-Corporation to surrender the property to its owner. Thus, the first respondent-Corporation, which is a Government of India undertaking, had failed to do its duty by handing over possession of the schedule mentioned property to the petitioner. Instead, on 3.1.2004, the first respondent-Corporation had decided to modify the petrol bunk established in the schedule mentioned property by erecting a new canopy by digging holes in the land. In such circumstances, the petitioner had been constrained to file the present Writ Petition before this Court, under Article 226 of the Constitution of India.

3. In the counter affidavit filed on behalf of the first respondent-Corporation, the submissions made by the petitioner, in the affidavit filed in support of the Writ Petition, have been denied. It has been submitted that the Writ Petition is not maintainable, either in law or on facts and therefore, it is liable to be dismissed in limine. It has also been stated that the writ petitioner has raised certain issues involving disputed question of facts, which cannot be adjudicated upon by way of a Writ Petition. The first respondent-Corporation, being a tenant under the [Madras] City Tenants' Protection Act, 1921, is entitled to the statutory protection under the said Act.

4. It has also been submitted that the Writ of Mandamus, being a discretionary remedy, would be issued only for the performance of a legal duty or for the enforcement of a public duty. Therefore, it cannot be issued, as prayed for by the writ petitioner, in the present case. Even otherwise, an efficacious alternative remedy is available to the writ petitioner by way of Civil proceedings before the appropriate forum. Therefore, the present Writ Petition filed under Article 226 of the Constitution of India, cannot be sustained in the eye of law.

5. Further, the petitioner having already filed a Civil Suit in 4838 of 2001, on the file of the II Assistant City Civil Court, Chennai, cannot be permitted to seek for the same relief before this Court by way of a Writ Petition. The ESSO EASTERN inc, had entered into a long term lease agreement, dated 26.6.1974, with Shanmugam, Umadevi, S. Doraivel, S.V. Shankar and Nagaraj, the predecessor's-in-title of the schedule mentioned property. Since the said lease agreement is still subsisting the first respondent-Corporation has been sending cheques to them for the lease amount payable. Pursuant to the lease agreement the first respondent-Corporation had appointed the second respondent as its dealer. Since the date of lease agreement the respondents have been in continuous and peaceful possession and enjoyment of 5.66 grounds, in Old No. 31/1 (New No. 46 and present No. 87), Anna Salai, Guindy, Chennai. In fact when there was an encroachment in a part of the property, a Civil Suit had been filed by the respondents, in O.S. No. 5467 of 1998, in which the XI City Civil Court, Chennai, by its judgment and decree, dated 25.7.2003, had held that the

first respondent-Corporation had proved that it is a lessee in respect of the suit property and therefore, it is entitled to re-possession of the property. The first respondent-Corporation is a statutory tenant in the property in question. and any notice sent for the termination of the lease agreement would be illegal and void. Further, the first respondent-Corporation is having a statutory right to purchase the property, u/s 9 of the [Madras] City Tenants' Protection Act, 1921, and therefore, the petitioner is not entitled to any relief by way of a Writ Petition filed under Article 226 of the Constitution of India.

6. The claim that the property in question had been purchased by the petitioner cannot be accepted since the petitioner has not shown sufficient proof of ownership in respect of the said property. When the petitioner had specifically admitted that there was an agreement of lease the question of termination of licence does not arise. The first respondent-Corporation is a lessee and at no point of time the petitioner had terminated the lease. The petitioner is not entitled for possession of the suit property. However, if disputed questions of facts are involved, with regard to the title or the possession of the property in question, it would be open to approach the Civil Courts for obtaining such relief's. The first respondent-Corporation has been paying all the taxes and other dues to the authorities concerned and it is having the licence to run the retail out let. In such circumstances, the Writ Petition is liable to be dismissed, as it is devoid of merits.

7. In the counter affidavit filed on behalf of the second respondent it has been stated that the second respondent is doing business in the schedule mentioned property in the name of Ravi Agencies, with a valid licence, based on a memorandum of agreement entered into between the first and the second respondents. It has also been stated that the petitioner claims to have purchased the schedule mentioned property, having an extent of 6800 sq. ft. of land out of the 13 grounds of land belonging to six persons, by way of three sale deeds. The sale deeds obtained by the petitioner refers to a partition deed, dated 22.9.1994, allotting the shares to the respective sharers. All the six persons had jointly given the property on lease to the first respondent-Corporation, wherein, a petrol bunk has been established. The total area occupied by the petrol bunk is 5 1/2 grounds, with Door No. 46. In the affidavit in support of the Writ Petition, the door number of the property in question is mentioned as Door No. 45. However, a Suit in O.S. No. 4838 of 2001, has been filed on the file of City Civil Court, Chennai, claiming that the petitioner is in possession of the property bearing Door No. 46, Anna Salai, Guindy, Chennai, wherein, the claim of the petitioner is that the property bearing Door No. 46 is in its possession. The said Suit is still pending on the file of the City Civil Court, Chennai. It has also been stated that the first respondent has filed O.S. No. 1561 of 1998, on the file of the City Civil Court, Chennai, against the vendors of the petitioner and certain others who had originally granted the lease of the property of the petitioner. The said Suit is also pending on the file of the City Civil Court, Chennai. An order of injunction has also been granted in the said Suit in favour of the first respondent-Corporation.

In such circumstances, the disputed questions of fact cannot be decided by this Court in the present Writ Petition filed by the petitioner, under Article 226 of the Constitution of India.

8. A counter affidavit has been filed on behalf of the first respondent in W.V.M.P. No. 54 of 2004, to vacate the order of "status quo" granted by this Court in W.P.M.P. No. 289 of 2004, wherein, it has been stated that the Writ Petition is not maintainable, either in law or on facts and therefore, it is liable to be dismissed, in limine. Since disputed questions of facts are involved the Writ Petition filed before this Court, under Article 226 of the Constitution of India, cannot be maintained. The first respondent-Corporation being a statutory tenant, under the [Madras] City Tenants' Protection Act, 1921, is entitled to the statutory protection and therefore, a Writ of mandamus, could not be a proper remedy for the petitioner. Further, the petitioner, having filed a Civil Suit in O.S. No. 4838 of 2001, on the file of the II Assistant City Civil Court, Chennai, cannot be permitted to agitate the issues by invoking the Writ jurisdiction of this Court. Further, the first respondent-Corporation had filed a Civil Suit in O.S. No. 5467 of 1998, before the City Civil Court, Chennai and by a judgment and decree, dated 25.7.2003, it has been held the first respondent-Corporation is the lessee in respect of the suit property. Based on the counter affidavit filed on behalf of the first respondent-Corporation, this Court had dismissed W.P.M.P. No. 289 of 2004, vacating the order of "status quo" granted by this Court, on 23.1.2004, stating that the petitioner had suppressed the fact that the XI City Civil Court, had decreed the Suit in favour of the first respondent-Corporation, restraining the petitioner and others from interfering with the possession and enjoyment of the property in question by the first respondent-Corporation. Further, in the counter affidavit filed on behalf of the second respondent, it has been stated that the petitioner had filed O.S. No. 4838 of 2001, on the file of the City Civil Court, Chennai and the first respondent-Corporation had also filed a Suit in O.S. No. 1561 of 1998, on the file of the City Civil Court, Chennai, with regard to the property in question and they are still pending. In such circumstances, this Court is of the considered view that the relief's sought for by the petitioner in the present Writ Petition cannot be granted, at this stage. In view of the fact that a number of Civil Suits had been filed by the parties, who are before this Court in the present Writ Petition and since the issues arising for consideration are relating to questions of fact, which have to be adjudicated upon based on the evidence, it would be appropriate for the parties herein to establish their rights by way of Civil proceedings before the appropriate forum. Since disputed questions of facts cannot be gone into by this Court, under Article 226 of the Constitution of India, the Writ Petition is liable to be dismissed. However, it is made clear that it would be open to the petitioner to approach the appropriate Civil forum to establish its rights, in the manner known to law. Hence, the Writ Petition stands dismissed. No costs.