

(1993) 09 MAD CK 0059
In the Madras High Court

The Commissioner, Nagapattinam Municipality

APPELLANT

Vs

P. Palanivelu and Others

RESPONDENT

Date of Decision : 14-09-1993

Acts Referred:

Citation : (1993) 2 LW 620 : (1994) 1 MLJ 28

Hon'ble Judges : K.A. Swami, C.J

Bench : Division Bench

Judgement

K.A. Swami, C.J.—This appeal is preferred against the order dated 22.4.1993 passed by the learned single Judge in W.P. No. 6283 of

1993. At the stage of admission, the first respondent has put in appearance through counsel. As the appeal lies in a narrow compass, it is admitted

and heard for final disposal.

2. In the writ petition, the first respondent herein sought for quashing the order bearing No. Na. Ka. No. 9598/92/Aa. 6, dated 5.3.1993

terminating the lease granted in his favour in respect of the premises situated at Nagapattinam belonging to the appellant on a monthly rent of Rs.

3,016 for a period of three years from 1.3.1992. The case of the appellant is that as the first respondent failed to pay the rent regularly in terms of

the lease, the appellant had no alternative but to terminate the lease. The learned single Judge has interfered with the order on the ground that the

lease has been terminated without affording an opportunity to the 1st respondent to explain the circumstances resulting in default of payment of

rent.

3. Before us, several contentions are urged, but we are of the view that only one contention that deserves to be considered is, that the lease in

question being a non-statutory contract though one of the contracting parties falls within the definition of "State" as defined under Article 12 of the

Constitution of India, the relief under Article 226 of the Constitution of India is not available to the aggrieved party for enforcement of non-

statutory and purely contractual rights which are governed by the terms of the contract. In this case, it is not in dispute that the lease in question

does not fall under anyone of the provisions of the Tamil Nadu District Municipalities Act with which the Municipality in question is governed. The

Travellers Bungalow belonging to the Municipality in question has been leased to the 1st respondent for a period of three years. It is a non-

statutory contract. If the termination is not in accordance with the terms of the lease and the provisions of the Transfer of Property Act, there is a

remedy open to the 1st respondent to approach a civil court. Apart from availability of an alternative remedy which by itself is sufficient to decline

the exercise jurisdiction under Article 226 of the Constitution of India in a matter relating to non-statutory concluded contract like the one in

question; the jurisdiction under Article 226 of the Constitution cannot be exercised as the rights of the parties being purely contractual are ground

by the terms of the contract. In Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, : Bareilly Development Authority and

Another Vs. Ajay Pal Singh and Others, , it has been held that in a case like this exercise of jurisdiction under Article 226 of the Constitution of

India is not warranted. The relevant portion of the judgment is as follows:

There is a line of decision where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and

the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to

compel the authorities to remedy a breach of contract pure and simple : Radhakrishna Agarwal and Others Vs. State of Bihar and Others, :

Radhakrishna Agarwal and Others Vs. State of Bihar and Others, , Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others,

: Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others, and Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., :

Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., .

In view of the authoritative judicial pronouncements of this Court in the series of

cases dealing with the scope of interference of a High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India in cases of non-statutory concluded contracts like the one in hand, we are constrained to hold that the High Court in the present case has gone wrong in its finding that there is arbitrariness and unreasonableness on the part of the appellants herein in increasing the cost of the houses/flats and the rate of monthly instalments and giving directions in the writ petitions as prayed for.

Following the aforesaid decision, we are of the view that the order passed by the learned single Judge has to be interfered with. Accordingly, the appeal is allowed and the order passed by the learned single Judge on 22.4.1993 in W.P. No. 6283 of 1993 is set aside. The writ petition is dismissed. However, in the facts and circumstances of the case, there will be no order as to costs.

4. The nephew of the 1st respondent has filed an affidavit giving an undertaking on behalf of the 1st respondent stating that he is the agent of the 1st respondent and he is also acquainted with the facts of the case. The affidavit contains an undertaking. It is also signed by the Advocate for the 1st respondent. Thus, it is an undertaking given by the 1st respondent not only through his agent but also through his counsel. In the affidavit, he has given an undertaking to the following effect:

The respondent voluntarily undertakes to vacate and hand over vacant possession of the Municipal T.B. Nagapattinam to the Nagapattinam Municipality on 31.12.1993 without leaving any arrears of rent or causing damage to the premises.

On the basis of the aforesaid undertaking, time is granted to the 1st respondent till 31.12.1993 to vacate and deliver vacant possession of the demised premises to the appellant without driving the appellant to the necessity of taking steps to secure possession and also without causing any damage to the premises and without inducting any third party. The 1st respondent shall also pay the rent as and when it becomes due.