

Rajendran Vs. the Nagercoil Municipality

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Court : Chennai

Decided On : May-13-1995

Reported in : 1995(2)CTC130; (1995)IIMLJ342

Judge : S. Jagadeesan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 24 - Order 39, Rule 1;
[Advocates Act, 1961](#) - Sections 30

Appeal No. : T.R.C.M.P. No. 6703 of 1995 and C.M.P. Nos. 6704 and 7699 of 1995

Appellant : Rajendran

Respondent : The Nagercoil Municipality

Advocate for Def. : P. Pepin Fernando, Adv.

Advocate for Pet/Ap. : V. Raghavachari, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S. Jagadeesan, J.

1. The Petitioner in this CMP has filed the suit in O.S.No. 200 of 1995 on the file of District Munsif, Nagercoil against the respondent herein praying for the relief of declaration of his leasehold right over the plaint scheduled property and consequential relief of injunction. It is the case of the petitioner that the respondent auctioned the leasehold right of the plaint scheduled property for a period of one year from 1.4.1992 to 31.3.1993 for the financial year 1992-93. The petitioner participated in the said auction and he was the highest bidder. As the highest bidder for a sum of Rs. 10,92,000/- the lease was confirmed by the Municipal Council in favour of the plaintiff. Though the annual lease amount was for Rs. 10,92,000/- the Municipality collected the amount as monthly rent from the petitioner. After the confirmation the petitioner was asked to sign in a lease deed prepared by the respondent and that the petitioner was directed to pay four months rent at the time of execution of the lease deed and the balance by way of monthly rent for the succeeding months. For subsequent financial years i.e., 1993-94 and 1994-95 leasehold rights were given to the petitioner on the revised rate of Rs. 12,19,000/- and Rs. 18,87,000/- respectively. For the year 1995-96, the respondent has notified fresh auction for the leasehold right. The petitioner had approached the respondent and informed them that the notification bringing the leasehold right of the plaint scheduled property is illegal and the respondent has no right to bring it for auction. For the leasehold rights relating to the plaint scheduled property the petitioner has submitted two representations dated 1.2.1995 and 10.2.1995. The respondent did not send any reply. Hence the suit has been filed by the applicant along with an Interlocutory Application No. 400 of 1995, praying for an injunction pending disposal of the suit. The petitioner further prayed that he must be allowed to continue to occupy the leasehold property by increasing the lease amount by 15% or any reasonable amount as may be fixed by the court.

2. The District Munsif, Nagercoil had initially granted injunction on 29.3.1995 and posted the matter for hearing on 6.4.1995. On 6.4.1995, the respondent's counsel filed vakalat and also counter. The District Munsif was inclined to take up the matter for arguments on the same day as the advocates were boycotting the court. The petitioner was not in a position to persuade his lawyer to make his submissions in court. But however, the Counsel for the respondent attempted to

persuade the court to hear the matter. But the court could not proceed with the hearing as the other counsel were creating a scene. Hence the case was posted on 10.4.1995 and on that date the District Munsif had made an endorsement that he is awaiting orders from the District Judge, Kanniyakumari since on 6.4.1995 he had sought for the direction from the District Judge for transferring the matter to any other court. The suit was transferred to District Munsif Court, Kuzhithurai and on 19.4.1995, the application was called. The suit was renumbered as O.S.200 of 95. On that day also when the counsel for the respondent attempted to make his submissions he was not allowed to advance his arguments and the petitioner being an illiterate depend only on his advocate and he was not in a position to do anything. The Municipal Commissioner in person made his representation to the court and the district Munsif, Kuzhithurai adjourned the matter to 24.4.1995 either to continue the argument or threatened to dismiss the application. This petition for transfer has been filed by the petitioner on the ground that at Padmanabhapuram there was no objection for the appearance of lawyer from outside the State and hence if the suit is transferred to Padmanabhapuram the petitioner may be in a position to engage the counsel from Kerala and conduct the Proceedings.

3. The respondent has filed counter. In the Counter the respondent has admitted about the boycott of the court by the lawyers at Nagercoil and about the transfer of the matter to Kuzhithurai. It is further stated that the petitioner's counsel R. Manickavasagam Pillai did not come to court on 19.4.1995 and even at Kuzhithurai the advocates from other state can appear and hence there is no need to transfer the case to Padmanabhapuram. Moreover, the resolution to boycott the courts does not relate to, only one court but it applies to all the courts in Kanniyakumari district and hence everywhere the problem will be there and the petitioner can appear in person as the respondent is appearing in person and the Court will consider the merits and demerits of the claim and pass final orders.

4. Apart from this, the respondent in their counter has stated that the petitioner has not given the correct facts either in the injunction application filed in I.A.No. 400 of 95 or in the injunction application filed before this court. Though the petitioner was the highest bidder in the auction held for the period 1992-93, as soon as the period was over, the licence right was again auctioned in public and the petitioner was

the successful highest bidder for the period 1993-94 and 1994-95. The right given under the auction is only a licence and not the lease. As soon as the yearly licence period was over for the current period from 1.4.1995 to 31.3.1996 the auction was held on 15.2.1995 and the petitioner participated in the auction and his bid was Rs. 23,30,000/-. Further he has signed the auction register wherein he has accepted all the conditions mentioned in the said auction proceedings and the highest bid was offered by one Mrs. S. Lakshmi and the bid amount is Rs. 31,05,000/- and hence her bid was accepted and the licence has to be granted to her. As the licence period was over, the petitioner cannot continue his possession in the plaint scheduled property. The points that arise for consideration in this petition are:

(1) Whether on the basis of the averments made in the affidavit filed in support of the transfer petition the transfer can be ordered?

(2) Whether the petitioner is entitled for an order of injunction as prayed for in C.M.P.No. 6704 of 1995?

5. Mr. V. Raghavachari, learned Counsel for the petitioner pleaded that his client has made every arrangement to conduct his case and the advocates at Nagercoil and Kuzhithurai are boycotting the court and they are not appearing before the courts and they also refused to permit any advocate from outside to appear in the courts on behalf of his client. Hence his client is helpless though he is very much eager to complete the hearing of the application. Mr. Peppin Fernando, learned counsel for the respondent submits that it is true that the advocates are boycotting the courts not only at Nagercoil and Kuzhithurai, but in all the courts throughout the Kanyakumar District. As Padmanabhapuram is within the Kanniyakumari District, the advocates are boycotting the court there also and there is no basis for the averments made by the petitioner that the members of the Bar at Padmanabhapuram may not object for the appearance of the counsel from outside.

6. The xerox copy of the docket sheets were produced. From that it is clear that the suit has been filed on 29.3.1995 and the interim injunction was granted till 7.4.1995. The respondent has filed application I.A.No. 413 of 95 for advancement

of the hearing of the I.A.No. 400 of 95 filed by the petitioner. The hearing was advanced to 4.4.1995 and the the hearing was posted to 6.4.1995. The following endorsement was made in the docket sheet:

'6.4.95 As per order in I.A.No. 413 of 95 dated 4.4.1995, Injunction application advanced to pay. Notice served. counter already filed Enquiry

On 6.4.1995 though the respondent counsel insisted for the hearing of the application the petitioner has sought for adjournment and also for extension of interim injunction order, However, the District Munsif has posted the matter the next day since already the injunction has been granted till 7.4.1995. There is no remark by the Munsif that there was any protest from the other members of the Bar preventing the proceedings of the Court on 6.4.1995. Further there is no endorsement on 6.4.1995 to the effect that the District Munsif has sought for a direction of the District Judge for transferring the matter to any other court. Hence the averment made by the petitioner in his affidavit that on 6.4.1995 the matter could not be proceeded with as the counsel were creating a scene that prevented the court from proceeding with any case and the case was posted on 10.4.1995 is totally false.

7. On 7.4.1995 the endorsement is as follows:

Vakalat for respondent 7.4.1995 returned for want of A.W.S. ON 6.4.1995.

From the above endorsement it is clear that the petitioner had appeared in person and his argument was part-heard. At that time some of the advocates had shouted that the respondent's counsel should come out of the Court and prevented the further hearing of the matter. Hence the District Munsif had made the request for the transfer of the case to some other court. When the endorsements dated 29.3.1995, heard the petitioner Documents perused and 7.4.95 entracted above very clear that the petitioner had represented his case in person before the court below, it is not open to him now to plead that he is an illiterate person and he is not in a position to putforth his case. The entire objection by advocates before the court below is for the appearance of the respondent's counsel. When that be so, the District Munsif, Nagercoil ought to have proceeded with the hearing the case

or adjourned the matter to enable the parties to be represent by their counsel. Knowing fully well that the advocates in the entire District are boycotting the courts, there is no useful purpose of transferring the case from Nagercoil to Kuzhithurai. The action of the District Munsif requesting the District Judge, Kanniyakumari to transfer the case is unwarranted.

8. Now the transfer sought for is only on the ground that the advocates at Nagercoil and Kuzhithurai are boycotting the courts and they are not permitting any outside Lawyers to appear in the courts. The provisions for filing and transfer in the High Court is made available only in cases where the relevant Sub-Courts are closed or are not functioning. Such a condition cannot be said to prevail in this case. The sub-courts are very much kept open and functioning and it is only the Lawyers in the Southern districts who are avoiding appearance before courts by adopting the measure of boycott. It is not as though the courts are not passing orders. As a matter of fact, in applications moved by parties and also by the counsel in cases at times in Chambers in some places, Courts have been passing orders. Therefore, the refusal of the lawyers to appear and plead before courts is no ground or reason to contend legitimately that the sub-courts or a particular court in the districts is not functioning. If the transfer is to be ordered on this ground, I am of the view, then, this court will not only be opening the flood gates for such transfer applications, but encouraging and putting its seal of approval over extra legal methods adopted on extraneous grounds I can take judicial notice of the fact that the entire Bar Members throughout the southern districts from Madurai to Kanyakumari are boycotting the courts for the past three months and refusing to appear and plead before courts thought the Presiding Officers are available and sitting and Courts as such are functioning and do not remain closed. In such situation, I do not think any transfer can be ordered on the ground now put forth.

9. It may be pertinent to refer a judgment reported in Lal Mohd. v. Mst. Haroon . The learned Judge dealt with an application for restoration of a petition dismissed for default since the Counsel absented himself on account of Lawyers' Strike.

'I have heard the learned counsel for the petitioner. The Judgments cited by the Counsel for the petitioner and reported in : [1981]3SCR509 (Raj) (Supra) are totally distinguishable and are not relevant to the facts of the present case. The Judgment passed by this Court in Prahlad Kumars's Case (Supra) is thought relevant but in this case the learned single Judge did not consider the judgment passed by Division Bench of this court in Hari Ram Sharma v. Rajasthan State Electricity Board, reported in 1992 1 Rajasthan LR 523. In this case, D.B.Special Appeal (Writ) No. 411 of 1991 and D.B. Civil Writ Petition No. 2928/89 were dismissed in default on 16.9.1991, as the counsel engaged in the aforesaid cases did not appear in the court on account of strike when the cases were called for hearing. Later on, restoration applications were submitted before this court and this court rejected the restoration applications. Para No. 5 of the Judgment reads as below:-'5. The question that arises for decision is as to whether the Lawyers can be allowed to hold the Courts at ransom and put their working out of gear by taking a decision to boycott the courts at any time according to their wishes and convenience without caring for their duty not only towards the Courts but also towards the clients who had engaged them and whether such absence on their part at the time of hearing of cases can be considered to be sufficient cause for restoration of the matters dismissed in default. Our answer to this question is early in the negative'.

Similar view was taken by this Court in Maula Bux (deceased) represented by his L.Rs. v. Sohan Lal, reported in 1961 (1) Raj LR 616 in which it has been held as under:

'It has been contended that the applicant cannot be made to suffer due to the fault of his lawyers and as such, the appeal should be restored. Reliance has been placed on the decisions of the Hon. Supreme Court in cases Rafiq v. Munshi Lal and Smt. Lachhi Tiwari v. Director of Land records, reported in : [1981]3SCR509 and : AIR 1984 SC41 . I have gone through the said authorities. They are the authorities on their own facts and in these cases the Hon. Supreme Court came to the conclusion that the appellants concerned had done all that was required to be done for being represented and should not be made to suffer for the fault of their lawyers. The above said authorities do not lay down that the matters dismissed in

default should be restored as a matter of course to give liberty to the parties or their advocates to appear or not to appear in the Court according to their wish, desire and convenience. If this interpretation is given to the above said authorities, it would mean that the parties and their learned counsel can put the working of the Court out of gear at any time and, in any view, no such intention can be impud to the Hon. Supreme Court.'

10. As pointed out by the Division Bench Judgment reported in (1992 (1) Rajasthan LR 523) referred to above, the lawyers cannot be allowed to hold the Courts at ransom and put their working out of gear by taking a decision to boycott the Courts at any time according to their wishes and convenience without caring for their duty not only towards the courts but also towards the clients who had engaged them. I entirely concur, with respect, with the above view expressed by the Division Bench. Though I pity the petitioner, I cannot look the interest of the petitioner alone. As a Judge of this Court, I have to consider the interest of the entire litigant public at southern districts from Madurai to Kanyakumari. The Advocate profession is accepted as a noble one by the entire world. While so, it is a very sorry state of affairs when the lawyers assume a role of trade union for their demands. As elite group in the society, the lawyers should realise not only the reasonableness of their demand but also must know as to whether their demand can be fulfilled overnight for the sake of merely asking for it. With a heavy heart, I am constrained to say that the Advocates in the Southern districts had totally forgot their duty to court, obligation to society at large and above all deny their services to their clients by continuing their strike indefinitely which cannot be considered as reasonable.

11. Countenancing the claim made on behalf of the petitioner in this case would also amount to giving legitimacy or judicial approval to an unlawful, unethical and uncalled for move, attempting to bring a stalemate in the effective administration of justice. Adopting extra legal methods to bring pressure upon constitutional functionaries and institutions can neither be appreciated nor be approved by Courts. The clients who have every liberty to move the Courts themselves and plead their own cases cannot be permitted to take advantage of a situation not permissible in law. Moreover, if one matter is to be transferred for this reason, then

as stated already, the flood gates for the transfer applications will be opened and that will naturally paralise the work of the other Courts within the District. Hence, I am of the view that there is no valid reason for transfer of the case from the file of the District Munsif, Kuzhithurai to the file of the District Munsif at Padmanabhapuram. Hence, the petition is dismissed.

12. Though I do not want to enter into the merits of the injunction application, the conduct of the applicant made me to dispose of the application on merits. The petitioner has appeared before the District Munsif, Nagercoil and represented his matter in person on 29.3.1995, 6.4.1995 and 7.4.1995. When the respondent filed the application for vacating the injunction on 6.4.1995, the applicant should have asked his counsel to make representation since there was no objection from other counsel for the appearance but a request was made by the petitioner for adjournment and also for extension of the injunction order. Thereafter, the suit was transferred to Kuzhithurai. At Kuzhithurai, the petitioner's counsel did not appear. Respondent appeared in person. Hence, the averments made in the affidavit filed in support of the transfer petition are totally false. Moreover, the petitioner has stated that for the years 1993-94 and 1994-95 he had been permitted to continue the leasehold by paying the enhanced amount and the respondent has stated that for this period also the licensee right was auctioned and the petitioner was successful bidder. Further, the auction for the current period took place on 15.2.1995 and the petitioner had taken part in the auction and having failed in the bid, has now chosen to file this suit on 29.3.1995 i.e., two days prior to the expiry of his licence period and obtained an order of injunction. If really the petitioner is aggrieved, he ought to have challenged the auction notice well in advance. Now having taken part in the auction, it is not open to him to challenge the auction as he is estopped from doing so. The conduct of the petitioner is nothing but to continue in possession even though he failed in his attempt to bid in the auction. Moreover, when the interim injunction has not been extended before the Court below, the applicant has filed this transfer application and sought for the interim injunction. I am of the view that pending the transfer application if at all any relief could be granted, it can relate only to the proceeding pending before the lower court and cannot confer any right on the parties. The injunction application itself is not maintainable. Pending the transfer petition, the petitioner has filed this interim

application as he has failed to get the injunction extended before the lower court.

13. In the decision reported in Vidhyavathi v. The chairman, Tamil Nadu Public Service Commission 1991 (II) MLJ 187, it has been held that the candidates participated in the selection process cannot be allowed to question the violation of any rule with reference to such selection.

14. In the decision reported in National High School, Madras v. Education Tribunal : AIR 1992 SC717 , the Supreme Court has held as follows:

'The argument for the appellant before us is that there is no statutory obligation for the school committee to conduct the Enquiry against the school teacher and the enquiry could be held either by the school committee or by any third person. In our opinion it is unnecessary to decide this issue since the appeal could be conveniently disposed of on another ground. It is not in dispute that the respondent himself demanded that the enquiry should be held by educationists other than the school committee. That request seems to have been necessitated since he has made accusations against the headmaster of the school. Accordingly a committee of outsiders was appointed to hold the enquiry. The respondent participated in the enquiry and did not at any time raise objection as to the jurisdiction of the committee. He was, therefore, estopped from raising the objection as to the jurisdiction of the school committee.'

Hence, there is absolutely no merit in the injunction application and the same is dismissed.

15. For the reasons stated above, C.M.P.Nos. 67G3 and 6704 of 1995 are dismissed with costs at Rs. 1,000/- one set and C.M.P.No. 7699 of 1995 filed by the respondent shall stand allowed.

TR.C.M.P.No. 6703 of 1995

S. Jagadeesan, J.

After the order was made ready for pronouncement, I noticed in the newspapers dated 29.5.1995 that the Advocated of the Southern Districts have decided to

withdraw their indefinite strike over setting up a High Court Bench in Madurai with the precondition that the Madras High Court Judges' Committee should positively forward their report before 30th July 1995, to the State Government. Though I am very happy about the first part of the decision, that is withdrawal of the indefinite strike, I am little bit worried about the condition imposed by the Advocates. Though at the first instance, I thought of dismissing the transfer application without giving the elaborate order on a second thought, I decided to pronounce the order so that it can be of a precedent in order to avoid any unpleasant situation that may arise in future.

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