

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.19004 of 2015
and M.P.Nos.1 & 2 of 2015

O.A.Syed Abudhahir

[Petitioner]

Vs

- 1 The State of Tamil Nadu
Rep. by its Secretary to Government
Municipal Administration & Water Supply
Department, Secretariat, Fort St. George
Chennai-9.
- 2 The Commissioner of Municipal
Administration, Chepauk Chennai-5.
- 3 The Regional Director of
Municipal Administration, Tiruppur Region
Tiruppur.
- 4 The Chairman
Municipal Council Mettupalayam Municipality
Mettupalayam Coimbatore District.
- 5 The Commissioner
Mettupalayam Municipality Mettupalayam
Coimbatore District.

[Respondents]

This Writ Petition under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records relating to the impugned resolution passed by the 4th Respondent in Resolution No.242 dated 27.01.2015 and to quash the same

For petitioner Mr.G.Sankaran

For respondents Mr.R.Vijayakumar,
Additional Government
Pleader(R1-3)

Mr.B.Anand (R4&5)

O R D E R

Heard Mr.G.Sankaran, learned counsel for the petitioner, Mr.R.Vijayakumar, learned Additional Government Pleader for respondents 1 to 3 and Mr.B.Anand, learned counsel for R4 and R5 and with their consent, the main writ petition is taken up for disposal at the admission stage itself.

2. This writ petition has been filed by O.A.Syed Abudhahir, challenging the resolution No.242 dated 27.01.2015 passed by the Chairman, Municipal Council, Mettupalayam Municipality, Mettupalayam, Coimbatore District, the 4th respondent herein, in and by which, the petitioner was called upon to vacate the shop within a period of 3 days, failing which, the Municipality will be taking possession of the shop in question.

3.1 Learned counsel appearing for the petitioner would submit that the petitioner, being a lessee of Shop No.1, Ooty Main Road, Mettupalayam, nearer to Jawahar Bus Stand, has been periodically renewing the lease and the 5th respondent also extended the lease for a period of three years, as per the proceedings in Na.Ka.No.6854/2008/A1 dated 09.04.2012 at the revised rate of rs.3942/- per month. On the basis of the said proceedings, the petitioner has been making the payment of rent to the Municipality regularly without any default.

3.2 Learned counsel for the petitioner would further submit that there are 200 shops belong to the respondent Municipality in and around Municipality Bus Stand and they are leased out to various individuals. When the period of lease of the petitioner came to an end on 31.03.2015, a representation was given by the petitioner to the respondent Municipality in advance, seeking renewal of lease, based on the enhanced rate of 15% as per Government orders. While that being the case, all of a sudden, the petitioner was issued with the present impugned notice dated 09.04.2015, by the respondent Municipality, calling upon him to vacate the shop within a period of 3 days. In this regard, the petitioner has also come to know that the Municipality is taking steps to remove 13 other shops located in the Main Road on the northern side of the Bus stand entrance on the ground that the shops are causing hindrance to the traffic.

3.3. Adding further, learned counsel for the petitioner would submit that when the resolution was passed by the 4th respondent for removal of 13 shops located on the northern side of the Bus stand entrance, it is not known as to how they have left other shops with an extension of the lease period. Therefore, according to him, the petitioner is entitled to question the correctness of the resolution passed by the 4th respondent.

3.4. That apart, according to the learned counsel for the petitioner, when the petitioner's lease period in respect of Shop

No.1 has been extended periodically, although the lease came to an end on 31.03.2015, it has to be construed as subsisting, in view of the fact that the respondent Municipality is collecting lease rent till now. While that being the case, when the petitioner's lease is subsisting, there cannot be any demolition of shops based on the resolution passed by the 4th respondent in Resolution No.242 dated 27.01.2015.

3.5. Besides, according to the learned counsel for the petitioner, there is no requirement for demolition of shops, since the same are not causing hindrance to the traffic. That apart, the road is having 70 feet breadth, which will be convenient for free flow of traffic and in addition thereto, there is no report or remarks received from the Highways Department, since the Ooty Main Road belong to the State Highways Department. Besides, there is no report from the Transport Department and Traffic Police to the extent of removal of shops for traffic purposes. Therefore, in the absence of any such preliminary steps, it is highly arbitrary and illegal on the part of the respondent in passing the resolution dated 27.01.2015 for removal of shop allotted to the petitioner, causing serious prejudice to his interest.

3.6 Taking support from Section 36 of the Tamil Nadu District Municipalities Act, 1920, (hereinafter referred to as the Act) learned counsel for the petitioner would submit that since the petitioner has already given a representation dated 26.06.2015 to the 3rd respondent, marking a copy of the 1st and 2nd respondents, on the premise that they have got enormous power as shown in sub clause (i) and (ii) of Section 36 of the Act, till the said representation of the petitioner is disposed of, the impugned resolution shall be kept in abeyance.

4. This Court finds it difficult to accept any one of the contentions raised by the learned counsel for the petitioner in the light of the reasoned order passed by this Court in a batch of writ petitions in W.P.Nos.10861 to 10864 of 2015 and 10794 of 2015 dated 15.04.2015, wherein, this Court considering the Municipalities requirement for removal of encroachments on lands, which do not form part of the road or roadside land or street margins, has upheld the steps taken by the Municipality for eviction of shops occupied by the similarly placed persons, to whom licences have been granted for demolishing the building, for better public use as well as free flow of vehicular traffic. In paragraph No.13 of the said order, this Court has held as follows:-

"13. This Court finds considerable force in the submission made by the learned Additional Advocate General. Admittedly, the local body took steps for eviction of the shops occupied by the respective petitioners, to whom license have been granted, for demolishing the building, for

better public use as well as free flow of vehicular traffic and enable the public to use the road properly and this Court cannot find fault with the said action as it is in public interest. The 3rd respondent is under mandate to carry out the resolution of the local body and it cannot be found fault with. This court, taking into consideration the plea made by the respective learned counsel appearing for the petitioners that the petitioners in occupation of the premises for so many years and their livelihood would be affected if they are vacated from the said premises, all of a sudden, is of the view that sufficient time is to be granted to them to vacate and deliver possession of the respective shop, subject to the filing affidavits or undertaking before this Court".

In view of the same, this Court is not inclined to entertain this writ petition.

5. At this juncture, the learned counsel for the petitioner submitted that the 4th respondent may be directed to consider the request of alternative accommodation, provided there is a possibility in this regard. It is needless to mention that the 4th respondent shall consider the said request, if the statute provides therefor keeping in mind the fact that the petitioner is running the shop for more than 15 years.

With the above direction, this writ petition is dismissed. No costs. Connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(AD I)

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सत्यमेव जयते

Sub Assistant Registrar

To

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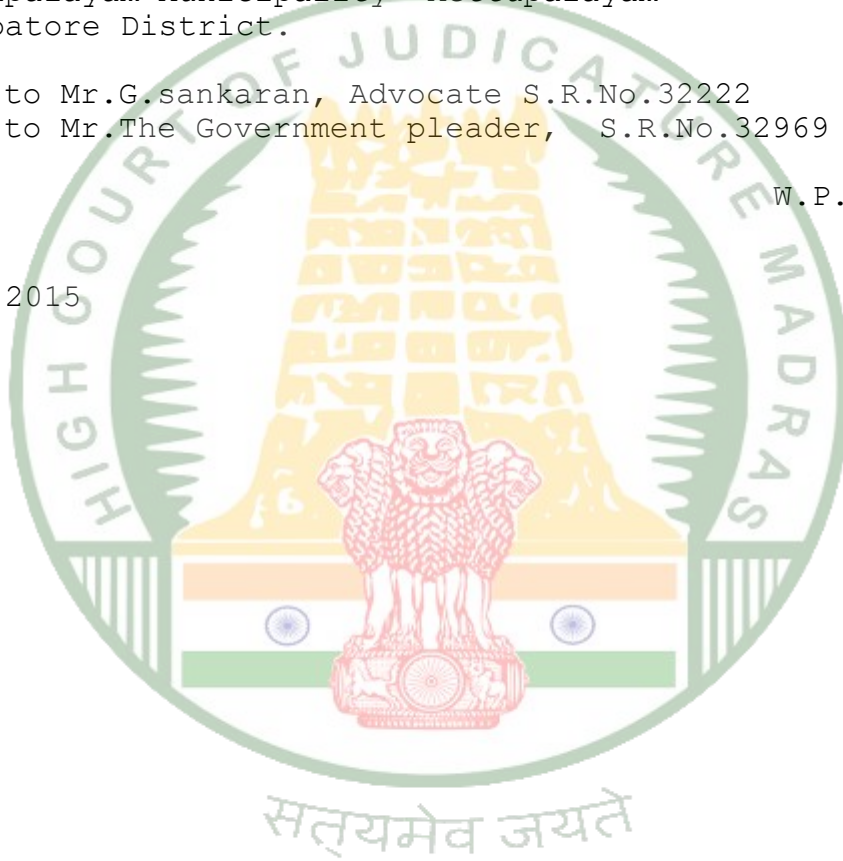
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+1cc to Mr.G.sankaran, Advocate S.R.No.32222
+1cc to Mr.The Government pleader, S.R.No.32969

W.P.No.19004 of 2015

ev[co]
srg 19.08.2015



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