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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18..03..2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, THE CHIEF JUSTICE
and

THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

O.S.A.Nos.30 to 32 of 2015

1.C.Meenakshi
2.K.Dhanalakshmi
3.B.Karthikeyani
4.V.Ponnammal

...Appellants in all OSAs.

Versus

The Official Trustee,
Administrative General of Tamil Nadu,
City Civil Court Buildings,
Chennai-600 104.

...Respondent in all OSAs.

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of Letters Patent against the Order and Decree dated 09.10.2014 made in Application Nos.2318, 2186 and 2077 of 2014 in C.S.No.274 of 1989 respectively, on the file of this Court.

For Appellants : Mr.Dr.FR.A.Xavier Arulraj
in all OSAs.

For Respondent : Mr.C.Manickamam
in all OSAs.

COMMON JUDGMENT

(Judgment of Court was made by M.M.Sundresh.J.,)

O.S.A.No.30 of 2015 has been filed by the appellants against the order passed in Application No.2318 of 2014 in C.S.No.274 of 1989, which was filed by the respondent, in which the learned single Judge has directed the appellants to quit and deliver the vacant possession of the Door No.208, Thiruvottiyur High Road, Thiruvottiyur, Chennai-600 019.



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2. O.S.A.No.31 of 2015 has been filed against the order passed in Application No.2186 of 2012 in C.S.No.274 of 1899, which was dismissed rejecting the prayer of the appellants seeking demolition of old building and to put up a new one.

3. O.S.A.No.32 of 2015 has been filed against the order passed in Application No.2077 of 2014 in C.S.No.274 of 1899, which was once again filed by the appellants seeking a direction to the respondent to renew the lease for a further period of 25 years and the said application was also rejected.

4. The learned counsel appearing for the appellants submitted that permission has been granted to the adjoining building situated in Door No. 209 to put up a commercial building. Therefore, a different yardstick cannot be followed in the case of the appellants. The appellants have been in possession for a quite number of years. They are ready to demolish the old building and reconstruct the same with the available resources.

5. The learned Administrative General and Official Trustee of Tamil Nadu appearing on behalf of the Trust submitted that the other tenant, who has put up construction in Door No.209, has suppressed the material facts and obtained permission. Appropriate steps would be taken to cancel the said permission and to modify the order passed. A commercial building has been put up contrary to the rules and regulation. The Trust is in possession of Rs.2.5 crores meant to be used for the development of the properties. The appellants do not have a vested right in seeking the reliefs as prayed for. Even according to the appellants, they are having only Rs.40 lakhs. The tenant of Door No.209 has put up construction in a grama natham, which is impermissible in law as held by the Division Bench of this Court. As the Trust has already obtained exemption under Section 11(2) of the Income Tax Act, 1961, the available money has to be used necessarily. The claim of the appellants is beyond the tenancy. Approximately about 620 sq.ft. alone was leased out, whereas the claim for construction is much beyond that. The earlier stand was taken by the respondent on a misconception of fact.

6. Heard the learned counsel appearing for the appellants and the respondent. Before hearing the parties on merits, we asked the learned counsel for the appellants as to whether they would be satisfied if sufficient time is granted. As the learned counsel prayed for an adjudication on merit, we pass the following order after hearing the learned counsel.



7. As submitted by both the learned counsel, the condition of the building is not in dispute, being aged between 100-150 years. The fact that the building is situated in grama natham land is also not in dispute. The object of the Trust can be fulfilled only by augmentation of adequate revenue by maximum utilisation of the resources. The appellants do not have a vested right to insist for demolition of the building and reconstruction as they like. The Trust has obtained exemption under Section 11(2) of the Income Tax Act, 1961. Having done so, it has to utilise the said exemption available and avail the benefit. The appellants do not have the sufficient resources as against the Trust.

8. Merely because a consent was given on a wrong perception of fact in favour of one tenant, the same cannot be applied to the other. The respondent is entitled to take a different stand. The appellants have not suffered any legal injury by the said action. Prima facie, the records produced would show that the consent was given by the respondent to Door No. 208 on a wrong understanding of fact and law, resulting in the order being passed. Suffice it is to state that the said order would not enure to the benefit of the appellants. There is no quibble that the extent of tenancy was about 620 sq.ft., as against the claim for a much larger extent. In other words, the appellants seek the area vacated by the other tenants. Before proceeding further, the respondent has duly issued termination notices to the appellants. It was issued by taking note of the dangerous condition of the building. The financial stability of the appellants put together is only Rs.40,41,455.28 as against Rs.2.5 crores of the respondent. It is further to be seen that Door No.209 pertains to a single tenancy, whereas Door No.208 is a composite one. Thus, the appellants cannot seek parity even on that score. Though the learned Administrative General and Official Trustee submitted that the appellants and the tenant in Door No.209 are hand in glove, as the second appellant has entered into a partnership deed with the daughter of the said tenant for the purpose of carrying out a business under the name and style of "Vadivudaiamman Tailoring", we do not wish to go into the same as there are sufficient and enough materials to dismiss the appeals for the reasons aforesaid. Accordingly, all these Original Side Appeals stand dismissed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar



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To

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The Sub. Asst. Registrar,
Original Side, High Court,
Madras.

1 CC to Mr.Dr.FR.A.Xavier Arulraj, Advocate SR.No. 15409

1 CC to the AG & OT, SR.No. 15386

O.S.A.Nos.30 to 32 of 2015

TEJ (CO)
PSI (31.03.2015)