

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2015

CORAM:

THE HONOURABLE **MR.JUSTICE M.M.SUNDRESH**

Review Application No.136 of 2015
(in W.P.No.29697 of 2012)
and M.P.No.1 of 2015

The Commissioner,
Vellore City Municipal Corporation,
Vellore

... Applicant / Respondent in W.P.

Vs.

M.Venkadasubbu, Proprietor,
Hotel Alagar, New Bus stand,
Vellore

... Respondent / writ petitioner

Prayer:- Review Application filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure against the order dated 29.10.2012 passed in W.P.No.29297 of 2011.

For Applicant : Mr. R.Muthukumarasamy, Sr. Counsel, for,
M/s. P.Shanthi
For Respondent : Mr. Karthik, for M/s. T.S.Gopalan & Co.,
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ORDER

Seeking to Review the order dated 29.10.2012, the present Review Application has been field.

2. Before going into the merits of the case, it is imperative to place on record the earlier order passed by this Court, which is sought to be reviewed and the same reads thus:-

".... In view of the directions given by this Court to approach the respondent seeking renewal of the lease, the petitioner made a representation to the respondent for extension of lease originally granted by the then Local Planning Authority. The same was rejected only on the ground that the respondent Corporation has not granted any lease to the petitioner and the lease was granted only by the erstwhile authority viz., the Local Planning Authority. In my considered view, the said stand taken by the respondent cannot be accepted. When once the petitioner was granted lease by the then Local Planning Authority when Vellore District was only a Municipality, on upgradation, not only the property but also the rights of the individuals over the property of the Municipality will also sail with the Corporation. In fact, the Vellore City Municipal Corporation Act, 2008, which has got the Assent of the Governor of Tamil Nadu on 25.5.2008, stipulates the same. Section 9 (1) of the said Act is thus, usefully extracted hereunder:-

"9. Transitional provisions:- (1) All property, all rights of whatever kind, used enjoyed or possessed by and all interest of whatever kind owned by or vested in, or held in trust by or for the municipal council with all rights of whatever kind used, enjoyed or possessed by the said municipal council as well as all liabilities legally subsisting against the said municipal council, on and from the date of the commencement of this Act and subject to such directions as the Government may, by general or special order, give in this behalf, vest with the Corporation".

While so, it is too hard for the respondent to say that the

lease was not granted by the Corporation and it was granted only by the Local Planning Authority when Vellore District was only a Municipality. In my considered view, the said stand taken by the respondent has to be rejected in toto. The petitioner is entitled to the protection under G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 3.7.2007. As per the said Government Order, the petitioner is entitled for 9 years of lease on increased rent. In fact, the petitioner who was paying a sum of Rs.1,10,000/- as monthly rent, pursuant to the orders of this Court referred to above, is paying a sum of Rs.5,00,000/- as monthly rent.

8. In view of the above stated position, I am of the considered view that the impugned order of the respondent dated 15.12.2011 is liable to be set aside and accordingly, set aside and the writ petition stands allowed. The respondent is directed to consider the claim of the petitioner for extension of lease by considering the reasons stated therein. No order as to costs. Consequently, connected miscellaneous petition is closed."

3. Heard the learned counsel appearing for both sides.

4. The learned Senior Counsel appearing for the Applicant herein (respondent in the writ petition) submitted that the Government Order relied upon earlier in G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007, does not apply to the Corporation, but it applies only to the Municipalities; even otherwise, the period of nine years

mentioned therein has been completed in the year 2014 itself; the respondent herein / writ petitioner has been in occupation even in excess of the same for more than one year; the respondent herein is bound by the terms of the conditions of the license-cum-agreement and he cannot go beyond the same and seek a perpetual lease.

5. The learned counsel appearing for the respondent herein / writ petitioner submitted that, in pursuant to the interim order passed, the petitioner has been paying a sum of Rs.5,00,000/- as monthly rent, therefore, even otherwise, the petitioner, having paid the amount in excess, is entitled for appropriate favourable orders from this Court.

6. This Court has considered the submissions made by the learned counsel appearing for both sides and perused the materials available on record.

7. A perusal of the Government Order passed in G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, would show that, certainly, it does not have any application to the case on hand, since the Applicant herein is a Municipal Corporation. Even otherwise, the said Government Order has been modified subsequently by restricting the license-cum-agreement period to three years. Apart from the same, the period of nine years itself is over in the year 2014. Once the writ petition is

dismissed, the interim order would get merged with the same. The entitlement of the respondent (writ petitioner) to get back the excess amount paid and the rent payable are beyond the scope of this Review Application. The respondent can always workout his remedy in the manner known to law.

8. Further, the respondent herein is bound by the terms of the license-cum agreement. The licence was initially for a period of three years, i.e., from the period 2005 onwards. Thereafter, it was extended for another period of three years i.e., from 2008-09 to 2010-11. Thus, as per law, there is no legal right to the respondent to be in the said place, thereafter. Hence, this Review Application is allowed, making it clear that it is open to the respondent to workout his remedy with respect to excess amount alleged to have been paid, in pursuant to the interim order passed by this Court. No costs. Consequently the connected MP is closed.

07.10.2015

srk

M.M.SUNDRESH, J.,

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