

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27 .03.2015

Delivered on : 09.06.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.Nos.674 and 675 of 2006

and

M.P.No.1 of 2006

1.M.Santhanakrishnan
2.C.Selvaraj
3.K.Subramaniam
4.P.Duraisami
5.R.Uthamaraj
6.S.Yaswanth Kumar Jain ..Appellants/Plaintiffs (in both SA's)

-Vs-

The Commissioner,
Coimbatore Corporation
Coimbatore .. Respondent/Defendant (in both SA's)

Second Appeals filed under Section 100 of the Civil Procedure Code against the decree and judgment of the Principal Subordinate Judge, Coimbatore dated 27.07.2005 made in A.S.No.104 of 2004 and Cross Objection in A.S.No.104 of 2004 reversing the judgment and decree of the Additional District Munsif, Coimbatore dated 06.07.2004 made in O.S.No.2091 of 2004.

For Appellants : Mr.S.Kalimuthu
for Ms.Gladys Daniel

For Respondent : Mr.R.Sivakumar

COMMON JUDGMENT

Both the second appeals have arisen out of the decree of the lower appellate court (court of the Principal Subordinate Judge, Coimbatore) dated 27.07.2005 made in A.S.No.104 of 2004 allowing the said appeal and setting aside the decree of the trial court (court of the Additional District Munsif, Coimbatore) dated 06.07.2004 made in O.S.No.2091 of 2001 and dismissing the cross objection filed by the appellants herein and ultimately dismissing the original suit without cost.

2. The plaintiffs in the original suit are the appellants in the second appeal. The Commissioner, Corporation of Coimbatore, who figured as the defendant before the trial court is the respondent

in the second appeal. The original suit was filed by the appellants herein against the respondent for a declaration that the communication dated 27.07.2001 sent by the respondent/defendant was illegal, arbitrary and null and void and for a permanent injunction restraining the respondent herein/defendant from in any way interfering with the peaceful possession and enjoyment of the suit properties, namely shops bearing Nos.1, 2, 4, 8, 15 and 16 in the Corporation Shopping Complex, Avinasi Road, Coimbatore Town, for not complying with the said demand made in the said letter.

3. The averments in the plaint are, in brief, as follows:

i) The shopping complex constructed by the Coimbatore Municipality in the year 1982 was leased out by conducting auction. The highest bidders for the shops separately were granted the leasehold right in respect of the respective shops. However, the document executed by the highest bidder was styled as Licence Deed. It provided for a lease/licence for a period of five years from 1982 to 1987 with a further provision for increase in the rent/licence fee by 15% in the 4th year, namely 1985-1986 and a further increase of 15% for the fifth year, namely 1986-1987. One year rent/lease amount was collected as security deposit and in addition Rs.5,000/- was collected as caution deposit, besides producing a solvency certificate to the tune of Rs.25,000/-. When a demand was made for the increase of 15% in the rent/licence fee for the year 1985-1986 and a further increase of 15% for the year 1986-1987, the appellants/plaintiffs claiming the same to be unreasonable filed a writ petition in W.P.No.5163/1986 on the file of this court and the same was dismissed on 22.09.1992 with an observation that it was open to the defendant to demand such enhancement. The matter was taken up on appeal to the Supreme Court by an Association of the Lessees/Licence holders of the shops in Civil Appeal No.1991 to 1994/1991 and the Supreme Court passed an order on 23.04.1991 to the following effect:

"a. The lessees shall be allowed to continue to be in occupation.

b. The lessees shall pay an increased rate of rent at 15% once in a block period of 3 years.

c. The increased rent should be paid within three months."

ii) Thereafter, the appellants filed W.P.No.16231/1992 before this court praying for a direction to the respondent/defendant to fix and collect a rent as per the above said judgment of the Supreme Court. This court passed an order on 01.01.1992 in W.P.M.P.No.23119/1992 in the said writ petition which reads as follows:

" The Respondents are directed to collect the rent for the years 1987-1988, 1988-1991 and 1991-1992 in accordance with the order passed by the Supreme Court in Civil Appeal Nos.1991-1994 of 1991.

It is open to the Respondent to insist upon a lease

deed to be entered into by the petitioners. If the Respondents do so the petitioners shall enter into a Lease Deed in accordance with the order passed by the Supreme Court in the Civil Appeals stated supra. If any of the Petitioners refused to enter into the Lease agreement, the Respondent can take suitable action. This petition is disposed of accordingly."

iii) The appellants requested the respondent/defendant to send revised statement of arrears of rent as per the orders of the High Court by a letter dated 21.12.1992, but the respondent/defendant did not oblige. The appellants were continuing to pay the rent as per the directions of the Supreme Court. Subsequently, the respondent/defendant failed to execute the lease deed in favour of the plaintiffs even though the rent was collected. The respondent/defendant closed the shops of the appellants/plaintiffs and sealed the premises on 16.12.1994 on the ground that the increased rent at 30% was not paid. Questioning the same, writ petitions in W.P.Nos.21040/1994 and 21041/1994 were filed. An order was passed by the High Court on 21.12.1994 directing opening of the shops subject to certain conditions and the said order was complied with. Again on 30.10.2001, the respondent/defendant sent another communication dated 27.07.2001 that as per G.O.Ms.No.147 of Municipal Administration and Water Supply Department and as per the Resolution of the Corporation dated 11.06.2001 it had been decided to grant licence for three years and that the appellants/plaintiffs should execute agreements and pay rent for one year as advance and produce a solvency certificate for Rs.1,00,000/-. The said demand made in the notice was challenged as illegal and arbitrary and the suit came to be filed for the reliefs indicated supra.

4. The suit was resisted by the respondent herein/defendant contending that the arrangement was not a lease arrangement and on the other hand, it was only a licence and the amount paid by the appellants like other allottees of shops were only licence fees and not rent; that in the order passed in the writ petition No.16231/1992, the High Court dismissed the said petition with an observation that the respondent/defendant was at liberty to let out shops in accordance with law with a direction that the members of the association could submit a representation to the Corporation and the same shall be considered and disposed of and that neither the association nor the appellants/plaintiffs gave any such representation for continuation in the property of the Corporation as licensees. It was contended further that after the disposal of the writ petition, the respondent/defendant Corporation proposed to revise and enhance the existing licence fee by 20% and the same was approved by the Taxation and Finance Department on 14.06.2000; that the merchants, who are doing business in Dr.Nanjappa Road Complex had already filed O.S.No.540/1987 on the file of the District Munsif Court, Coimbatore for declaration and permanent injunction but the same was decided in favour of the respondent/defendant Corporation; that the Corporation's right to fix the licence fee has been recognised by the High Court and that the intention of the appellants/plaintiffs was to drag on the proceeding, in order

to avoid the fixation of the licence fee by the Corporation. With the above said averments the respondent/defendant prayed for the dismissal of the suit.

5. Necessary issues were framed and the parties went for trial on the basis of the issues framed by the trial court. The third appellant/third plaintiff was examined as PW1 and twenty one documents were marked as Exs.A1 to A21 on the side of the appellants herein/plaintiffs, whereas one witness was examined as DW1 and no document was marked as exhibit on the side of the respondent herein/defendant.

6. The learned trial Judge, after trial, decreed the suit in part granting the relief of permanent injunction. However, the suit was partly dismissed in respect of the prayer for declaration. As against the decree of the trial Court dated 06.07.2004, the respondent herein/defendant preferred an appeal in A.S.No.104 of 2004 and the appellant herein/plaintiffs preferred a cross objection in the said A.S.No.104 of 2004. The learned lower appellate Judge viz., Principal Subordinate Judge, Coimbatore, upon hearing, allowed the appeal filed by the respondent herein/defendant and dismissed the cross objection filed by the appellants herein/plaintiffs. Challenging that part of the decree allowing the appeal, S.A.No.674/2006 has been filed and challenging the dismissal of the cross objection, S.A.No.675/2006 has been filed on various grounds set out in the respective grounds of memorandum of second appeal.

7. At the time of admission, three questions were formulated as substantial questions of law. They are as follows:-

"1. Whether the respondent is under a legal obligation to fix fair rent in accordance with the guidelines set out in G.O.Ms.No.147, dated 30.12.2000 and they have no power to arbitrarily increase the rent for the shops?

2. Whether the appellants cannot be evicted except by due process of law?

3. Whether the respondent can take advantage of the exemption of Municipal Buildings from the purview of the TN Buildings Lease and Rent Control and resort to rack renting and unreasonable eviction when the Rent Control Act has been enacted to prevent the twin evils?"

8. The arguments advanced by Mr.S.Kalimuthu, learned counsel appearing for Ms.Gladys Daniel, learned counsel on record for the appellants and by Mr.R.Sivakumar learned counsel for the respondent were heard. The materials available on record were also perused. This Court carefully considered the submissions made on both sides and the materials available on record.

9. A perusal of the above said questions formulated as

substantial questions of law will show that they were raised on the assumption that the relationship between the respondent Corporation and the appellants as landlord and tenants has been admitted. However the fact remains that the main controversy is regarding the jural relationship between the respondent Corporation and the appellants. In an auction conducted by the respondent Corporation for the grant of licence to do business in the shop portions concerned in this case, the appellants emerged successful and they were granted licence and not lease. In this regard, even in paragraph 4 of the plaint, the appellants admitted that the deeds executed by them in favour of the respondent were deeds of licence. In fact while claiming that they got the property on lease, they admitted that the documents executed between them were deeds of licence. The relevant portion in the plaint is extracted hereunder:

"Originally the lease period was for five years from 1982 to 1987 and the deed of licence provided for increase in rent by 15% increase in the 4th year 1985-1986 and for another increase of 15% in the 5th year 1986-87."

10. Since the deeds executed were admittedly deeds of licence, the appellants who have approached the court with the suit, have not produced either the said deeds or their copies. Of course, it is true that the respondent/defendant has also failed to produce the same. But no notice to produce the document was served upon the respondent/defendant. The appellants are not in a position to produce any receipt showing that the amounts paid by them were received as rent. On the other hand, after the filing of the suit alone, they seem to have sent the money by cheques with covering letters stating that the amounts were sent towards rent. Of course it is true that the said cheques were received and encashed. But a provisional receipt issued under Ex.A8 simply acknowledges the payment by way of cheque subject to realisation. There is no indication therein as to whether the amount was received towards rent or licence fee. Copies of the covering letters have been produced as Exs.A19 to A20. Since they came to be issued during the pendency of the suit, no importance can be attached to them for determining whether the relationship between the respondent and the appellants is one of licensor and licensees" or "lessor and lessees".

11. The earliest document that came into existence after the conclusion of the auction is Ex.A17-letter dated 22.04.1982 evidencing the factum of handing over the shops to the successful bidders. The said letter was signed by an official of the respondent Corporation for its Commissioner on 23.04.1982. In the said letter it has been stated in clear terms that licence was granted subject to conditions. "chpikahd epge;jidfSf;F cl;gl;L 31/3/87 Koa j';fSf;F chpikahizf;F tplg;gLfpwJ/". Exs.A11 to A15 are the copies of letters sent by the appellants to the respondent Corporation as reply to Exs.A4 to A9-communications dated 27.07.2001 sent by the respondent. In Exs.A4 to A9, it has been stated that the shops had been given on licence basis and a demand

of enhanced licence fee came to be made. The appellants had been called upon to execute an agreement in 20 rupees stamp paper and produce a solvency certificate to the extent of Rs.1,00,000/- or in lieu of solvency certificate deposit of Rs.20,000/- by each one of the appellants. For the said communication alone, the replies under Exs.A11 to A15 have been sent by the appellants stating that the Supreme Court had passed an order in WMP No.23119/1992 in C.A.No.1991-1994 of 1991 directing upward revision of rent at the rate of 15% for every block of three years and submitting that they were prepared to do so and they were not prepared to deposit one year rent as advance and produce a solvency certificate at an enhanced rate or for payment in lieu of production of solvency certificate. Copy of the judgment of the Supreme Court referred to in the said reply letters has been produced as Ex.A1. It does not pertain to the shop complexes at Dr.Nanjappa Road and Avinashi Road owned by the City Municipal Corporation of Coimbatore. On the other hand, relying on a Government letter dated 29.04.1985, the Supreme Court chose to issue the following direction:

"We have given our anxious consideration to the contention urged by both parties. It seems to us that there is no point in dispossessing the petitioners if they are prepared to pay the enhanced rent as per the said Government Order. They are in the premises, doing business apparently with considerable investment. The periodical charges of premises seems to be detrimental to their interests. If the municipality is assured of reasonable rent it is proper that the petitioner be allowed to continue in the premises. They must however pay the rent at the increased rate of 15% more than the amount which is payable by them. This increased rate of rent at 15% shall be payable once in a block period of three year commencing 01.04.1991. The increased rate of 15% for the period from 1-4-99 to 1-4-1991 shall be payable within a three months from today."

12. It is pertinent to note that the issue before the Supreme Court was not one as to the nature of jural relationship, namely lessor and lessee or licensor and licensee. On the other hand, the said order of the Supreme Court seems to have been made on the admitted fact that the members of the association, which was the appellant before the Supreme Court were lessees in respect of shopping complexes owned by municipalities. It is also obvious that the same does not deal with the shops regarding which the occupants were licensees as distinguished from lessees/tenants. It is also pertinent to note that the said civil appeals came to be filed by Erode Perundu Nilaya Viyaparigal, Salem Municipal Shops Lessees Association, Tamil Nadu Municipal Market Building Merchant Asso. and Viyaparikal Ikia Sangam. Copy of the Government letter referred to in the said judgment is dated 28.04.1984 and has been produced as Ex.A16. The said order of the Supreme Court came to be passed taking into account the Government letter dated 28.04.1984, a copy of which has been filed as Ex.A16. The contents of the Government

letter are as follows:

"It has been brought to the notice of the Government that the lease amount from the shops belonging to Municipalities/Municipal Corporations could not be collected effectively due to cases filed by the Lessees in the High Court and other Courts. It is also understood many shops have been given on sub-lease violating the lease agreements.

2. The following instructions are issued to the Director of Municipal Administration and the Commissioners of Madurai, Coimbatore and Madras Corporations in the matter.

(1) All the cases of shops which are in litigation and where the rents are not being paid now should be reviewed. The concerned legal officers/Lawyers must be asked to make close follow up action with the concerned Court and expedite the decision.

(2) All the shops should be inspected and in the cases of sub-letting and violation of other terms of lease agreements, the lease should be straightaway cancelled.

(3) The remaining cases which can be allowed to continue should be identified and from the expiry date of the last lease agreement latest Supreme Court's Judgment on increase of lease amount should be applied and the rent payable reworked providing for the 15% increase, once in 3 years. The amount so worked out shall be collected from the concerned shopkeepers and their continued occupation be regularised by issuing suitable orders. Once the shopkeepers realise that the intention is not to dispossess them of the shops but only to regulate the arrangement in terms of the Supreme Court decision, but with an increased deposit, it is expected that they may cooperate.

(4) Even in the cases which are so regularised, additional deposits shall be collected from the parties and these additional deposits, should have some relationship with the market rate of pagadi for similar shops in the locality and in any case, higher than the cost of constructions. This amount can be collected as additional deposits in easy installments.

(5) In respect of future leases to be given, deposits equal to the cost of construction should be collected in addition to the rent which is determined in the auction-cum-tender. Afterwards the rent can be increased by 15% once in three years.

(6) In case, if 15% increase every three years is revised as a result of the clarification petitions proposed to be filed now on the Supreme Court orders, the above instructions will get

modified suitably.

3. The Director of Municipal Administration and the Commissioners, Madras, Madurai and Coimbatore Corporation are requested to take necessary further action in the matter."

13. Based on the said Government letter, a learned Judge of this court in W.P.No.16231/1992 chose to issue a direction to the respondent/defendant to collect rent for the years 1987-88, 1988-91 and 1991-1992 in accordance with the orders passed by the Supreme Court in C.A.Nos.1991-1994/1991. The relevant portion in the order reads as follows:

"The respondents are directed to collect the rent for the years 1987-88, 1988-91 and 1991-92 in accordance with the order passed by the Supreme Court in Civil Appeal Nos.1991 to 1994 of 1991. It is open to the respondents to insist upon a lease deed to be entered into by the petitioners. If the respondents do so, the petitioners, shall enter into lease deed in accordance with the order passed by the Supreme Court in the Civil Appeals stated supra. If any of the petitioners refuses to enter into the lease agreement, the respondents, can take suitable action. This petition is disposed of accordingly."

Subsequently, the merchants in Dr.Nanjappa Road filed two other writ petitions in W.P.Nos.21040 and 21041/1994 for a mandamus forbearing the respondent from demanding enhanced rent at 30% for the year 1987-1988 and directing the respondent to execute a lease deed in favour of the members of the Association in respect of shop Nos.1, 2, 4, 6, 7, 13, 16 and 17 in the Municipal Corporation Shopping Complex, Coimbatore at Avinashi Road. The said writ petitions came to be filed because the Corporation locked the shops for non-compliance with the demand for enhanced licence fee. An interim direction was granted in the said writ petition to the effect that on payment of 25% of the arrears, the merchant should be allowed to reopen the shops and that a further payment of 25% should be made on or before 31.12.1994 with a rider that if such payment was not made, the respondent was at liberty to retain the possession of the shops. Admittedly, pursuant to the said order, payments were made and the appellants were allowed to open the shop and do the business. Under the said circumstances alone, the impugned communications, which have been marked as Exs.A5 to A9, came to be issued giving rise to the present dispute.

14. Whatever may be the nature of the dispute between the Corporation and the appellants at the inception, namely in 1992, during the course of proceedings before the High Court and the Supreme Court, it has been contended by the merchants that they were lessees and they were paying rent to the shops occupied by them. The courts have also proceeded on the assumed admission that the arrangement was one of lease and not licence. Hence this court has to make an inference that though the arrangement at its inception was one of licence, subsequently, it was admitted that

the occupants of the shops were lessees/tenants.

15. Learned counsel for the respondent Corporation submitted before this court that the respondent Corporation is prepared to permit them to continue their possession of the shops and carrying on their trade, provided they would execute a deed of licence admitting the relationship to be one of the licensor and licensee. As rightly contended by the learned counsel for the appellants, such a contention shall not be available to the respondent/defendant Corporation after the High Court and the Supreme Court had held that the allottees of the shopping portions were the lessees and the amounts collected from them was rent. It is also not the case of the respondent/defendant that each shop was given to the allottee for a specific purpose or that the allottee cannot change his business. It is also an admitted fact that the appellants were free to modify the internal structures to suit their business. There is no monitoring or overall control of the business of the appellants by the respondent Corporation. Moreover the letter produced as Ex.A16 also makes it clear that the object sought to be achieved was to protect the merchants, provided they pay fair rent to the municipalities of municipal corporations. In view of the said facts and also in view of the admission made on behalf of the respondent/defendant that the defendant Corporation is prepared to allow the appellants to continue their business in the suit shops, provided they agree for payment of enhanced rent as per the Supreme Court order, namely 15% increase in every block of three years and in view of the decisions taken in the previous proceedings holding the payments to be made by the appellants were rent, this court comes to the conclusion that the respondent/defendant cannot contend that the relationship was only a licensor and licensee terminable by issuing notice. Though the nature of transaction at the inception was only a licence, subsequently it was converted into an arrangement of lease by virtue of conduct, which came to be recognised. Hence this court comes to the conclusion that the respondent/defendant cannot insist upon execution of a deed of licence. On the other hand, the respondent can insist upon execution of a lease deed in accordance with the Government Letter dated 28.04.1984 and the judgments of the High Court and the Supreme Court indicated supra, providing for an increase in the rent at 15% for every block of three years from 1986-87 onwards.

16. In view of the above said finding that the relationship between the respondent and the appellants is one of lessor and lessee, the appellants cannot be evicted except adopting due process of law. Since both the parties agree for fixation of increase in rent by 15% for every block of three years, the questions 1 and 3 framed as substantial questions of law does not need any consideration. The second question formulated as Substantial question of law is answered accordingly in favour of the appellants/plaintiffs.

17. For the reasons stated above, both the second appeals are allowed and the decree of the lower appellate court dated 27.07.2005 made in A.S.No.104 of 2004 and Cross Objection in A.S.No.104 of 2004 are set aside. In the suit in O.S.No.2091 of 2004, the plaintiffs are granted the relief of declaration and permanent injunction as prayed for, without cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

True Copy

Sub Assistant Registrar

To

1.The Principal Subordinate Judge, Coimbatore

2.The Additional District Munsif, Coimbatore

jsv(co)
krd 30/6

S.A.Nos.674 and 675 of 2006



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