

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14522 of 2016 &

W.M.P.No.12681 of 2016

N.R.Thirumurthi

.. Petitioner

Versus

1.The Commissioner,
Pollachi Municipality,
Pollachi,
Tiruppur District.

2.The Commissioner,
Municipal Administration,
Commissionerate of Municipal Administration,
6th Floor, Ezhilagam, Annex Building,
Chepauk, Chennai-600 005. .. Respondents

(The second respondent impleaded, vide
order dated 27.04.2016 (today) in
W.M.P.No.13862 of 2016 in
W.P.No.14522 of 2016)

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the entire records relating to the order made in Na.Ka.No.8434/2011/A6, dated 12.04.2016 on the file of the first respondent herein and quash the same and consequently, direct the respondents to strictly follow the procedures contemplated in G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 in the case of the petitioner.

For Petitioner : Mr.S.Silambanan, Senior Counsel
For Mr.C.Munusamy

For Respondents : Mr.A.S.Thambuswami and
Mr.B.Anand

O R D E R

Heard Mr.S.Silambanan, learned Senior Counsel appearing for the petitioner and Mr.A.S.Thambuswami, learned Standing Counsel, accepting notice on behalf of respondents. With the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2. The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to quash the order passed by the first respondent-Municipality dated 12.04.2016, in and by which, lease granted in favour of the petitioner has been cancelled.

3. The undisputed facts are that the respondent-Municipality called for public auction-cum-tender for leasing out the building owned by them at Municipal Girls Higher Secondary School, Udumalpet Road, Pollachi on 02.08.2013. The petitioner participated in the auction and he was declared as successful bidder.

4. According to the petitioner, the building which was leased out to him was in a highly dilapidated condition, not fit for any occupation. Fully knowing well about the condition of the building, the respondent-Municipality leased out the same to the petitioner and the petitioner is said to have applied to the then Commissioner of Municipality for carrying out the repairs and renovation work in the building which was permitted to be done by Proceedings dated 25.10.2013. The petitioner is said to have spent Rs.1 Crore on the building and the photographs produced shows that the building is a very elegant building and there is a textile showroom in the said building. The Commissioner who granted permission was transferred by way of routine transfer and the present improvement after taking charge came to know that certain illegalities has been committed in the manner of grant of lease to the petitioner and the subsequently permission has been granted for carrying out repairs / renovations. Therefore, the first respondent has submitted a report to the second respondent dated 18.03.2016. Even earlier, the Vigilance and Anti Corruption Department, Coimbatore had commenced certain enquiry and certain records were requisitioned from the Municipality, but as on date the it is not known as to why the Inspector of Vigilance and Anti Corruption Department, Coimbatore has not proceeded further.

5. Be that as it may, based on the report submitted by the first respondent dated 18.03.2016, the second respondent has passed an order dated 06.04.2016, which is an internal communication between the second respondent and the first respondent. This appears to have been a sole reason for passing

the impugned order. In fact, in the impugned order, order passed by the second respondent dated 06.04.2016 was referred to as reference No.2. The Proceedings of the second respondent dated 06.04.2016 is the basis of the impugned proceeding and that order has been passed without notice to the petitioner. Even assuming that there is gross irregularity and illegality, yet petitioner who was put in possession as lessee was entitled to be heard in the matter.

6. The other question would be as to the jurisdiction of the Municipal Commissioner to grant permission for renovation and repairs and from the photographs produced by the petitioner, it appears that the entire construction is a new construction or it is substantially a new development. Therefore, a deeper probe into the matter is required at the level of the Commissioner of Municipal Administration and the records have to be placed before the Commissioner and the Commissioner is satisfied, he may also direct preliminary inspection to be done into the matter. However, in the meantime, the petitioner should not be dispossessed. However, this protection goes with the further condition that in the event it is found that the petitioner had unauthorizedly put up the construction with the collusion with the then Municipal Commissioner, then the petitioner is not entitled to claim any amount for the construction he has put up and if he directed to vacate based on the outcome of the enquiry, then he is not entitled for building in question on the ground that he has done renovation work and repairs.

7. With the observation, while keeping the impugned proceedings in abeyance, there will be a direction to the second respondent to commence a full fledged enquiry into the matter, after issuing notice to the petitioner and all concerned. The above direction be complied with by the second respondent, within a period of three months from the date of receipt of a copy of this order. Till the enquiry is completed by the second respondent as directed above, the petitioner shall continue to remit the lease amount of Rs.1,82,119/- along with other charges and this direction should not construed as if this Court has extended the lease.

With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

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Pollachi,
Tiruppur District.

2.The Commissioner,
Municipal Administration,
Commissionerate of Municipal Administration,
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Chepauk, Chennai-600 005.

+1 cc to Mr.A.S.Thanbuswami Advocate sr.26666

+1 cc to Mr.C.Munusamy Advocate sr.26529

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