

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2016

Date of Reserving the Order	Date of Pronouncing the Order
08.01.2016	01.02.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.32608 of 2014

K.Anbazhagan

... Petitioner

Vs.

The Pollachi Municipality
Rep., by its Commissioner,
Pollachi

... Respondent

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, to forbear the respondent from demolishing superstructure in the leasehold land bearing Door No.117, Raja Mill Road, Pollachi, dispossessing from it and preventing the petitioner from running the Automobile Workshop therein as a lessee in any manner till the expiry of the present lease period on 31.03.2015 and thereafter, till the expiry of the lease period to be renewed by its as per the G.O.Ms.No.92, Municipal Administration & Water Supply Dept., dated 03.07.2007.

For petitioner .. Mr.T.P.Manoharan for
M/s.R.Nandhakumar

For Respondents .. Mr.A.S.Thambuswamy &
Mr.B.Anand for R1

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O R D E R

The Petitioner seeks for issuance of a Writ of Mandamus to forbear the respondent Municipality from demolishing the superstructure in a leasehold land bearing Door No.117, Raja Mill Road, Pollachi, and not to dispossess the petitioner till the expiry of the lease period to be renewed in terms of G.O.Ms.No.92, Municipal Administration & Water Supply Department, dated 03.07.2007.

2. The petitioner's father was given on lease as vacant land pursuant to his application dated 19.02.1970, for establishing an Auto-mobile workshop. The lease rent was fixed at Rs.90/- per month. After the demise of the petitioner's father on 03.06.1984, the lease is said to have been transferred in the petitioner's name. Applying G.O.Ms.No.92, dated 03.07.2007, the lease granted in favour of the petitioner was renewed for a period of three years upto 31.03.2012, with enhanced lease rent of Rs.3450/-, per month. On expiry of the lease on 31.03.2012, the lease was extended upto 31.03.2015, on an enhanced lease amount of Rs.3968/- per month. The petitioner claims that in terms of G.O.Ms.No.92, he is entitled for a third automatic renewal of lease till 31.03.2018. It is alleged that on 08.12.2014, the Commissioner of the respondent Municipality along with his officers and the employees demolished a portion of the Auto-mobile workshop and the petitioner was orally directed to remove the remaining superstructure and hand over vacant possession of the leasehold property on or before 10.12.2014. It is submitted that in spite of the petitioner having informed the officials that the lease is subsisting till 31.03.2015, and entitled for further renewal of three years, the officials were not in a mood to consider the petitioner's request, which has prompted the petitioner to approach this Court. The fact that the lease had been renewed upto 31.03.2015, is not in dispute in the light of the proceedings of the respondent Municipality, dated 13.06.2012 in Na.Ka.No.9588/2012/A6.

3. Thus, the short question to be considered is as to whether the petitioner is entitled for a third renewal upto 31.03.2018.

4. The learned counsel for the petitioner after reiterating the factual averment set out above submitted that the action of the respondents is improper, unfair and discriminatory and violative of the Government Order in G.O.Ms.No.92. It is submitted that the Government having taken a policy decision providing for further renewal, the respondent has no power or jurisdiction to act contrary to the Government Order. Further, it is submitted that the lease granted in favour of the petitioner is subsisting and without termination of lease, attempted to dispossess the petitioner is high handed and improper. Further, it is submitted that even today, the respondent Municipality is maintaining the Municipal Lorry Stand which is situated behind the petitioner's leasehold property and there is a need to provide maintenance facility for the lorries which come to the Municipal Lorry Stand and therefore, there is no valid reason to dispossess the petitioner. The learned counsel for the petitioner referred to the relevant provisions in G.O.Ms.No.92 and other documents filed in the typed set of papers to substantiate the factual averment set out in the Writ Petition.

5. The learned counsel for the respondent Municipality submitted that the Writ Petition is misconceived and not maintainable either on law and facts and that the lease has expired with effect from 31.03.2015

and the petitioner is not entitled to invoke G.O.Ms.No.92, as the period mentioned therein is applicable to persons who became licensee in an auction conducted by the Municipality. Further, it is submitted that a lessee of the Municipality property like that of the petitioner is not entitled to be possession for 18 years from the date of G.O.Ms.No.92, dated 03.07.2007. Further, if the lessee violates the conditions of lease, the respondent Municipality has power to cancel the lease. Further, the encroached portion of the vacant land belonging to the Municipality and sub-let the portions of the land leased out to third party. Therefore, it is submitted that the respondent on account of the violation of the lease conditions, notice has been issued to the petitioner calling upon the petitioner explain as to why the lease should not be terminated and at that juncture, the petitioner has approached this Court by way of this Writ Petition. It is further submitted that the Council of the respondent Municipality has taken a decision to remove the encroachments made by various third parties in the locality in question and take possession of the land and construct a shopping complex in the said place, which would earn good revenue for the respondent Municipality to carry out welfare scheme to benefit the general public. The allegation that the petitioner's father put up a titled construction in the property has been denied in the counter affidavit, while it is admitted that he had established an Auto-mobile workshop.

6. With regard to the applicability of G.O.Ms.No.92, it is submitted that from the date of auction, lease will be granted for a period of three years at the first instance and thereafter, the lessee is entitled to renew for two block periods of three years each at enhanced rate of lease and after nine years, the lessee must agree to pay market rate prevailing at that time. Therefore, unless the lessee agrees to pay the market rate, he is not entitled for extension of lease. That apart in the case of the petitioner after expiry of 18 years, no lease can be granted and the respondent Municipality has to necessarily go for public auction. Referring to the decision of the Hon'ble Division Bench of this Court in the case of P.Muthusamy vs. State of Tamil Nadu reported in (2014) 5 MLJ 129, it is submitted that the Hon'ble Division Bench has held that the period of lease should be computed from the date of original lease and not from the date of the Government Order. Further, it is submitted that the petitioner's father was granted the lease by the Municipal council without any public auction during in the year 1970 and the lease was transferred to the petitioner in 1984. Thus, the petitioner and his father have been continuing as lessee for 44 years, and therefore, G.O.Ms.No.92, has absolutely no application to the case on hand. In the counter affidavit the allegation made against the respondent and its officers said to have occurred on 08.12.2013, has been denied. The names of the persons to whom the petitioner has sub-let portions of the property has been set out in paragraph 10 of the counter affidavit and reference has been made to the show cause notice, dated 20.11.2014 and the communication sent to the petitioner dated 23.04.2015, stating that the lease cannot be extended in his favour. It is submitted that the petitioner is trying

to misinterpret the provisions of G.O.Ms.No.92 and squat in the Municipal property by paying a meagre rent.

7. Heard the learned counsels appearing for the parties and perused the materials placed on record.

8. This is a classical case where the petitioner who is a transferee of a leasehold right, which transfer having been effected in 1984, is seeking to continue in possession by referring to G.O.Ms.No.92, dated 03.07.2007. The said Government Order had been interpreted by the Hon'ble Division Bench in the case of P.Muthusamy vs. State of Tamil Nadu (supra), pointing out that letting out of shop by the Municipality, was to collect revenue and the best way to get maximum revenue is by public auction and when a Municipality resorts to such public auction, there can be no arbitrariness on their part. The Hon'ble Division Bench has also considered a communication dated 12.03.2009, which was issued after issuance of G.O.Ms.No.90, dated 03.07.2007, and held that the said communication cannot overreach the Government Order which speak about removal when conditions are not complied. There is an allegation that the petitioner has sub-let the portion of the leasehold property to third parties. This has not been specifically denied by the petitioner by filing an reply affidavit to the counter affidavit. That apart, the moot question would be as to whether the petitioner can claim any protection under G.O.Ms.No.92.

9. As noticed above, the petitioner's father was granted a lease of the said property by a resolution passed by the Municipal Council, dated 24.02.1970 and he continued as a lessee till his demise on 03.06.1984, after which the lease was transferred in favour of the petitioner during 1984. Thus, the petitioner has continued as lessee in his individual capacity for 20 years and adding the period of lease from 1970, when his father was granted the lease, between the petitioner and his father, they have continued as lessees of the property for 44 years. It is rather surprising to note as to why the respondent Municipality did not take any effective steps prior to 2007 i.e., before issuance of G.O.Ms.No.92, if they really wanted to protect the Municipal property. Thus, partly the Municipality has to be blamed, which has facilitated, the petitioner to continue to be in occupation.

10. G.O.Ms.No.92, did not contemplate of any such contingency as in the present case. Therefore, if it has to be held that the petitioner has to continue till 2018, it would amount to virtually transferring the property in favour of the petitioner, which the Municipality is not entitled to do. The purpose of leasing out Municipal properties is to generate funds for the Municipality to be utilised for public welfare. This is a case, where there is absolute failure of the official machinery in protecting the interest of the Municipality and its properties. Therefore, the benefit of G.O.Ms.No.92, cannot be extended to the petitioner and cannot be made applicable to the facts of the present case. Thus, the very premise based on which the Writ Petition has been filed is without any basis. Therefore, the petitioner is not

entitled for any relief. The petitioner had been issued a show cause notice, dated 20.11.2014, calling upon him as to why action should not be taken for sub-letting the property and he has said to have given a reply on 18.12.2014, after this Writ Petition was filed on 10.12.2014, but there is no acknowledgement to show that the reply has been replied by the respondent.

11. Be that as it may, the request made by the petitioner to extend the lease in his favour has been rejected by communication dated 23.04.2015, which has not been put to challenge. Hence, on the grounds raised by the petitioner, no relief can be granted in this Writ Petition.

12. For all the above reasons, the petitioner has not made out any case for issuance of a Writ of Mandamus as sought for and accordingly, the Writ Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

pbn

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Pollachi Municipality
Rep., by its Commissioner,
Pollachi

+1 CC to Mr.R.Nandhakumar, Advocate Sr.6465
+1 CC to Mr.A.S.Thambuswamy, Advocate Sr.No.6447

CO-LRS
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Order in

W.P.No.32608 of 2014