

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Appeal No.105 of 2012
and
M.P.No.1 of 2012

The Commissioner,
HR & CE Department,
Nungambakkam High Road,
Chennai-600 034

... Appellant/2nd Respondent

-Vs-

1. Seetha Kingston House Matriculation
Higher Secondary School,
managed by Dharmamurthi Rao Bahadur
Calavala Cunnan Chetty's Charities,
rep.by its Correspondent

2. The Collector of Chennai,
Chennai Collectorate,
Chennai

... Respondent

WRIT APPEAL filed under Clause 15 of Letters Patent against
the order passed in W.P.No.20847 of 2011, dated 12.10.2011.

W.P.No.20847 of 2011 : Petition filed under Article 226 of the
Constitution of India, praying for a Writ of Certiorarified
Mandamus, directing the respondent to renew the licence, under
Tamil Nadu Public Buildings (Licensing) Act 1965 in Form D, to
Seetha Kingston House Matriculation Higher Secondary School, No.
768, Poonamallee High Road, Kilpauk, Chennai 10 on the basis of
Application dated 20.12.2010 and the Inspection Report dated
07.02.2011 without insisting on No Objection Certificate, from
the Commissioner of Hindu Religious and Charitable Endowment
Department.

For Appellant : Mr.K.V.Dhanapalan,
Additional Government Pleader

For Respondent : Mr.Kuberan for
M/s.Rank Associates for R1
Mr.R.Ravichandran,
Additional Government Pleader
for R2

J U D G M E N T

(Judgment of the Court was delivered by A.SELVAM, J)

This Writ Appeal has been directed against the order dated 12.10.2011, passed in W.P.No.20847 of 2011, by the learned single Judge of this Court.

2. The first respondent herein, as petitioner, has filed W.P.No.20847 of 2011, under Article 226 of the Constitution of India, praying to issue a writ of mandamus, directing the appellants/respondents to renew the licence, under Tamil Nadu Public Buildings (Licensing) Act, 1965.

3. It is averred in the petition that the first respondent/petitioner has entered into a lease agreement with Hindu Religious and Charitable Endowment Department in respect of the building in question for a period of 99 years, for running the school in question. The second respondent/first respondent, who is the District Collector, Chennai, has to give necessary licence. Further it is averred in the petition that the lease period has already expired. Under the said circumstances, the second respondent/first respondent, i.e. the District Collector, has directed the first respondent/petitioner to produce 'No Objection Certificate' from the Hindu Religious and Charitable Endowment Department. Under the said circumstances, the present writ petition has been filed for getting the relief sought therein.

4. The learned Single Judge, after considering the rival contentions put forth on either, has disposed of the writ petition by way of giving necessary direction to the second respondent to issue No Objection Certificate to the first respondent, viz., the District Collector, subject to the orders to be passed in W.P.No.37548 of 2003, within a period of two weeks. The order passed by the learned Single Judge is being challenged in the present writ appeal.

5. The learned counsel appearing for the appellant has repeatedly contended that the lease period has already come to an end and under the said circumstances, the appellant/second respondent is not entitled to give any No Objection Certificate to the second respondent/first respondent, so as to enable him to grant licence to the first respondent/petitioner and further, the first respondent/petitioner, as plaintiff, has originally instituted C.S.No.467 of 2001 on the file of this Court and subsequently transferred to the City Civil Court and taken on file in O.S.No.7159 of 2010, wherein, a prayer has been sought to the effect that the defendants have to execute a lease in respect of the suit property by way of renewal for a further period of 99 years and the said suit is not legally maintainable and under the said circumstances, the order passed by the learned Single Judge is erroneous and the same is liable to be set aside.

6. Per contra, the learned counsel appearing for the first respondent/petitioner has also equally argued to the effect that the first respondent/petitioner has been running a school for more than 100 years and since lease has not been renewed, the second respondent herein, namely, the District Collector, has insisted to get No Objection Certificate from the appellant and since the appellant has refused to give the same, W.P.No.20847 of 2011 has been filed and the learned Single Judge, after considering the over all factual circumstances available on record, has allowed the writ petition subject to the condition mentioned therein and therefore, the order passed by the learned Single Judge does not call for any interference.

7. It is an admitted fact that the first respondent/petitioner as plaintiff, has instituted C.S.No.467 of 2001, on the file of this Court, wherein it has been specifically prayed to direct the defendants to execute a lease of the suit property by way of renewal for a further period of 99 years and some other consequential reliefs have also been sought therein.

8. Further it is seen that C.S.No.467 of 2001 has been subsequently transferred, on the ground of jurisdiction, to the City Civil Court and taken on file in O.S.No.7159 of 2010. It is also seen that O.S.No.7159 of 2010 is in the stage of part-heard.

9. The learned counsel appearing for the appellant has also contended that in O.S.No.7159 of 2010, on the side of the plaintiff, an attempt has been made to file additional documents and the same has been rejected by the trial Court and against

the rejection order, Civil Revision Petition No.5009 of 2014 has been filed on the file of this Court and the same is also pending.

10. The learned counsel appearing for the first respondent/petitioner has fairly conceded that C.R.P.No.5009 of 2014 is pending against the rejection order passed by the trial Court.

11. On the basis of the available factual circumstances, this Court can easily deduce that with regard to renewal of licence for a further period of 99 years, now, Original Suit No.7159 of 2010 is pending. The contention put forth on the side of the appellant herein is that the said suit is not legally maintainable. The contention put forth on the side of the appellant can be decided only in O.S.No.7159 of 2010.

12. It has already been pointed out that Original Suit No.7159 of 2010 is in the stage of part-heard and further due to rejection order passed in the petition filed on the side of the plaintiff, Civil Revision Petition No.5009 of 2014 has been filed on the file of this Court and the same is pending.

13. The learned counsel appearing for the first respondent/petitioner has given assurance to not press Civil Revision Petition No.5009 of 2014, so as to expedite disposal of O.S.No.7159 of 2010.

14. Considering the assurance given by the learned counsel appearing for the first respondent/petitioner and also for giving quietus to the litigation, disposal of O.S.No.7159 of 2010 is essential and therefore this Court is of the view that the first respondent/petitioner is entitled to get the relief sought in W.P.No.20847 of 2011 and further, this Court is also of the view to give the following direction:

The learned Single Judge, after considering the nature of the relief sought in W.P.No.20847 of 2011, has rightly allowed the same, subject to the condition mentioned therein.

In fine, this writ appeal is dismissed without cost. However, the first respondent/petitioner is directed to not press Civil Revision Petition 5009 of 2014. The Second Additional City Civil Court is directed to dispose of O.S.No.7159 of 2010 before the end of September 2016 and report the same to the Registry without fail. Further it is made clear that the first respondent/petitioner is at liberty to file a fresh petition for reception of additional documents

(originals). Both parties are strictly directed to give their unstinted support to the II Additional City Civil Court for disposal of O.S.No.7159 of 2010 within the period stipulated by this Court. Further it is made clear that whatever findings/observations given in this order are not binding upon the parties in the disposal of O.S.No.7159 of 2010. Consequently, M.P.No.1 of 2012 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Collector of Chennai,
Chennai Collectorate,
Chennai.
2. The II Additional City Civil Court,
Chennai.
3. The Registrar,
City Civil Court,
Chennai.

+1cc to M/s.Rank Associates, Advocate, S.R.No.41448
+1cc to the Government Pleader, S.R.No.41587

GJ(CO)
CA(03/08/2016)

W.A. No.105 of 2012

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