

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

SA.No.719 of 2009

and

C.M.P.Nos.11331 and 11332 of 2016

The Commissioner,
Tiruppur City Municipal Corporation,
Tiruppur Town and Taluk,
Tiruppur District ... Appellant/Defendant

vs.

P.Visvanathan ...Respondent/Plaintiff

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 23.12.2008 of the learned Subordinate judge, Tiruppur, in A.s.No.34 of 2005 confirming the decree and judgment dated 19.08.1996 of the learned District Munsif, Tiruppur in O.S.No.157 of 1992 .

For Appellant : Mr.V.R.Thangavelu

For Respondent : Mr.G.Vivekanand

J U D G M E N T

Challenging the concurrent finding rendered by the Courts below, the Tiruppur Corporation represented by its Commissioner has filed the present Second Appeal, arising out of a suit for declaration and injunction filed by the respondent herein.

2. The respondent as the plaintiff sought for a declaration to declare that he is entitled to continue the leasehold rights of the plaint mentioned property on payment of enhanced rate of rent at 15% and to restrain the Corporation by way of permanent injunction in any way interfering with his right of collecting the charges and rents from the suit property.

3. The case of the plaintiff is that he is the successful bidder for the leasehold right of collecting

charges at various places belonging to the defendant Corporation and he is entitled to continue even for the extended period by paying the increased rate of rent at 15% on the basis of the Government Order issued in G.O.Ms.285 dated 29.04.1985. The suit was contested by the Corporation.

4. The trial Court granted the relief to the plaintiff based on the Government Order issued, wherein and whereby, the lessee is entitled to continue the lease on payment of 15% enhanced rent. The Appellate Court has also confirmed the said findings. Challenging the concurrent findings, the present appeal is filed before this Court.

5. This Appeal is admitted by raising the following questions of law.

i) Whether the First Appellate Court as well as the Trial Court have failed to consider the question of res-judicata?

ii) Whether the First Appellate Court as well as the Trial Court have erred in applying the guidelines set out in the Government Order in G.O.Ms.No.285 MAS dated 29.04.1995 relating to 'lease' to license?

6. Learned counsel for the appellant Corporation submitted that the respondent herein cannot have a perpetual injunction in his favour by virtue of the decree granted by the Courts below as the Government Order which was relied on by the respondent, namely, G.O.Ms.285 dated 29.04.1985 has been subsequently, superseded by G.O.Ms.90 dated 03.07.2007, through which, the entitlement of continuance of the lease by the very same lessee is subject to certain conditions, out of which, one is that the Corporation is entitled to reassess the market rate of rent payable by the lessee after 9 years from the date of the Government Order and only when the lessee agreed to pay the enhanced market rate of rent, his lease can be extended for a further period of 9 years. Therefore, learned counsel submitted that the plaintiff cannot enjoy the fruits of the decree granted by the trial Court in his favour, when the Government has passed the subsequent G.O.Ms.92 dated 03.07.2007. It is further stated that in view of the above said G.O., the appellant Corporation has also issued notification inviting tenders from the parties who are willing to pay the enhanced rents.

7. Per contra, learned counsel appearing for the respondent submitted that as both the Courts below have concurrently granted injunction in favour of the respondent, the appellant is not entitled to bring the shops for fresh auction.

8. It is seen that both the Courts below have concurrently granted the relief of injunction in perpetuity in favour of the respondent which in effect is without reference to the rights of the lessor namely, the Corporation to exercise their right to deal with their properties to be let on lease based on the change of policy, if any, to be taken by the Government periodically as and when an occasion arises. In other words, the injunction relief granted in favour of the respondent is in effect is a perpetual one, which in my considered view, cannot be granted as admittedly, the respondent is only a lessor under the Corporation. Therefore, the respondent is bound by the terms and conditions either altered or newly introduced by the appellant as and when a policy is taken to that effect by the Government. Certainly, the respondents cannot insist the appellant Corporation to allow him to continue forever by paying 15% of the enhanced rent by relying on the G.O.Ms.285 dated 29.04.1985 which admittedly has been superseded in the subsequent G.O.Ms.92 dated 03.07.2007. A perusal of the said G.O.Ms.No.92 would show that a lessee is entitled to continue for 9 years from the date of the said G.O. and thereafter, the lessor namely, the Corporation is entitled to reassess the market rent payable by the lessee and if the lessee agrees to pay such reassessed market rent, he can continue for further period of 9 years. On the other hand, if the lessee is not agreeing for the enhanced market rent, the property shall be brought for auction. When such being the condition imposed by the subsequent Government Order, the respondent is not entitled to enjoy the property under the decree granted by the Court which even otherwise has to be construed as the one granted based on the then existed orders of Government and not the one granted against the Government forever. At the most, he can either take part in the auction or accept to pay the enhanced rent. Without doing so, he cannot be permitted to continue in the premises by virtue of the injunction granted by the Courts below.

9. Learned counsel for the respondent fairly submitted that in pursuant to the fresh auction notice recently on 03.07.2016, the respondent has also submitted his tender. He further submitted that because of the pendency of this appeal, the appellant Corporation is not considering his tender.

10. Considering the above stated facts and circumstances, I find that both the Courts below have erred in granting the relief of injunction in perpetuity in favour of the respondent. Accordingly, the questions of law are answered in favour of the appellant. Consequently, the Second Appeal is allowed and the connected miscellaneous petitions are closed. No costs. Since the second appeal is allowed, the appellant Corporation is at liberty to proceed with the fresh tender and the respondent is also entitled to participate in the same. Needless to say that the appellant Corporation shall consider the tender of the respondent on its own merits and in accordance with law without reference to the order passed in this Second Appeal.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Tiruppur.

2. The District Munsif,
Tiruppur.

Copy to

The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.V.R.Thangavelu, Advocate Sr.43822

+1cc to Mr.G.Vivekanand, Advocate Sr.44170

Second Appeal No.719 of 2009

mg[co]

srg 09/09/2016