

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 04.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.27857 of 2014
and
M.P. Nos.1/2014 & 1/2015

K.N. Balasubramanian ... Petitioner

vs.

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai 600 003.
2. The Assistant Revenue Officer,
Zonal Office - 10,
Corporation of Chennai,
No.117, N.S.K. Salai,
Kodambakkam,
Chennai 600 024. ... Respondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 2nd respondent to forthwith remove the seal on the Hotel/shop of the petitioner at No.34, Hotel Sivaprasad, Palani Andavar Koil Street, Vadapalani, Chennai - 600 026 and to allow the petitioner to continue to carry his business based on valid license and to pass further orders.

For petitioner : Mr.L.Chandrakumar

For Respondents : Mr.K.Venkataramani,
Addl. Advocate General
Assisted by Mr.A. Nagarajan

O R D E R

(Order of the Court was made by Huluvadi G.Ramesh, J.)

Heard learned counsel for the petitioner and Mr. K. Venkataramani, learned Additional Advocate General.

2. According to the petitioner, he is one of the occupants in the premises at Door No.34, Pazhani Andavar Koil Street, Vadapalani, Chennai 600 026 as a lessee for more than 15 years and has been paying rents together with property taxes from the year 2001 till date. The petitioner along with others have been running a Juice Stall Hotel, in the said premises, after obtaining valid license in License Code No.0117046792 dated 31.03.2001, valid upto March 2015. While so a notice under Section 379A of the Act was issued on 21.08.2014, which gave only 24 hours time to the petitioner and other lessees to vacate the premises. Since the petitioner and other lessees did not vacate the premises, their shops were locked and sealed by the Assistant Commissioner of Corporation. Aggrieved by the same, the petitioner submitted a representation dated 25.08.2014 to the respondents seeking for removal of the sealing and for permitting him to run the Hotel. Pending appeal, other aggrieved persons approached this Court to remove the seal on their shops by way of W.P.Nos.23315 of 2014, etc batch. This Court, by a common order dated 08.10.2014, disposed of the said Writ Petitions, holding as under:

"18. In view of the above, the Writ Petitions are disposed of to the following effect:

(1) The petitioners are granted time up to 30.09.2015 to vacate and hand over vacant possession of the premises.

(2) Upon the petitioners vacating and handing over vacant possession, the respondents are free to demolish the building and reconstruct, without letting out the old building to third parties.

(3) Immediately upon completion of construction of a new commercial complex, the respondents may assess the market rate of rent that could be collected from those shops in normal circumstances, by getting an opinion from the Executive Engineer of Public Works Department.

(4) After getting the market rate of rent evaluated by the Executive Engineer, as a benchmark, the respondents shall put up newly constructed shops to auction. The petitioners may participate in the auction. If they are successful, they may take the properties on license. If they are unsuccessful, it will be open to them to take advantage of a clause normally incorporated in such auctions of public properties, to offer an higher amount than the highest bid by 10% and seek a preferential allotment.

(5) If the petitioners fail to vacate and hand over vacant possession by 30.09.2015, it will be open to the respondents to evict the petitioners.

(6) Till then, the respondents shall not interfere with the business activities carried on by the petitioners.

(7) The above order is subject to the approval of the proposal for demolition and reconstruction by the Corporation Council. There will be no order as to costs. Consequently, connected Miscellaneous Petitions are closed."

3. As per the above order, the respondents removed the lock and seal of the shops belonging to the petitioners therein and they proceeded with their business. Since there was no reply for his representation dated 25.08.2014, the petitioner also filed the present writ petition and obtained an order on 17.10.2014 to remove the seal on the hotel of the petitioner and continued to carry on his business.

4. According to the learned counsel for the petitioner, despite possession of a valid license, which was also renewed periodically, the respondents have sealed the premises of the petitioner. It is his contention that without getting any approved plan and sanction for putting up construction, the respondent/ Corporation is hurriedly taking possession of the premises only to let out the property to some third parties.

5. While so, it is the case of the respondent/Corporation that necessary approval for the proposal of demolition and reconstruction of the building in dispute has been obtained and money has been sanctioned by the Chennai Corporation for demolition and reconstruction. It is his contention that the petitioner and other lessees are trying their best to avoid eviction, despite being given sufficient time to vacate the premises. The petitioner possesses license only to run a Eating House and not for Restaurant or Juice shop and that he is running a Marriage Hall on the first and second floor without getting any proper permission. It was further submitted that the petitioner is not paying any rent or etc., from 2000 onwards. Learned Additional Advocate General for the respondent/Corporation submitted that the Corporation is taking steps to evict all the occupants so that the existing premises is demolished and new building is constructed without any hindrance. He further submitted that the petitioner will also be given due preference as observed by the learned Single Judge vide order dated 08.10.2014 in W.P.Nos.23315 of 2014, etc batch and once the building is constructed, allotment will be given only by means of public auction.

6. The order dated 08.10.2014 made in W.P.No.23315 etc. batch, has already become final and that has not been questioned by way of appeal. Even in the order dated 05.07.2016 passed in W.P.No.31436 of 2015, etc batch, filed by similarly placed persons, this Court had directed the petitioner and other lessees therein, to hand over vacant possession of the premises on or before 30.09.2016. Before the learned Single Judge, they have sought time till 31.12.2016 for vacating the premises and later in the Appeal in W.A. No. 1209 of 2016 the appellant therein had sought for two years time. Learned counsel for the petitioner submits that the petitioner is ready to vacate the premises in question, if he is also given a reasonable time, as others.

7. Based on the order passed by this Court in W.A. No.1209 of 2016 for similarly placed persons, this Writ Petition is ordered on the following lines:-

(i) the petitioner is granted time up to 31.12.2016 to pay the entire arrears of rent due to the respondent/Corporation as on 31.12.2016;

(ii) the petitioner is granted time up to 31.01.2017 to vacate the premises in question and hand over vacant possession of the same to the respondent/Corporation and the rent due for the month of January 2017 shall be paid to the respondent/Corporation on or before 31.01.2017;

(iii) non-payment of rent, if any, would attract 12% compound interest from the date the money became due to be paid for the month agreed, in case of non-vacation of the premises on or before 31.01.2017;

(iv) Upon the petitioner handing over vacant possession of the premises in question, the respondent/Corporation is free to demolish the building and reconstruct, without letting out the same to third parties;

(v) After getting the market rate of rent evaluated by the Engineer concerned, the respondent/Corporation shall put up newly constructed shops to public auction and it is open to the petitioner to participate in the auction. If the petitioner is unsuccessful, it will be open to him to offer a higher amount than the highest bid by 10% and seek a preferential allotment;

(vi) If the petitioner fails to vacate and hand over the vacant possession by 31.01.2017, it will be open to the respondent/Corporation to evict him, without prejudice to the right to take proceedings before this Court for non-compliance of the undertaking;

(vii) Till then, the respondent/Corporation shall not interfere with the business activities of the petitioner;

No costs. Consequently, connected Miscellaneous Petitions are closed.

avr

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai 600 003.
2. The Assistant Revenue Officer,
Revenue Department,
Zonal Office - 10,
Corporation of Chennai,
No.117, N.S.K. Salai,
Kodambakkam, Chennai 600 024.

+1cc to Mr.A. Nagarajan, Advocate, S.R.No.57138
+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.57099

GJ(CO)
EU(22/11/2016)

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and
M.P. Nos.1/2014 & 1/2015