

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-02-2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.31712 of 2015

M. Muthu

.. Petitioner

Vs

1. The Commissioner
Salem Corporation
Salem

2. The Assistant Commissioner
Suramangalam Ward Officer
Salem Corporation
Salem

.. Respondents

Writ Petition under Article 226 of the Constitution of India praying for a writ of Certiorari to call for records relating to the impugned proceedings issued by the second respondent in K1/34694/1993 dated 23-07-2015 and to quash the same and to pass orders.

For petitioner : Mr. R.N. Amarnath

For respondents : Mr. S. Diwakar, AGP
Mr. K. Krishnamurthy,
Advocate Commissioner

ORDER

The petitioner has filed this writ petition challenging the proceedings of the respondent-Corporation, dated 23-07-2015 wherein the respondent-Corporation has claimed market rent in respect of an extent of 1471 sq. ft which according to the respondent is in excess of the lease-hold area.

2. The petitioner is running a Hotel in the bus-stand complex owned by the respondent-Corporation and the area granted to the petitioner, on lease is 2777 Sq.ft. The petitioner has challenged the said impugned proceedings as being arbitrary and unreasonable, contending that there is no encroachment or additional extent occupied by the petitioner than the leasehold area and the respondent-Corporation have erroneously taken into

consideration a open corridor and toilets as area in occupation, over and above the leasehold area.

3. Earlier an order was passed in this writ petition appointing an Advocate Commissioner to inspect the property and submit a report. The Advocate Commissioner has submitted a report from which it is seen that there is a passage with sunlit ventilation covered with A/C sheet roof with drainage of 277.91 sq.ft., and two toilets totally measuring 31.8 sq.ft. Thus, the report clearly shows that there is no encroachment of municipal land nor it has been put to use as a hotel. It appears to be used only as a passage and it is not a closed area. Further, the toilet amenities has to be provided to the customers, who visit the Hotel, especially when the Hotel is situated in bus-stand complex. Therefore, this Court is inclined to accede the technicality that the area measuring passage of 277.91 sq.ft. and toilets measuring 31.86sq.ft is not an encroachment. But, however, since the petitioner is utilising the same and he being a commercial establishment, has to pay a reasonable rent for the said extent to the Corporation.

4. Accordingly, the writ petition is partly allowed and the impugned order insofar as the extent mentioned as 1471 sq.ft., is set aside and the extent of the land is fixed as 309.77sq.ft(277.91+31.86) for which the petitioner shall pay rent to the respondent-Municipality at the same rates which the petitioner had been paying for the leasehold area of 2777sq.ft. with periodical increases from 1994 onwards till date. The respondent/Corporation is directed to issue a revised demand in this regard which shall be paid by the petitioner.

5. It is submitted by the learned counsel for the petitioner that the remuneration has been fully paid to the learned Advocate Commissioner, as fixed by this Court and there was no request for additional remuneration.

6. However, there will be no order as to costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

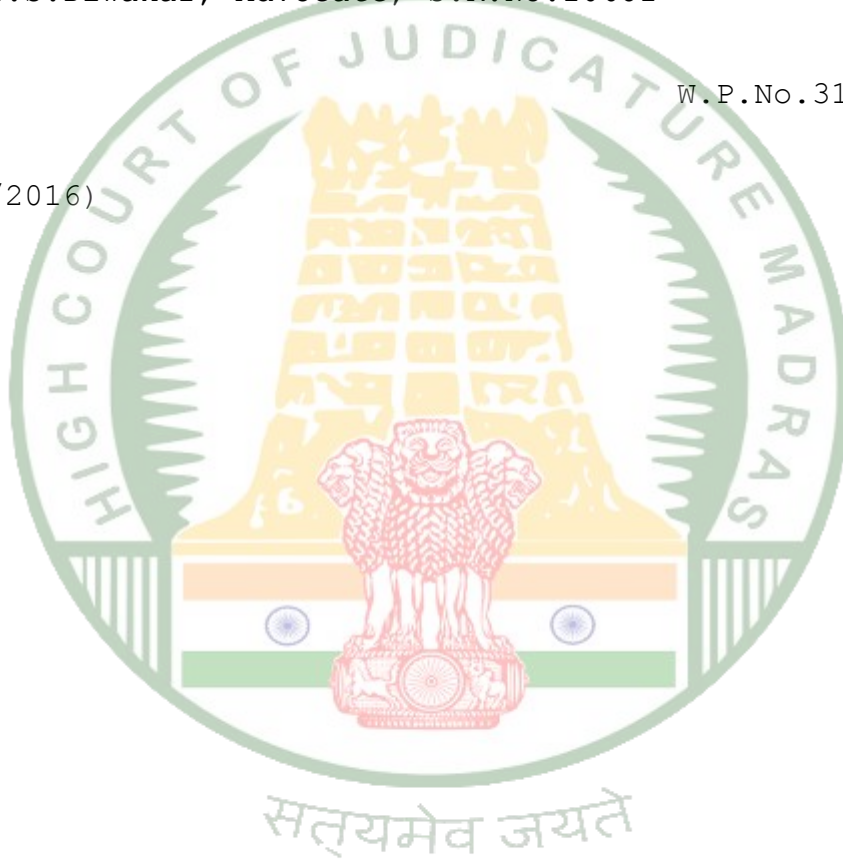
1. The Commissioner,
Salem Corporation,
Salem.
2. The Assistant Commissioner,
Suramangalam Ward Officer,
Salem Corporation,
Salem.

+1cc to Mr.R.N.Amarnath, Advocate, S.R.No.10033

+1cc to Mr.S.Diwakar, Advocate, S.R.No.10681

W.P.No.31712 of 2015

ev (CO)
srg (25/02/2016)



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