

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-02-2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.33279 of 2015

R. Muthukrishnan

... 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,
Additional Government Pleader

Mrs.C. Kanakavalli and
Mrs. Nirmala Murugan
(Advocate Commissioners)

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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 445 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 2686 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 learned 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 242.78 sq.ft., and toilet and bathroom totally measuring 24.36 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, toilets and open space of 292.76 sq.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 445 sq.ft., is set aside and the extent of the land is fixed as 292.76 sq.ft 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 2686sq.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 Advocate Commissioners that both of them had gone personally and had taken all the measurements and submitted reports along with 25 photographs, which were taken by engaging the services of a local photographer and expenses have been incurred by them. Considering the said submission, in addition to whatever remuneration has been paid to the learned Advocate Commissioners, the petitioner shall pay a further sum of Rs.25,000/- (Rupees Twenty five thousand only) to be shared equally by both the learned Advocate Commissioners viz., Mrs.C. Kanakavalli and Mrs.Nirmala Murugan.

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

glp

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.10032

+1cc to Mr.S. Diwakar, Advocate, S.R.No.10680

W.P.No.33279 of 2015

EV(CO)
CA(25/02/2016)

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