

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Appeal No.1214 of 2016
and
C.M.P.Nos.15574 to 15576 of 2016

T.Murthy Appellant/Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai 600 003.

2. The Assistant Commissioner,
Zonal Office - 10,
Corporation of Chennai,
No.117, N.S.K. Salai,
Kodambakkam,
Chennai 600 024.

3. The Assistant Revenue Officer,
Zonal Office - 10,
Corporation of Chennai,
No.117, N.S.K. Salai,
Kodambakkam,
Chennai 600 024.

4. Chandran ... Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 05.07.2016 made in W.P.No.32728 of 2015 passed by the learned Single Judge of this Court.

W.P.No.32728 of 2015 : Writ Petition filed under Article 226 of the Constitution of India, praying to issuance of Writ of Mandamus, directing the respondents 1 to 3 to allot the mini hall namely Murugan Mini Hall at No.34, Palani Andavar Koil Street, Vadapalani, Chennai-600 026 in favour of the petitioner.

For Appellant : Mr.R.Mohandoss
for M/s.Swaminathan Law Associates

For Respondents 1 to 3 : Mr.K.Venkataramani,
Additional Advocate General
assisted by
Ms.A.Nagarajan, Standing Counsel

J U D G M E N T
(Made by S.VAIDYANATHAN, J.)

The appellant/writ petitioner, who has successfully completed one year today by audaciously not vacating the leased out premises and not handing over vacant possession of the same to the respondent/Corporation, has come up with this appeal, now challenging the common order of the learned Single Judge of this Court dated 05.07.2016 passed in W.P.No.32728 of 2015, etc batch of cases.

2. We have heard the learned counsel for the parties and perused the material documents available on record.

3. According to the appellant, 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 20 years and has been paying rents together with property taxes from the year 1992 till date. The appellant along with others have been carrying on flower vending business, running Bakery, Hotels and Sweet shops, etc. in the said premises.

4. Initially, eviction notices were issued to the appellant and other lessees. However, a fresh notice under Section 279 of the Chennai City Municipal Corporation Act, 1999 was issued on 22.07.2014 and thereafter, since they failed to comply with the said notice, fresh notice under Section 379A of the Act was issued on 22.08.2014, which gave only 24 hours time to the appellant and other lessees to vacate the premises. Since the appellant and other lessees did not vacate the premises, their shops were locked and sealed by the Assistant Commissioner of Corporation and hence, they 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."

5. According to the learned counsel for the appellant, the appellant is ready to vacate the premises in question, if he is given time till 31.12.2016. 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.

6. 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 appellant and other lessees are trying their best to avoid eviction, despite being given sufficient time to vacate the premises.

7. In reply, learned counsel for the appellant submitted that one Hotel is still permitted to be run in the said premises and that the respondent/Corporation is trying to evict only the appellant and other lessees, who are before this Court.

8. In this regard, learned Additional Advocate General for the respondent/Corporation submitted that the Corporation is taking steps to evict all the occupants including the one, who is running a Hotel in the said premises, whose Writ Petition in W.P.No.27857 of 2014 is pending before this Court, so that the existing premises is demolished and new building is constructed without any hindrance. He further submitted that the appellant and other lessees will 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.

9. It is seen that when the appellant and other lessees approached this Court in W.P.No.23315 etc. batch, to remove the seal on their shops, by an order dated 08.10.2014, time was granted till 30.09.2015 to vacate and hand over vacant possession of the premises. In the said order, this Court had made it very clear that if the writ petitioners fail to vacate and hand over vacant possession by 30.09.2015, it is open to the respondent/Corporation to evict them. It was also observed that the said order is subject to the approval of the proposal for demolition and reconstruction by the Corporation Council.

10. 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 impugned order dated 05.07.2016 passed in W.P.No.31436 of 2015, etc batch, this Court had directed the appellant and other lessees to hand over vacant possession of the premises on or before 30.09.2016, i.e. today. That being so, the attitude of the appellant herein and other lessees in trying to get their relief by filing another set of Writ Petitions is certainly a dubious method, thereby preventing the implementation of the legitimate order. Strictly speaking, the appellant and other lessees have committed an act of contempt, by continuing to disobey the order of this Court.

11. That apart, in the present Writ Appeal, the appellant and other lessees seek two years time to hand over vacant possession of the premises. Before the learned Single Judge, they sought time till 31.12.2016 and by questionable conduct, now the appellant seeks two years time. Learned Additional Advocate General has clearly stated that a Resolution has been passed by the Chennai Corporation Council to demolish the existing building and reconstruct a multi-storied building and that none of the occupants in the premises in question would be spared from eviction.

12. The appellant herein has filed an affidavit dated 30.09.2016 to the following effect, and the same has been accepted, endorsed and counter-signed by other lessees/appellants in connected Writ Appeals.

"... I humbly submit that since all our business is inter-linked and we are involved in supplying Flower Garlands and also providing Prasadam for the main deity and also for orders placed by the devotees upto 2017 for the purposes of Temple Poojas, Wedding Ceremonies and Ear Boring ceremonies, we humbly request this Hon'ble Division Bench may be pleased grant us time for a period of 2 years from today, in the best interest of justice and also on humanitarian grounds, since our livelihood and survival are greatly affected.

Under the above mentioned circumstances on behalf of the Appellants 2 to 7 and also on behalf of me, this Hon'ble Division Bench may be pleased:

(i) to grant us 2 years time from this date;

(ii) allow us to do our existing business without any interruptions from the respondents by using police force or threat or whatsoever;

(iii) allocate the same extent at the same premises in the ground floor in the same location as we are running now in the proposed new construction without any pre-condition or auction condition but prevailing market rate at that time of handing over possession by the respondents;

(iv) or any other order as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.''

13. In this regard, the first respondent/Corporation has filed an affidavit dated 30.09.2016, the contents of which, reads thus:

"2.... the Chennai Corporation Council has passed a Resolution No.533/2013, dated 26.09.2013 to demolish the existing building and reconstruct a multi-storied building, since it is a prime location situate opposite to Vadapalani Temple, Chennai. The lease period of original lease is already over and the persons presently occupying are in unlawful possession and encroachers. All of them have to pay a sum of Rs.24,96,708/- towards the arrears of the rent for the period from 01.10.2014 to 30.09.2016 and for subsequent period till date. This respondent states that they will not lease the property to third parties after evicting the writ petitioner/appellants. After demolition and reconstruction of the building, the premises will be let out to individual by public auction and the rent will be fixed as per rules in force. It is submitted that appellants can be permitted to participate in the public auction.

14. Though this Court is not inclined to interfere with the order of the learned Single Judge, in view of the affidavit of undertaking filed by the 1st respondent/Corporation and the undertaking of the appellant herein and other lessees, the Writ Appeal is disposed of to the following effect:

(i) the appellant 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 appellant 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 appellant 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 appellant to participate in the auction. If the appellant 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 appellant 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 appellant;

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(J)

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Sub Assistant Registrar

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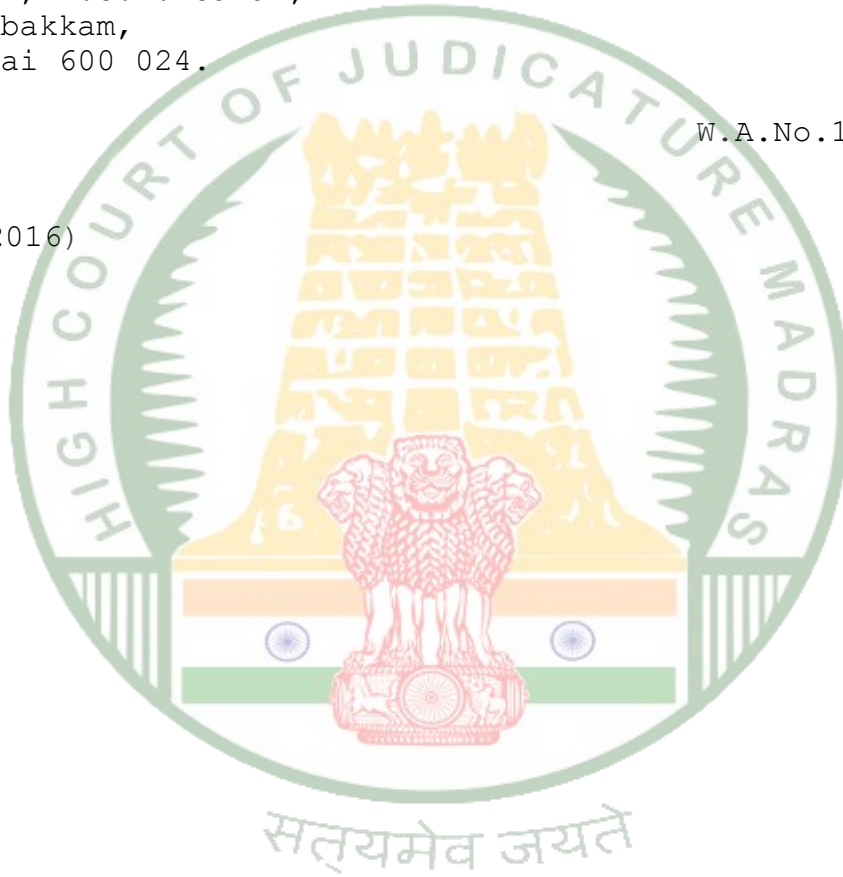
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W.A.No.1214 of 2016

SCD(CO)
CA(05/10/2016)



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