

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.22570 of 2017
& WMP No.23694 of 2017

R.Kumar

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by the Secretary,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai - 9.
2. The Commissioner,
Vridhachalam Municipality,
Vridhachalam, Cuddalore District.
3. K.Gunasekaran

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the second respondent to remove forthwith the illegal bunk shop put up by the 3rd respondent in Vridhachalam Municipal Bus Terminus.

For Petitioner : M/s.Hema Sampath, Senior Counsel
for M/s.R.Meenal
For R1 : Mr.O.Selvam, G.A.
For R2 : Mr.R.P.Prathap Singh
For R3 : No Appearance

ORDER

The petitioner has come forward with this petition to direct the second respondent to remove forthwith the illegal bunk shop put up by the 3rd respondent in Vridhachalam Municipal Bus Terminus.

2. The case of the petitioner is that the petitioner is the successful bidder in an auction held on 24.01.2002 and that he was paying a monthly rent of Rs.3,900/-. The rent was periodically revised and the petitioner is now paying Rs.5,932/-. According to the petitioner, the third respondent has put up a shop and carrying on similar business and no similar shop shall be adjacent to the other and the third respondent is not carrying out the business for which the lease

agreement was entered into. However, no documents have been produced to that effect either by the petitioner or by the third respondent and there is no appearance for the 3rd respondent, though notice has been served on the third respondent and his name also having been printed in the cause list. It is further submitted by the petitioner that the third respondent has earlier filed a Writ Petition in W.P.No.2355 of 2014, which came to his knowledge only now. According to the petitioner, the third respondent availed the license to run Aavin Parlour and he was not carrying on that business. Apart from that, the third respondent is defaulter in payment of rent. If this fact had been brought to the attention of this Court while entertaining W.P.No.2355 of 2014, this Court would not have shown any indulgence to the third respondent and would not have ordered to treat the third respondent as a tenant and consequently directed to avail the electricity connection.

3. The learned counsel for the second respondent has filed a counter stating that the petitioner was carrying on business in Vridhachalam Municipal bus stand and adjacent to that, the third respondent is carrying on business. It is also stated that the petitioner was paying monthly rent of Rs.5,932/- and the third respondent was allotted the shop to do cobbler business by paying a rent of Rs.450/- per month. Even though the third respondent obtained permission to carry on Aavin milk product sales and sought for electricity connection, this Court by the order dated 22.01.2015 in W.P.No.2355 of 2014 directed the Official respondent in that Writ Petition to pass appropriate orders recognizing the third respondent as a tenant and to issue necessary proceedings to the Electricity Department in order to give the electricity connection to the third respondent, and the the 3rd respondent has not yet commenced the said business.

4. The third respondent was treated as a tenant and that the third respondent has changed his business to Tea & Cool drink shop from Cobbler's shop and that rent was increased from Rs.450/- to Rs.3,000/- by the proceedings dated 19.10.2017 and that the rent is payable from September 2017. According to the second respondent, the third respondent has paid rent till August 2017 and that the third respondent is not an encroacher.

5. Though third respondent was served with notice, but none entered appearance.

6. Heard both parties and perused the materials available on record.

7. It is not in dispute that the petitioner and the third respondent started bunk shop business and two lease agreements were entered into between the official respondent and the

petitioner and also there is an agreement between the official respondent and the third respondent.

8. The photographs produced by the Writ Petitioner in page 25 of the typed set in support of the writ petition, is very clear that the petitioner's shop is double in size than that of the third respondent's. However, not only from the photographs, but also from the averments of the official respondent, it is seen that the third respondent is not carrying Aavin Parlour in the shop allotted. Even though counter is silent about any Aavin Parlour in that area, it is stated that there is an Aavin Parlour run by some other person and not by the third respondent.

9. The contention of the petitioner that the third respondent is also carrying on similar business like that of the petitioner and that the two shops carrying on similar business cannot be adjacent to the other, cannot be accepted. Hence, that contention is rejected.

10. However, the documents produced by the petitioner would make it very clear that the third respondent defaulted in payment of rent and that the Municipality had issued a notice dated 27.02.2015 stating that the total arrears of rent payable by the third respondent is Rs.5,400/- which is due from April 2014-2015. The Municipality has also given break-up details showing that from April 2014, the third respondent has not paid a sum of Rs.450/- per month. Now in the present counter, the official respondent has stated that the rent has been paid. But there are no details as to when the rent was paid and if the fact about non-payment of the rent had been brought to the attention of the learned Judge in the earlier Writ Petition, the learned Judge would not have granted the relief.

11. In spite of the fact that the notice has been served on the third respondent, the third respondent has not appeared. According to the second respondent, the rental value is determined based on the size of the shop and the petitioner is having bigger shop than that of the third respondent.

12. The contention of the petitioner is that the 3rd respondent has not approached this Court with clean hands and obtained order from the learned Judge and the contention of the Municipality is that the 3rd respondent has not taken any prior permission to run the business. It is true that the 3rd respondent has earlier not stated his case before the learned Single Judge. In any event, both of them (petitioner and the 3rd respondent) have a similar shop in the same area adjacent to the other, that cannot be construed as illegal or arbitrary. The petitioner feels that his business may get affected, and hence he is trying to evict the 3rd respondent. As per Article 41 of

the Constitution of India, the State shall make effective provision for securing right to work. Similarly, as per Article 19(1)(g), all citizens have right to carry out any occupation, trade or business, but, it should not be in violation of the laws of the land. If the 3rd respondent is asked to shift, it will be in violation of Article 21 of the Constitution of India, which guarantees right to life that is protected.

13. This Court makes it clear that the 3rd respondent has sought for electricity connection only for running Aavin Parlour. The 3rd respondent will have to make necessary application seeking Electricity connection with the correct details, which can be considered by the Electricity Board and proper permission may also be sought by the 3rd respondent to run the business and that may be considered by the respondents 1 & 2. However this Court is of the view that the rent payable either the petitioner or the 3rd respondent or any other person in the locality may be of the same parameter based on the square feet and such other manner that shall be determined by the Municipality.

14. The relief sought for by the petitioner cannot be granted. Writ Petition is disposed of with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pvs / dsa

To
1. The Secretary,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai - 9.

WEB COPY

2. The Commissioner,
Vridhachalam Municipality,
Vridhachalam, Cuddalore District.

+1cc to M/s.R.Meenal, Advocate SR.No.78225
+1cc to M/s.O.Selvam, Advocate Sr.No.78387
+1cc to M/s.R.P.Prathap Singh, Advocate Sr.No.78766
+1cc to Government Pleader SR.No.79013

W.P.No.22570 of
2017
& WMP No.23694 of 2017

GMI (CO)
sm:28.11.2017



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