

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.26678 of 2017 & W.M.P.No.28406 of 2017

K.Majeed Basha ... Petitioner

Vs.

- 1.The Union of India,
Rep. by its Secretary,
Finance Department,
Secretariate, New Delhi.
- 2.The State of Tamil Nadu,
Rep. by its Secretary,
Finance Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 3.The Commercial Tax Officer,
Thiruvallikeni Assessment Circle,
Chennai-600 028.
- 4.The Deputy Commissioner (CT),
Zone VII, Chennai-600 006.
- 5.R.K.Real Estate and Investments,
Rep. by its Partner, Mr.P.Sri Ram Kumar,
No.37, General Patters Road,
Chennai-600 002.
- 6.Raja Babu

7.Kumari Jayapradha ... Respondents

[RR-1, 5, 6 & 7 are deleted as per order
dated 13.10.2017, in Memo filed dated
13.10.2017 in W.P.No.26678 of 2017]

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent's order dated 23.08.2017 made in PDL 178/2015/A2 to quash the same and to consequently direct the respondents 5 to 7 to forebear from interfering and disturbing with the petitioner's peaceful possession and enjoyment of the petitioner's business, named and styled as "National Radiators" situated at No.37/3 G.P.Road, Chennai-600 002, in contravention to the proceedings in O.S.No.6878 of 2015, on the file of the XIV Asst. Judge, City Civil Court, Chennai and RCOP No.1753 of 2015, before the XI Small Causes Court, Chennai except under the provisions of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1974.

For Petitioner : Mr.M.N.S.Mohamed Habeeb Raja

For Respondents: Mr.K.Venkatesh, for RR2 to 4

O R D E R

Heard Mr.M.N.S.Mohamed Habeeb Raja, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for respondents 2, 3 and 4. The third respondent, Mrs.Sasikala, C.T.O., Thiruvallikeni Assessment Circle, is present in Court and has produced the original files. With consent on either side, this writ petition is taken up for final disposal.

2.The petitioner is aggrieved by an order passed by the third respondent dated 23.08.2017, cancelling the petitioner's registration under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "TNVAT Act"). The reason for cancellation is that the petitioner has not produced any renewed valid rental agreement between himself and the owner of the property in spite of notice dated 26.08.2016 and therefore, the Commercial Tax Officer opined that in the absence of a valid rental agreement, the operation done by the petitioner in the place of business is unauthorized and accordingly, registration certificate of the petitioner has been cancelled. The petitioner has been a tenant in the said property for over 20 years and there appears to be a serious landlord and tenant dispute between the petitioner and the owners of the property. Though the petitioner had impleaded the owners, they had been given up as per the memo dated 13.10.2017, because no relief has been sought for against them. The reason given by the Commercial Tax Officer, who is present in Court for cancelling registration is by stating that the petitioner failed to produce

renewed and valid rental agreement. This direction is virtually impossible for compliance on account of the landlord and tenant dispute between the parties. It has been stated in the affidavit filed in support of the writ petition that a suit has been filed by the petitioner against the landlord in O.S.No.6878 of 2015, on the file of the XIV Assistant Judge, City Civil Court, Chennai, to restrain the owners of the property from initiating any proceedings to forcibly evict the petitioner except by following due process of law.

3.Learned counsel for the petitioner submits that till date no application has been filed for eviction before the Rent Controller. In the suit, the petitioner had filed I.A.No.16929 of 2015 for an order of temporary injunction. The said application was contested and it is stated that the City Civil Court has granted an order of injunction as prayed for on 13.10.2017, the certified copy of which is yet to be made ready.

4.Further, it is submitted that the petitioner has filed RCOP No.1753 of 2015, before the XI Small Causes Court, Chennai, under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1974 and the petitioner has deposited rent into the Court and the matter is pending trial. In the factual scenario, the position of the petitioner is litigious and obviously the petitioner cannot produce a valid rental agreement from the owners of the property on account of the on-going litigation. Therefore, the entire premise based on which the impugned proceedings were issued is unsustainable in law.

5.For the above reason, this writ petition is allowed, the impugned order is quashed and the Commercial Tax Officer, Thiruvallikeni assessment circle, viz., the third respondent, is directed to restore the petitioner's registration and permit the petitioner to file E-returns regularly. It is well open to the Department to proceed further in accordance with law, if still a need arises, after the termination of the suit proceedings. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Secretary,
The State of Tamil Nadu,
Finance Department,
Secretariat, Fort St. George,
Chennai-600 009.

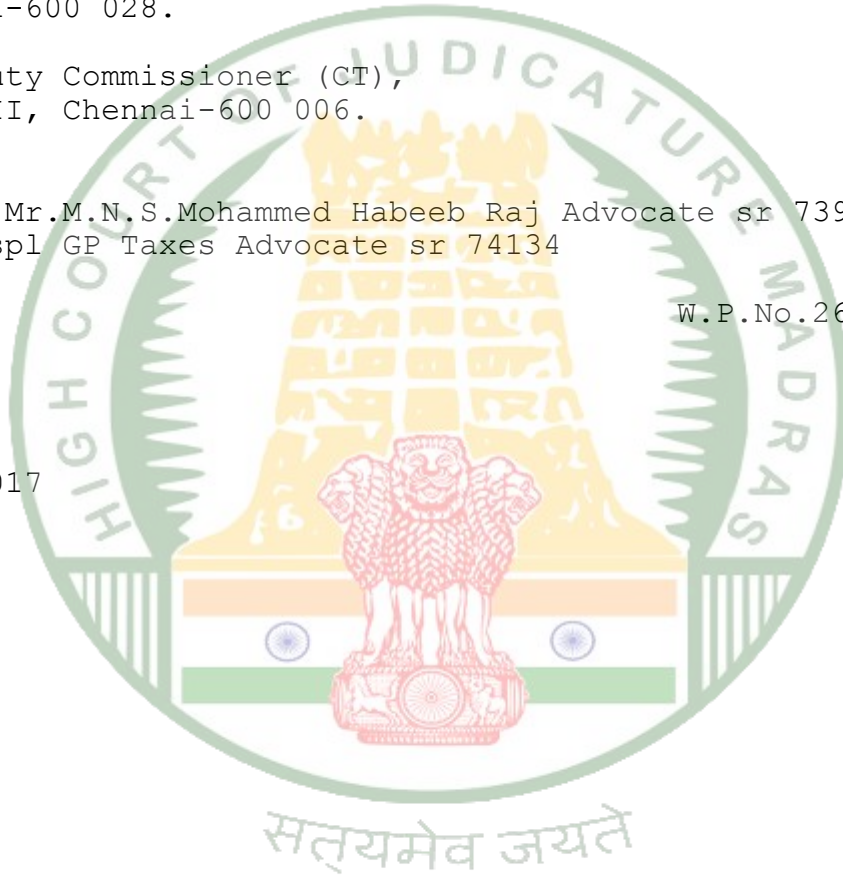
2.The Commercial Tax Officer,
Thiruvallikeni Assessment Circle,
Chennai-600 028.

3.The Deputy Commissioner (CT),
Zone VII, Chennai-600 006.

+2 ccs to Mr.M.N.S.Mohammed Habeeb Raj Advocate sr 73941
+1 cc to spl GP Taxes Advocate sr 74134

W.P.No.26678 of 2017

rsi(co)
aa13/11/2017



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