

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.12.2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.6835 of 2018
and
W.M.P.No.8462 of 2018

M/s. Hotel New Grand,
rep. by its Proprietor
H.Basheer
No.310, GST Road,
Chrompet, Chennai -44

... Petitioner

-Versus-

1. The Commissioner,
Pallavapuram Municipality,
3rd main road, New Colony,
Chrompet, Chennai - 600 044.

2. Mrs.D.Vanitha

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in Na.Ka.No.1253/2018/H-1 dated 20.03.2018 and quash the same, thereby directing the first respondents to renew the licence to run eating and lodging house standing in the name of the petitioner H.Basheer.

For Petitioner : Mr. P.Sidharthan
For Respondents : Mr. P.Srinivas,
for R1

Mr. L.C.Chandrakumar
for R2

ORDER

This writ petition has been filed challenging the order passed by the first respondent Municipality refusing to renew the licence of the petitioner to run a restaurant.

2. According to the petitioner, he is a lessee under the second respondent and running a restaurant in the leased premises from the year 2007 onwards. The licence was also issued by the first respondent Municipality in the year 2007 and the same has been renewed periodically till 2017. In the mean time, a dispute arose between the petitioner and the landlord/second respondent, and the second respondent has taken steps to evict the petitioner. Hence, the petitioner has filed a suit in O.S.No.16 of 2018 on the file of the Additional District Munsif Court, Alandur restraining the second respondent from evicting the petitioner except due process of law and also obtained an order of interim injunction, which is still in force. Subsequently, the second respondent also filed a petition before the Rent Controller for fixing of fair rent and the same is still pending. So far the second respondent did not take any action to evict the petitioner and that being the position, before expiry of the licence period, in the year 2017, the petitioner has made an application before the first respondent Municipality seeking for renewal of licence. Now that application was rejected on the ground that since the second respondent objected for renewal of licence and also without obtaining No Objection Certificate from the landlord, licence cannot be renewed. Challenging the above order, the present writ petition has been filed.

3. The second respondent, landlord has filed a counter affidavit stating that originally the lease was granted for a period of 10 years and the lease period was expired on 26.12.2017. Since the second respondent required the premises for her own occupation, she requested the petitioner to hand over the premises and she has filed an objection before the first respondent Municipality for renewing the licence. Considering the objection, now the impugned order has been passed.

4. The learned counsel appearing for the petitioner submitted that even though the lease period expired in the year 2017, so far no eviction proceedings have been initiated by the second respondent. Further, the petitioner himself filed a suit against the second respondent, landlord and obtained an order of injunction. Apart from that, as on today, there is no arrears of rent and also there is no provision in the Tamil Nadu District Municipalities Act prohibiting the first respondent Municipality from renewing the licence without No Objection

Certificate from the landlord. The first respondent, at the instigation of the second respondent has passed the impugned order.

5. The learned counsel appearing for the second respondent submitted that since the lease period has been expired, the petitioner should vacate the premises and he cannot continue to run the restaurant in the leased premises after the expiry of the lease period.

6. The learned counsel appearing for the first respondent submitted that since the landlord raised objection for renewing the licence, the first respondent has passed the impugned order.

7. I have considered the rival submissions and perused the materials available on record.

8. Admittedly, the petitioner is a lessee under the second respondent. The licence was also granted to the petitioner by the first respondent in the year 2007 and the same was periodically renewed till 2017. Now, for the year 2018, the renewal has been refused on the ground that the petitioner did not get a no objection certificate from second respondent. The learned counsel appearing for the respondent 1 and 2 are not in a position to point out any specific provision in the Tamil Nadu District Municipalities Act, prohibiting the first respondent from renewing the licence without a no objection certificate from the landlord. When the licence has been granted and the licensee is complying with all the conditions, the renewal of licence cannot be denied merely on the ground that no objection certificate has not been obtained from the landlord. When there is a dispute between the landlord and the tenant, it cannot be expected that the landlord will come forward to give No Objection Certificate for renewing the licence. In the said circumstances, the first respondent Municipality cannot refuse to renew the licence merely on the ground that the landlord has not given No Objection Certificate, in that circumstances, the impugned order is liable to be set aside.

9. Accordingly, the writ petition is allowed and the impugned order is set aside and the first respondent is directed to renew the licence, if the renewal application is otherwise in order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

mrp

Sub Assistant Registrar

To

The Commissioner,
Pallavapuram Municipality,
3rd main road, New Colony,
Chrompet, Chennai - 600 044.

+2 ccs to Mr.P.Sidharthan, Advocate, S.R.No.83456
+1 cc to Mr.L.Chandrakumar, Advocate, S.R.No.83694
+1 cc to Mr.P.Srinivas, Advocate, SR No.84558
+1 cc to the Government Pleader, S.R.No.84040

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SSM(23/01/2019)



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