

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.03.2018

Coram

The Hon'ble Mr. Justice R. Subbiah
and

The Hon'ble Mr. Justice P.D. Audikesavalu

W.A.No.582 of 2018

and

C.M.P.Nos.5599 and 5600 of 2018

D. Govindaraj

...Appellant

Vs.

1. The Commissioner,
Villupuram Municipality,
Villupuram.

2. The Revenue Inspector,
Villupuram Municipality,
Villupuram.

3. The Revenue Officer,
Villupuram Municipality,
Villupuram.

...Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the portion of the common order, contained at Para No.9 of the judgment passed in W.P.No.29058 of 2017, on 14.11.2017 and thereby, directing the appellant for extension of time to vacate his shop, bearing No.2/Tax Assessment No.87, Old Bus Stand Complex, West Neruji Road, Villupuram Municipality, Villupuram.

W.P.No. 29058 of 2017 : -Petition under Article 226 of the Constitution of India praying that in the circumstances stated therein, and in the affidavit filed therewith the High court will be pleased to issue Writ of Certiorari Mandamus Calling for the records of the proceeding of 1st respondent urgent notice bearing in No.Na.Ka. No.7098/2014/A5 dated 02.11.2017 quash the same and thereby direct the respondents not to interfere in the peaceful possession and enjoyment of the petitioner business shop bearing Shop No.3 / Tax Assessment No.87 Old Bus Stand Complex West Neruji Road Villupuram Municipality Villupuram.

For Appellant

: Mr.P.Kannan

For Respondents

: Mr.V. Jayaprakash Narayanan
Special Government Pleader

JUDGMENT

(Judgement of the Court was delivered by R.Subbiah,J.)

This Writ Appeal is an inhouse Appeal, aggrieved against that portion of the common order rendered by the learned Single Judge, (more particularly, Para No.9) dated 14.11.2017, insofar as the writ petitioner in W.P.No.29058 of 2017 is concerned.

2. Heard Mr.P.Kannan, the learned counsel appearing for the appellant and Mr.V.Jayaprakash Narayanan, the learned Special Government Pleader, for the respondents.

3. Challenging the Eviction Notice issued by the first respondent/Municipality, dated 02.11.2017, directing the appellant and other tenants to vacate the shops, on the ground that, the building was in a dilapidated condition and it requires demolition/re-construction, the appellant and other aggrieved persons filed W.P.Nos.29058, 29059, etc., of 2017 (batch). The Writ Petitions were disposed of, by a common order, dated 14.11.2017. For better appreciation, the operative portion of the order is extracted herein below:-

"9. In view of the facts discussed supra and the fact that the building is in dilapidated condition, the respondents should give four months time to vacate the premises from today. If any of the petitioners seek for extension of time to vacate the shop, the time granted by this Court will automatically be withdrawn and the petitioners are deemed to have vacated the premises, and the Municipality will remove the belongings found in the premises and they are not responsible for damage of any of the belongings of the petitioners. If commercial complex is constructed and other things being equal, the petitioners shall be given preference with regard to the allotment of shop in the complex and that the petitioners shall pay the rent / lease amount that may be fixed by the respondents on that date.

10. With the above observation and direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed. Till such time the premises are vacated / evicted, if any untoward incident happens, the

petitioners shall take responsibility for the Civil and Criminal actions, after paying compensation to the affected persons."

4. Thus, by the order, (quoted supra) the Writ Petitions were disposed of, directing the respondents to grant four months time to the writ petitioner for vacating the shops, however, coupled with a rider that the writ petitioners shall not seek for extension of time to vacate the shop, in case, the petitioners sought time for vacation, the time granted by this Court would automatically be withdrawn and the petitioners were deemed to have vacated the premises. Aggrieved over that portion of the order, this intra Court Appeal is preferred by one of the writ petitioners, viz., the writ petitioner in W.P.No.29058 of 2017.

5. When the Appeal is taken up for hearing today, the learned counsel appearing for the appellant has produced an affidavit of undertaking filed by the appellant, wherein, it is stated as follows:-

" 3. I respectfully submit that, I undertake that I will vacate my shop bearing No.2/Tax Assessment No.87, Old Bus Stand Complex, West Neruji Road, Villupuram Municipality, Villupuram on 05.04.2018, and I hand over the vacant possession to the first respondent.

4. I respectfully submit that, if any portion of the building collapse and cause damage to the occupant of the appellant herein, on that account, the occupant of the appellant undertakes not to claim any damage from the first respondent. I undertake that, I will not ask any damage or compensation from the first respondent in respect of above shop.

5. I respectfully submit that in the event of demolition and reconstruction of the first respondent commercial complex or alteration/renovation of the existing first respondent commercial complex premises at No.94, Old Bus Stand Complex, West Neruji Road, Villupuram Municipality, Villupuram, the first respondent may be directed by this Court to allot one shop or the same shop respectively to the appellant herein.
"

6. Thus, having regard to the aforesaid affidavit solemnly sworn to by the appellant, undertaking to vacate the premises and handover the vacant possession to the first respondent/Municipality, on or before 15 April, 2018, nothing survives in this Writ Appeal for further adjudication. Resultantly, this Writ Appeal is closed. The said affidavit of undertaking shall form part of the record. No costs. Consequently, connected Miscellaneous Petitions are closed.

Xerox Copy of Affidavit of Appellate

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

sd

To

1. The Commissioner,
Villupuram Municipality,
Villupuram.
2. The Revenue Inspector,
Villupuram Municipality,
Villupuram.
3. The Revenue Officer,
Villupuram Municipality,
Villupuram.

+1cc to Mr.P.Kannan, Advocate SR.No.21576
+1cc to Mr.V.Jayaprakash, Advocate SR.No.22181

PA(CO)
GN(27/03/2018)

W.A.No.582 of 2018

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