

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:12.01.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.18437 of 2017 and
W.M.P.No.20004 of 2017

M.Malarvizhi

.. Petitioner

Vs.

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

2.The Zonal Officer,
Zone - VIII, Corporation of Chennai,
No.36B, Pulla Avenue Road,
Shenoy Nagar, Chennai - 600 030.

3.S.K.Gopalakrishnan

...Respondents

[R3 impleaded as per order dated
29.8.2017 in WMP.No.21880/2017]

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the 2nd respondent vide proceedings in Z.O.8.Va.Thu.Na.Ka.No.R1/513/2017 dated 10.05.2017 and quash the same and consequently direct the respondents herein to remove the lock and seal from the premises in No.30/15, Pulla Avenue, Shenoy Nagar, Chennai - 600 030 and allow the petitioner to reside there, in view of the undertaking of the petitioner that she will not run the Tiffin Centre without obtaining necessary license from the Corporation.

For Petitioner : Mr.G.Arul Murugan

For RR 1 & 2 : Mr.A.Nagarajan

For 3rd Respondent : Mr.R.Raman Laal

O R D E R

[Order of the Court was made by S.VAIDYANATHAN, J.]

The petitioner has come forward with this writ petition to call for the records of the 2nd respondent vide proceedings in Z.O.8.Va. Thu.Na.Ka.No.R1/513/2017 dated 10.05.2017 and quash the same and consequently direct the respondents herein to remove the lock and seal from the premises in No.30/15, Pulla Avenue, Shenoy Nagar, Chennai - 600 030 and allow her to reside there, in view of her undertaking that she will not run the Tiffin Centre without obtaining necessary license from the Corporation.

2.Heard both sides.

3.The petitioner's case is that the respondent officials have put up a lock and seal of the premises on the ground that the petitioner cannot run the tiffin shop without holding a licence and that the tiffin shop may be removed for the purpose of enabling the petitioner to reside in the said place and that she is willing to give undertaking that she will not run the tiffin centre without obtaining necessary licence from the Corporation.

4.The petitioner had approached this Court earlier seeking for a mandamus when there was a lock and seal put up by the Corporation. This Court, while disposing of the writ petition, directed the respondent officials to consider the request of the petitioner dated 16.03.2017 and that the Court made it very clear that if the petitioner is a tenant, the authorities have to serve notice on the owner of the premises and thereafter, pass necessary orders, and, as far as running of the hotel in the premises is concerned, the tenant should obtain the consent of the owner. The petitioner would contend that she is residing there for the past 45 years and that she is not a tenant of the 3rd respondent, who was impleaded by this Court. Further, she submitted that due to personal enmity, the 3rd respondent is making complaints, due to which, action has been initiated by the Corporation.

5.The learned counsel for the 3rd respondent would submit that on account of the storm in the year 2015, the petitioner was asked to reside/stay in the open place which she has converted into a tiffin centre and that she is not the owner of the premises and the 3rd respondent never gave consent to the petitioner either for continuously residing in the place or for running the tiffin centre. Further, he submitted that there is no locus for the petitioner to seek for staying in the premises of the 3rd respondent and to run the tiffin centre.

6.The Corporation has filed a counter affidavit, wherein it is stated that notice has been served on the owner and that the petitioner is residing in the address at No.30/15, Pulla Avenue, Shenoy Nagar, Chennai - 600 030. It is also stated that the building put up within a shed is not suitable for residing purpose. Admittedly, the petitioner has not produced any document to show that either she is the owner of the property or a tenant of the 3rd respondent and also not produced any document that she has got permission either to stay or to run a canteen/tiffin centre.

7.Earlier, the 3rd respondent had filed a petition before the State Human Rights Commission in SHRC.No.537 of 2017 stating that the petitioner has encroached the platform in front of his house cum shop and built a shed running a tiffin centre and also that the 2nd Respondent has not stated as to the result of the said petition. The 3rd respondent submitted that the Human Rights Commission has directed the authorities viz., the Corporation to take appropriate action.

8.If the petitioner contends that she is residing there as a tenant and that she has got right to continue to run the business or to reside in the said place belonging to the 3rd respondent, the writ petition is not an alternative remedy. The petitioner will have to workout the remedy before the appropriate forum. The relief sought for by the petitioner enabling this Court to give a helping hand for the petitioner to reside in the address mentioned supra on the ground that she will not run the tiffin centre without obtaining necessary licence from the Corporation, cannot be a ground to grant the same. By getting an order from this Court, the petitioner may try to run the tiffin centre and this Court cannot be a party to the illegality.

9.Therefore, the petitioner is directed to remove the canteen/tiffin centre within a period of 15 days from the date of receipt of a copy of this order, failing which, it is open to the respondent Corporation to remove the shed/tiffin centre with the assistance of the jurisdictional police.

10.In view of the above, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

2.The Zonal Officer,
Zone - VIII, Corporation of Chennai,
No.36B, Pulla Avenue Road,
Shenoy Nagar, Chennai - 600 030.

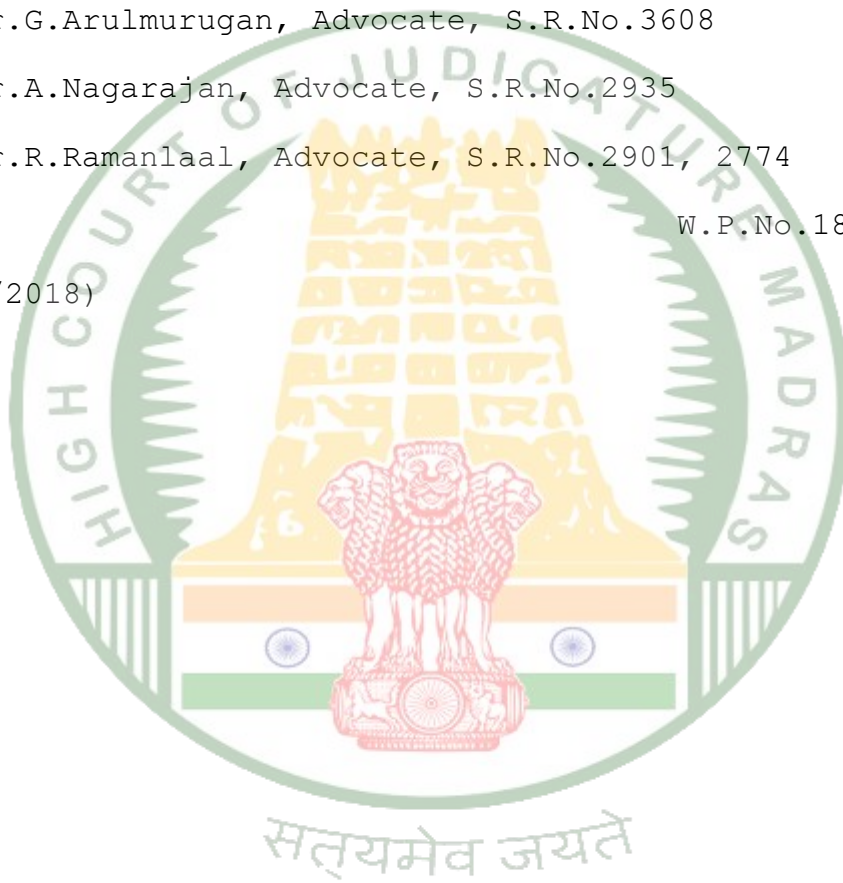
+1cc to Mr.G.Arulmurugan, Advocate, S.R.No.3608

+1cc to Mr.A.Nagarajan, Advocate, S.R.No.2935

+2cc to Mr.R.Ramanlal, Advocate, S.R.No.2901, 2774

W.P.No.18437 of 2017

AK(CO)
RRK(02/02/2018)



WEB COPY