

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.07.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.41284 of 2006
and
M.P.No.1 of 2006

T.Munisamy

... Petitioner

Vs.

1. Mrs.T.Puviarasi
Ex. Municipal Chairman,
Gudiyatham Municipality,
Vellore.

2. The Commissioner,
Gudiyatham Municipality,
Vellore.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the order dated 27.10.2006 of the respondents in their proceedings Na.Ka.No.A1/9227/06 in pursuant to the resolution No.222 passed on 08.09.06 by the respondents herein and quash the same.

For Petitioner : Ms.Rita Chandrasekar

For Respondents : R1 Dismissed vide
Order Dated 30.09.2011

Mr.K.Ravikumar

Additional Government Pleader for R2

O R D E R

The petitioner filed a Writ Petition, challenging the order dated 27.10.2006 of the respondents proceedings Na.Ka.No.A1/9227/06 in pursuant to the resolution No.222 passed on 08.09.2006 by the respondents herein and quash the same.

2. The case of the petitioner is that he is the Member of the Gudiyatham Municipality Shop Merchant Welfare Association, he is also having a shop and doing General Merchant business at shop No.10, J.K.Chetty Street, Gudiyatham. There are more than 100 shops situated in the J.K.Chetty Street, Gudiyatham which belongs to the respondents Municipality. The respondents municipality conducted public auction in the year 1968. The

above said Association Members were participated in the public auction and the petitioner became the highest bidder and thereby the lease was confirmed in favour of the petitioner. The petitioner was doing his business in the above said shop till date there was no complaint regarding the rent payment. He paid the rent without delay and there is no arrears of rent till date. The lease was renewed each and every 3 years.

3. The building was constructed in the year 1968 is sub-standard and thereby the construction and the wood used for making door and its frame, windows and doors comes to the status of dilapidated condition in the year 1978. Thereby each and every shop owners was permitted by the respondent to repair the shops and remove the wooden doors and frames enable them to install rolling shutters on the heavy investment of the lessees. On contra, they have permitted orally on receipt of the heavy bribe for getting repaired the shops by the staffs of the municipality from the year 1968 to till date.

4. Earlier, Secretary of the Gudiyatham Municipality Shop Merchant Welfare Association filed a Writ Petition in W.P.No.15868/04 challenging the resolution No.88, dated 31.05.2004, wherein the respondent decided to bring the shops for public auction which was challenged before this Court. This Court passed an interim order on condition that the Association should pay the entire arrears of rent upto and also pay the future rent from 01.07.2004 at an enhanced rate of 15% over and above the existing lease rent 31.08.2004. As per interim direction he is regularly paying the rent to the respondent municipality. On 28.07.2006 issued a notice called upon him to explain why he has changed the superstructure without permission which is against the lease condition for that why the respondent should not take action to cancel the lease and thereby the petitioner has been directed to remove the same within 24 hrs. Again on 10.08.2006, the show cause notice has been issued for the same purpose. He gave an explanation explaining that he has not changed the structure of the shop or additionally constructed or altered against the lease conditions but he has repaired the shops for enabling the petitioner to run the shop as per lease condition. However, the respondent passed the impugned order cancelling the license granted in favour of the petitioner against which this writ petition is filed.

5. The learned counsel for the 2nd respondent filed a counter. In his counter statement he has stated as follows:

The Municipality despite the averments the shop was constructed in the year 1968. However, this Court directed that the petitioner should pay entire arrears upto that date and also a future rent from 01.07.2004 at the enhanced rate of 15% rent over and above the existing lease rent. The petitioner altered

the superstructure without permission of the 2nd respondent/Municipality. However, the request of the petitioner for repairing the superstructure was rejected on 08.04.2002, even thereafter without consent of the 2nd respondent the petitioner has made repair works and changed the superstructure. Hence, the 2nd respondent/Municipality cancelled the license granted in favour of the petitioner.

6. The learned Counsel appearing for the petitioner would submit that initially the 2nd respondent/Municipality passed a resolution No.88, dated 31.05.2004. Wherein the 2nd respondent decided to bring the shops for public auction and the said resolution was challenged before this Court in W.P.No.15868 of 2004 and this Court by its Order dated 19.03.2005 granted interim stay and subsequently made absolute. Thereafter, on 20.07.2006 the petitioner made a representation to the 2nd respondent stating that on 19.07.2006 at about 3.30 p.m. a portion of the roof of the shop was fell down and thereby the petitioner requested the 2nd respondent/Municipality to permit the petitioner to repair the shop on his own expenses and he assured that he will not claim the expenses incurred for the repair works.

7. However, on 28.07.2006 the 2nd respondent issued a show cause notice calling upon the petitioner to explain how the petitioner changed the superstructure without present of the 2nd respondent Municipality. The petitioner filed a detailed representation that the superstructure was altered only on the oral permission of the 2nd respondent Municipality. Even thereafter the 2nd respondent passed a impugned order dated 27.10.2006, which is unsustainable one. The petitioner entitled to renew the shops after expiry of three years on enhancement of 15% of the rent amount. All those things were not considered by the 2nd respondent/Municipality and issued a impugned Order directing the petitioner to vacate the shop is unsustainable one.

8. The learned Additional Government Pleader appearing for the 2nd respondent would submit that the said property was auctioned in the year 1968 with the condition that the petitioner should not alter the superstructure. Contrary to the above said condition the petitioner altered the superstructure and continuously occupied the premises from the year 1968 without allowing the Municipality to conduct public auction. Since the 2nd respondent Municipality has not conducted any public auction, the valuable property of the Municipality was continuously under the possession of the petitioner, for which the 2nd respondent Municipality is not able to earn more income. Accordingly, he prayed for dismissal of the writ petition. He further submit that on perusal of the affidavit filed by the

petitioner in paragraph No.4 it is stated that in the year 2002 the respondent has allowed the petitioner to repair his shop on his own expenses is contrary to the facts and there is no proof.

9. The undisputed facts are, the 2nd respondent constructed Municipality Shops in the year 1968 and the petitioner participated in the public auction. Subsequently, a shop is renewed in favour of the petitioner at the enhanced rate of 15%. In the year 2002 the petitioner made a representation for alteration of superstructure, however on 08.04.2002 the 2nd respondent/Municipality rejected the request made by the petitioner. Even thereafter without consent of the 2nd respondent the petitioner altered the superstructure, for which the 2nd respondent passed an impugned order by cancelling the license and directed the petitioner to hand over the vacant shop and the same was brought to the notice of the Councils of Municipality. Accordingly, the Municipality passed a resolution No.222, dated 08.09.2006, granting permission to the 2nd respondent/Municipality to vacate the shop. Based on the resolution the 2nd respondent/Municipality by its order dated 27.10.2006 directed to petitioner to hand over the vacant shop.

10. Admittedly, the petitioner is continuously enjoying the property from 1968 for one or other reasons, the Municipal authorities are empowered to allot the shops by granting license, by exercising the powers under Section 303 of the Tamil Nadu District Municipalities Act. While exercising such powers the Municipal Authorities have to take the largest interest of the society into consideration. Certain persons like petitioner merely because of they bid at auction they become successful bidders and they entitle to enjoy the right for certain period. Even thereafter they allow to continue by way of renewing the license in their favour for unlimited period it will affect the incomes of the 2nd respondent/Municipality. Therefore the petitioner is not entitled to continue in possession for the shop owned by the Municipality under the rights of any event and the properties of the local bodies cannot be allowed to effect in perpetuity.

11. In this context, the respondents referred to a Division Bench judgment of this Court in A.Sathar Vs. The District Collector, Coimbatore and another reported in AIR 1998 Madras 217, wherein this Court held in paragraph 2 is as follows:-

"2....We are of the view that the extension of the lease to the appellant is against the interest of the Panchayat. As already noticed the rental income from the properties owned by the Panchayat is one of the sources of income to the Panchayat. Therefore, the interest of the Panchayat cannot be jeopardised by permitting the appellant to continue in possession of the premises in question at the enhanced rate of 15 per cent as

prayed for. There are absolutely no merits in this writ appeal and the same is dismissed."

12. In this context, it is further necessary to refer the following decision in the case of DCW Ltd. Vs. The State of Tamil Nadu and others reported in AIR 2005 MADRAS 264. The following passages found in paragraph nos. 14 and 23 of the said judgment is as follows:

"14.It is well settled in the aforesaid decisions that property belonging to the Government or an instrumentality of the State is not private property, and hence it cannot be disposed off at the sweet will of the authorities in any manner they choose. Such property can only be given by the State or instrumentality of State ordinarily through public auction/public tender as held in Selvarani's case cited supra (2005 (1) CTC 81). Public property is not largesse which can be given by the Government to anybody. Since the appellant was given the grant only as temporary occupation for a period of twelve years, they cannot insist that the grant be continued even after twelve years as of right. If the appellant has made any investment on the said land they should have realized that after twelve years they have to vacate the land, and it is not that they have a right to continue in possession of the land till eternity. The appellant has no monopoly over the said land which belongs to the Government. After expiry of the lease the public property should be put to public auction/public tender after advertising it in well-known newspapers having wide circulation, so that there is transparency in the matter and all eligible persons can apply. In this way, Article 14 of the Constitution of India will be complied with, otherwise it will be violated.

23.Moreover, in our opinion, the petitioner's conduct also disentitles it for relief under the discretionary jurisdiction of Article 226 of the Constitution. When a person remains in occupation of a property, even after his grant has expired, he is not acting in a fair manner. There was no fresh grant or renewal in favour of the petitioner after 12 years period, which expired on

31.03.2003. Without a fresh grant of lease, the occupation of the land in question by the petitioner was totally illegal and unauthorized. We are not inclined to exercise our discretion under Article 226 of the Constitution in favour of such unauthorized occupants, whatever may be the merits of the case....."

13. In the present case the petitioner has altered the superstructure without consent of the Municipality and the same was noticed by the Councils of Municipalities. Thereafter, the Councils passed a resolution and decided to evict the petitioner and the said resolution is binding on the Commissioner. Accordingly the Commissioner passed the present impugned order directing the petitioner to hand over the shop.

14. However, no records were placed before this Court, to show that permission was granted by the 2nd respondent/Municipality to the petitioner as well as the shop owners to alter the superstructure. In the absence of any such material for altering and constructing the superstructure without consent of the Municipality, I am not inclined to interfere with the order impugned in this writ petition.

15. In view of the above discussions and the decisions cited supra, I do not find any error in the impugned order passed by the Municipality. Hence, the Writ Petition stands dismissed. However, there will be no order as to Costs. Consequently, the connected Miscellaneous Petition is closed.

dh

Sd/-

Assistant Registrar (CS-VI) -

// True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

The Commissioner,
Gudiyatham Municipality, Vellore.

+1 CC TO MRS.RITACHANDRASEKAR, ADVOCATE SR 43118

KR/8/10/18

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and
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