

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.24955 of 2007
and
M.P.Nos.1,2 & 3 of 2007

P.Gurunathan

Versus

... Petitioner

1.The District Collector,
Chennai District,
Mr.Singaravelar Maligai,
Rajaji Salai,
Chennai - 600 001.

2.The Executive Engineer,
The Public Works Department,
Marina Division,
Chepauk, Chennai - 600 005.

3.The Revenue Divisional Officer,
Fort-Tondiarpet Taluk,
Periamet,
Chennai - 600 003.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the proceedings Aa4/22286/2005, dated 26.06.2007 passed by the 3rd respondent and quash the same.

For Petitioner

:

Mr.K.Kannan

For Respondents

:

Mr.R.Ravikumar,
Additional Government Pleader.

ORDER

The petitioner has filed this writ petition to call for the records pertaining to the proceedings Aa4/22286/2005, dated 26.06.2007 passed by the 3rd respondent and quash the same.

2. The petitioner participated in the public auction to run a canteen in Ezhilagam Building, Chepauk on 17.07.1998 and he was declared as a successful bidder. His offer of Rs.2,75,000/- towards advance lease rent was accepted by the respondents and he was granted lease to run the canteen from 21.08.1998 to 20.09.1999. An agreement was executed between the petitioner and the second respondent as per which the lease can be renewed on payment of 10% of the advance lease rent namely Rs.27,500/-. According to the petitioner, the business premises where he was running a canteen was sealed by the respondents on the ground that he was running the canteen without obtaining licence, while the other leasehold premises were not sealed and they were also running without licence. Thus, according to the petitioner, he alone was discriminated and his business premises was sealed. The petitioner filed WP No. 1691 of 1999 challenging the action of the respondents in sealing the premises in which an interim order was passed by this Court on 12.12.1999 to remove the seal. Accordingly, the seal was removed and the petitioner was inducted in the leasehold premises. The petitioner, complaining that he incurred loss between the period from 05.01.1999 to 18.02.1999 during which the business premises was sealed, filed a suit in O.S. No. 4713 of 1999 before the VIII Assistant Judge, City Civil Court, Chennai and it was decreed on 12.07.2004. In the meantime, as the period of lease granted to the petitioner expired, he sought for refund of the security deposit of Rs.27,500/- which he paid at the time of executing the agreement of lease, but it was refused by the second respondent. The petitioner therefore filed another O.S. No. 5353 of 2000 before the XVIII Assistant Judge, City Civil Court, Chennai for return of the amount with interest. The suit was decreed on 19.04.2002 and the petitioner also filed E.P. No. 346 of 2003 before the X Assistant Judge, City Civil Court, Chennai to recover the decreed amount. At this stage, the third respondent issued a notice dated 26.06.2007 calling upon the petitioner to pay Rs.85,156/- towards arrears of rent and electricity charges. According to the petitioner, he has paid the security deposit besides paid the electricity consumption charges during the period of lease and therefore, he need not pay any amount to the respondents. Therefore, the petitioner has filed this writ petition challenging the notice dated 26.06.2007 issued by the third respondent.

3. The learned counsel for the petitioner, while reiterating the averments contained in the affidavit filed in support of the writ petition, would contend that the petitioner need not pay any amount to the respondents. The impugned notice was issued by the third respondent as a counter blast to the suits filed by the petitioner and to harass him. The amount

indicated in the impugned notice, without any break up, cannot be accepted. The demand made in the impugned notice is time barred and the notice in Form No.4 under the Revenue Recovery is defective.

4. The learned Additional Government Pleader would contend that the petitioner vacated the premises on 07.12.1999, whereas, the lease period was over on 20.08.1999. Earlier, the respondents issued a notice dated 08.07.1999 calling upon the petitioner to vacate the premises, but continued to occupy the premises in question. Thus, the petitioner over stayed in the lease hold premises from 21.08.2009 to 07.12.1999 for 173 days. The rent is calculated for the 173 days at Rs.81,737/- including electricity charges at Rs.3,419/-, thus a total sum of Rs.85,156/- is payable by the petitioner. Further, apart from the two suits referred to by the petitioner in the affidavit, the petitioner has also filed a suit in O.S. No. 5353 of 2000. In that suit, the Court, while decreeing the suit, directed the respondents to refund the caution deposit of Rs.27,500/- with interest at the rate of 6% and at the same time gave liberty to take necessary action separately to collect the rental arrears from the petitioner through Revenue Recovery Act. Accordingly, the amount of Rs.27,500/- with interest at 6% was paid to the plaintiff on 04.08.2003. Further, as per the judgment passed in the above suit, a letter dated 23.06.2005 was sent to the Collector of Chennai to recover the dues payable by the petitioner to the Government under Revenue Recovery Act.

5. The learned Additional Government Pleader would further contend that the other suit filed in O.S. No. 4713 of 1999 by the petitioner was partly allowed on 12.07.2004 directing the defendants to pay Rs.62,650/- towards the loss incurred by the petitioner during the period when the business premises was sealed. As against the Judgment in O.S. No. 4713 of 1999, the Executive Engineer, Marina Division filed an appeal in A.S. No. 241 of 2006 and it was allowed on 22.03.2007 setting aside the decree and Judgment passed by the trial court. It is further submitted that the petitioner received the entire amount of Rs.27,500/- remitted by him on the basis of the decree and judgment dated 19.02.2002 passed in O.S. No. 5353 of 2000 without permitting the respondents to adjust the amount which he has to pay. Therefore, the respondents were left with no other alternative except to recover the amount from the petitioner. The amount indicated in the notice, which is impugned in this writ petition, is payable by the petitioner for his overstay in the premises towards rent and electricity charges. The petitioner has conducted business in the premises beyond the period of lease and therefore, he is liable to pay the amount as indicated in the impugned notice. It was further stated that this Court granted interim stay on 24.07.2007 in MP No. 1 of

2007 in WP No. 24955 of 2007 whereby the respondents could not recover the amount from the petitioner. The learned Government Advocate therefore prayed this Court to dismiss the writ petition and to permit the respondents to recover the amount due to the Government.

6. Heard the counsel for both sides. It is seen from the records that the amount sought to be recovered from the petitioner represents the arrears of lease rent and electricity consumption charges. It is not in dispute that the petitioner, even after expiry of the lease period, had conducted business in the premises for 174 days. In other words, the lease expired on 21.08.2009 and the petitioner vacated and handed over the premises only on 07.12.1999. Thus, for the period of occupation of the business premises, the petitioner is bound to pay the lease rent together with electricity charges. In order to recover the amount indicated in the notice, which is impugned in this writ petition, the respondents have invoked the Revenue Recovery Act after writing a letter dated 23.06.2005 to the Collector of Chennai to recover the dues payable by the petitioner to the Government under Revenue Recovery Act. The impugned notice was issued in compliance with principles of natural justice and it cannot be said that the impugned notice is not in order. The dues sought to be recovered from the petitioner is the lawful due payable or to be remitted to the Government and the respondents, after following the due procedure under law, have issued the notice which is impugned in this writ petition to recover the dues from the petitioner. The impugned notice therefore cannot be interfered with by this Court. Moreover, it is seen from the records that the interim stay granted in the writ petition on 24.07.2007 was vacated by this Court on 31.10.2017 and therefore, there is no embargo for the respondents to recover the amount from the petitioner.

7. Accordingly, the writ petition is dismissed. No costs. Consequently, connected MP Nos. 2 and 3 are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Chennai District,
Mr.Singaravelar Maligai,
Rajaji Salai,
Chennai - 600 001.

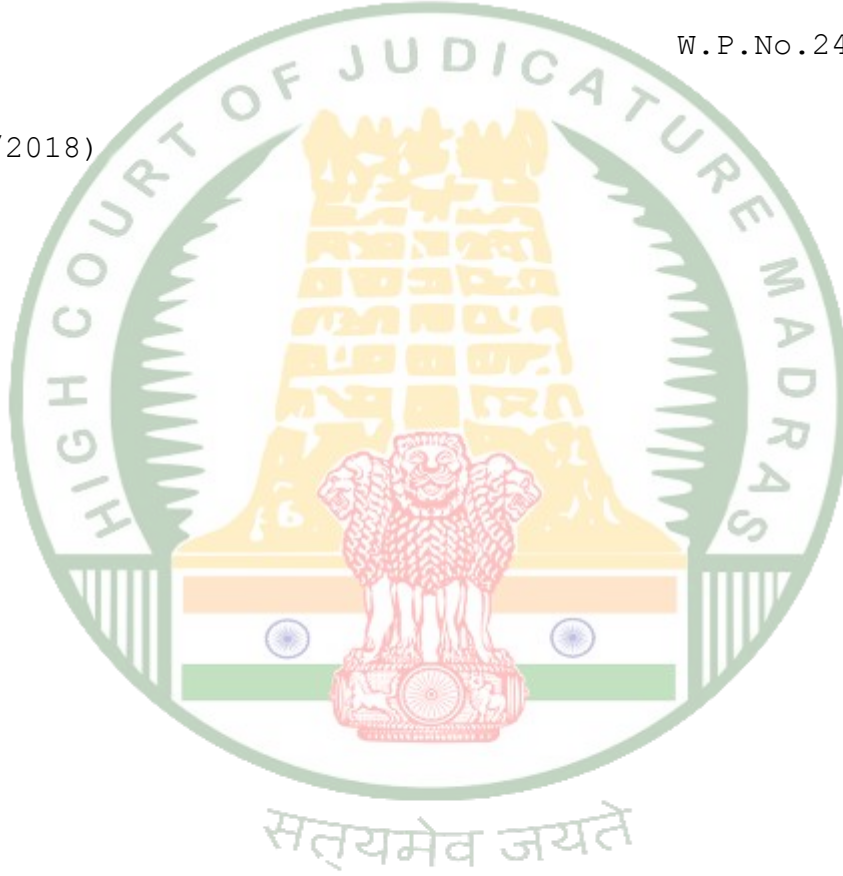
2.The Executive Engineer,
The Public Works Department,
Marina Division,
Chepauk, Chennai - 600 005.

3.The Revenue Divisional Officer,
Fort-Tondiarpet Taluk,
Periamet,
Chennai - 600 003.

+1cc to Mr.K.Kannan, Advocate, S.R.No.49547

W.P.No.24955 of 2007

GSP(05/09/2018)



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