

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28..09..2018
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.29705 of 2017 & W.M.P.No.32023 of 2017
and
W.P.No.5806 of 2018 & W.M.P.No.7143 of 2018

W.P.No.29705 of 2017

D.Aruldass Praveen ...2nd Respondent in WP.NO.5806/18

... Petitioner in WP.NO.29705/17

-Versus-

1.State Rep. by its Commissioner,
Uthagamandalam Municipality,
Uthagamandalam,
The Nilgiris District. ...1st Respondent in both the WPs

2.Devadoss, *
National Bakery,
UMC Market (Near Annathani Coffee),
Uthagamandalam,
The Nilgiris District. Petitioner in WP.5806/18
2nd Respondent in WP.29705/17

[*Impleaded as per order dated 22.11.2017
in W.M.P.No.32757 of 2017]

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the 1st respondent - Commissioner, Uthagamandalam Municipality, to grant license to the petitioner with respect to the Tea Stall premises in Ooty Market No.6, IUUDP Stall, MS Lane or in the alternate directing the Respondent to conduct auction for all sub-let shops in the Ooty Market including the above said Tea Stall premises and OOTY Market in No.6IUUDP STALL MSLANE

W.P.No.5806 of 2018

V.Devadoss

..... Petitioner

-Versus-

1.The Commissioner,
Uthagamandalam Municipality,
Uthagamandalam,
The Nilgiris District.

2.D.Aruldoss Praveen

..... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing 1st respondent - Commissioner, Uthagamandalam Municipality to extend the lease for the shop premises bearing No.6, Udhagamandalam Market, Udhagamandalam, The Nilgiris District, in favour of the petitioner for further period.

For Petitioner : Mr.I.John Arockiadas for petitioner in W.P.No.29705 of 2017 and 2nd respondent in W.P.No.5806 of 2018

For Respondent(s) : Mr.P.Srinivas, Standing Counsel for the 1st respondent in W.P.No.29705 of 2017 and W.P.No.5806 of 2018

Mr.K.Sabapathi for 2nd respondent in W.P.No.29705 of 2017 and Petitioner in W.P.No.5806 of 2018

COMMON ORDER

(i) The writ petition in W.P.No.29705 of 2017 has been filed seeking a direction to the respondent - Commissioner, Udhagamandalam Municipality, to grant license to the petitioner in respect of Tea Stall premises in Ooty Market No.6, IUDD Stall, MS Lane or in the alternate to conduct auction for all sub-let shops in the Ooty Market including the above said Tea Stall premises.

(ii) The writ petition in W.No.5806 of 2018 has been filed seeking a direction to the 1st respondent - Commissioner, Udhagamandalam Municipality to extend the lease for the shop premises bearing No.6, Udhagamandalam Market, Udhagamandalam, The Nilgiris District, in favour of the petitioner for further period.

2. Since the issues involved in both the writ petition are interlinked, both the writ petitions were clubbed and heard together and the same are being disposed of by means of this common order.

3. The petitioner in W.P.No.29705 of 2017 claims to be the sub-lessee under the petitioner in W.P.No.5806 of 2018. The petitioner in W.P.N.29705 of 2017 has been arrayed as 2nd respondent in W.P.No.5806 of 2018. [The petitioner in W.P.No.5806 of 2018 claims to be licensee. According to him, the petitioner in W.P.No.29705 of 2017 has been in unlawful possession of the shop in question.] For the sake of convenience, hereinafter, the petitioner in W.P.No.29705 of 2017 will be referred to as "the sub licensee" and the petitioner in W.P.No.5806 of 2018 will be referred to as "the licensee". Let us now cull-out the cases as projected by the respective parties.

4. The case of Mr.V.Devadoss (licensee) is that the shop in question belongs to the respondent municipality and a license was granted to him to run tea stall by respondent municipality by order dated 14.10.2009. He has been paying rent regularly to the respondent municipality without any default fixed by them from time to time. According to licensee, the petitioner in the other writ petition joined as salesman in his tea stall in the year 2010. Till 2016 there was no problem. In the year 2016, the sub licensee prevented him from entering into the shop and he has started doing his own tea stall business. In the said circumstances, the licensee made a police complaint against sub licensee alleging that he behaved in an unruly manner and has taken over the possession of the premises illegally against the interest of the licensee. But, no action was taken on the complaint. Thereafter, the licensee submitted a complaint to the Commissioner, Udhagamandalam Municipality, to take action against the sub licensee for his illegal occupation, for which, the sub licensee issued a reply on 09.02.2017 taking a stand that the Commissioner cannot initiate any action against him. Thereafter, on 09.02.2017 municipality sent a notice to the licensee stating that he had sub-let the premises to the sub licensee and therefore, possession should be handed over to the municipality. The respondent municipality has also sent another notice dated 18.04.2017 directing the licensee to hand over the key of the shop to the respondent municipality. Thereafter, on 11.05.2017, the respondent municipality directed the licensee to pay the arrears of rent of Rs.2,46,107/- . On 17.05.2017, licensee had paid the entire arrears of rent as demanded by the respondent municipality by way of demand draft. In the mean time, the sub licensee filed a writ petition in W.P.No.11949 of 2017 seeking a direction to the respondent municipality to grant license in his name in

which though the original licensee was arrayed as a party respondent no notice was served on him and the writ petition was disposed of by order dated 15.06.2017 at the admission stage itself wherein the sub licensee was permitted to participate in the auction for the allotment of the shop in question. According to the original licensee, despite the fact that the respondent municipality has recognized him as licensee, the sub licensee has been carrying on the business in the shop premises illegally. Since, he is the original licensee and he had paid the entire license amount, he has come up with W.P.No.5806 of 2018 seeking a direction to the respondent municipality to extend the license already granted in his name for further period.

5. The case of Mr.D.Aruldass Praveen (sub licensee) is that the shop in question belongs to the respondent municipality and he has been running Tea Stall in the above shop premises for more than 10 years. According to him, originally the shop was licensed to Mr.Devadoss (licensee), but, he sub-let the premises to him in the year 2005, as he could not run his business profitably for which he paid a sum of Rs.7,00,000/-. Even since the date of sub-let he has been running tea stall in the premises. He has been paying rent and other charges to the respondent municipality regularly without any default. He was not aware of the legal position that shop premises belonged to the respondent municipality cannot be sub let. In the said circumstances, when he approached the original licensee and enquired him regarding the legal position, he was informed that it was the usual practice to sub let the premises to third parties. Thereafter, according to the sub licensee, on 10.04.2016, the original licensee came with goondas and threatened him to handover the possession and criminally intimidated him. Hence, he filed a police complaint against the original licensee. Even though, he paid a sum of Rs.7,00,000/- as advance and spent a sum of Rs.15,00,000/- to renovate the shop, he was forced to vacate the premises and the municipality sealed the premises. Therefore, earlier he filed a writ petition in W.P.No.11949 of 2017 seeking a direction to the respondent municipality to grant license in his name in which though the original licensee was arrayed as a party respondent no notice was served on him and the writ petition was disposed of by order dated 15.06.2017 at the admission stage itself wherein the sub licensee was permitted to participate in the auction for the allotment of the shop in question. Even thereafter, the shop has not been opened and possession has not been given to the sub licensee. In the said circumstances, the writ petition in W.P.No.5806 of 2018 for the relief as already stated above.

6. I have heard the learned counsel for the licensee and the learned counsel for the sub licensee and also the learned counsel for the respondent municipality.

7. It is an admitted fact that a license was granted to petitioner in W.P.No.5806 of 2018 as early as in the year 2009 and that the has been subsequently extended from time to time till 31.03.2017, thereafter, the license has not been extended. It is the case of the respondent municipality that the original licensee had sub let the premises to the sub licensee and he was carrying on tea stall in the same. After inspection of the premises, the respondent locked and sealed the premises. Thereafter, the sub licensee filed W.P.No.11949 of 2017 and this court by order dated 15.06.2017 while disposing of the writ petition passed the following order:

"6. Though the petitioner does not have neither a legal right nor a vested right, the fact remains that he has been running the tea stall, but now the license itself has been cancelled. Therefore, this Court is of the view that till the auction is completed and the successful tenderer is identified, it would be appropriate to permit the petitioner to run the tea stall since in the process the first respondent also would be benefited. There is no necessity to hear the second respondent since his license has already been cancelled.

7. In such view of the matter, a direction is issued to the first respondent to complete the process of auction of the tea stall in question within a period of three months from the date of receipt of a copy of this order. Till such time, the petitioner is permitted to run the same subject to the requisite payment to the first respondent. Therefore, the first respondent is directed to remove the lock so as to enable the petitioner to run the tea stall as indicated above. The petitioner is also at liberty to take part in the proposed auction."

The above said order was not challenged by anybody and the same had become final and pursuant to the same, the respondent municipality has to conduct a public auction in respect of the shop in question. Now, the original licensee has come up with W.P.No.5806 of 2018 seeking for a direction to the respondent municipality to extend the period of license for another term. In the considered opinion of this court, such a relief cannot be granted to him for two reasons (i) that the license already granted to the licensee had already come to an end as early as

on 31.03.2017 and (ii) that the license which was granted to the original licensee had already been cancelled by the municipality on the ground that he had sub let the premises to the petitioner W.P.No.29705 of 2017. The said order has not been challenged by the either by the licensee or sub licensee. However, this court by order dated 15.06.2017 in W.P.No.11949 of 2017, which was filed by the sub licensee, had directed the respondent municipality to conduct public auction for the shop premises in question and the same has become final. Even though the argument advanced by the learned counsel for the original licensee that the licensee was not served with any notice and the writ petition was disposed of at the admission stage itself is attractive, this court does not find any force in the same as even after the order of this court came to the knowledge of the original licensee, he had not chosen to challenge the same. Therefore, the order dated 15.06.2017 made in W.P.No.11943 of 2017 binds on the original licensee. In the above circumstances, the relief sought for by the licensee cannot be granted.

8. Coming to the writ petition filed by the sub licensee, as already stated above, on his writ petition only, this court directed the municipality to conduct fresh public auction in respect of the shop premises in question and therefore, the relief sought for by him also cannot be granted. Thus, as of now, the only option available to the respondent municipality is to go ahead with the fresh auction. Therefore, this court finds no merit in W.P.No.29075 of 2017 also.

9. For the foregoing discussions, both the writ petitions are liable to be dismissed. However, considering the fact that despite order of this court to conduct fresh auction, the respondent municipality could not proceed further with auction on account of pendency of these writ petitions. Therefore, this court hereby directs the respondent municipality to conduct public auction for granting license in respect of the shop premises in question within a period of three months from today. It is made clear that it is always open to the petitioners in these writ petition to participate in the public auction being conducted by the respondent municipality.

10. In the result, the writ petitions are dismissed. No costs. Consequently, connected WMPs are closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Commissioner, Uthagamandalam Municipality,
Uthagamandalam, The Nilgiris District.

+1cc to Mr.I.John Arockiadas , Advocate SR.No. 67772

W.P.No.29705 of 2017
and
W.P.No.5806 of 2018

ASK(06/12/2018)



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