



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A(MD)NO.1640 OF 2011

and

M.P(MD)No.1 of 2011 and 1 of 2012

S.Nazir

: Appellant/Petitioner

.vs.

1. The State of Tamil Nadu,
by Secretary to Government,
Municipal Administration and Water
Supply Department, Secretariat,
Fort St.George, Chennai.

2. The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli.

: Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.1489 of 2008, dated 09.12.2011.

Prayer in WP(MD). 1489/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, calling for the records of the 2nd respondent s order dated 2.2.2008 and the subsequent tender notice dated 4.2.2008 and quash the same and consequently direct the respondent to consider the petitioner s case under G.O.92 of 2007 dated 10.8.2006.

For Appellant

: Mr.S.Meenakshisundaram

Senior Counsel

for Mr.R.Manimaran

For Respondent-1

: Mr.C.M.Mari Chelliah Prabu

Addl.Govt.Pleader

For Respondent-2

: Mr.Aayiram K.Selvakumar

JUDGEMENT

[Judgement of the Court was made by **K.RAVICHANDRABAABU, J.**]

The unsuccessful Writ Petitioner is the appellant before us.

He filed the Writ Petition challenging the order, dated 02.02.2008 issued by the Commissioner, Tirunelveli Municipal Corporation, Tirunelveli and the subsequent tender notice, dated



04.02.2008 solely relying upon G.O.92 of 2007, Municipal Administration and Water Supply Department, dated 03.07.2007.

2.The Petitioner is running a Bunk Shop and the same was let out to his father by the second respondent/Corporation, pursuant to a resolution passed to that effect. However, the second respondent/Corporation latter has chosen to cancel the licence by passing another resolution, dated 28.10.2004. Further, it is seen that the Petitioner filed a Writ Petition before the Principal Bench of this Court in W.P.No.25201 of 2006, seeking for a mandamus directing the respondents therein to transfer the lease in favour of the Petitioner in respect of the subject-matter shop, since the Petitioner's father had already been granted lease of the said shop and paying rent to the second respondent/Corporation. An order was passed in the said Writ Petition on 10.08.2006 directing the respondents therein to permit the Petitioner to pay 25% of the enhanced rent over and above the existing rent and to pay the arrears as well, with further direction to the second respondent/Corporation to permit the Petitioner to continue in possession of the subject-matter bunk shop on the above terms, till the auction is called for. Thereafter, the second respondent/Corporation issued an auction notification on 04.02.2008 and also called upon the Petitioner to vacate and hand over the possession of the subject-matter bunk shop through communication, dated 02.02.2008. Both the above said proceedings are put to challenge before this Court in the present Writ Petition.

3.The learned Single Judge dismissed the Writ Petition by observing that the Petitioner's earlier attempt in W.P.No.25201 of 2006 was not fruitful and that he was allowed to continue till the auction was called for. The learned Judge also referred to another order passed in W.P(MD)Nos.3142 and 3143 of 2006, dated 15.11.2011, to hold that in the absence of any legal or enforceable right on the part of the Petitioner, the Writ Court cannot entertain the Writ Petition. Challenging the said order, the present Writ Appeal is filed before this Court.

4.Heard both sides.

5.The appellant/Writ Petitioner, is admittedly in possession and enjoyment of the subject-matter Bunk Shop for all these years, even after the disposal of the earlier Writ Petition filed by him on 10.08.2006, as stated supra. The present Writ Petition is filed solely placing reliance on G.O.92, dated 03.07.2007. There is no dispute to the fact that, even assuming that the said Government Order is to be applied in this case, the Petitioner can enjoy the extension at the maximum of 9 years and not more than 9 years. As admitted by the Petitioner, the Petitioner has enjoyed the subject-matter Bunk Shop for more than 9 years, even though an order was passed on 10.08.2006 in his earlier Writ Petition, permitting him to be



there in possession by paying 25% of the enhanced rent, till the auction is held. Therefore, in our considered view, the Petitioner, even without getting benefit under G.O.92, dated 03.07.2007, has however indirectly enjoyed the fruits of the said Government Order by overstaying in the property for nearly 9 ½ years. It is also brought to out notice of this Court that G.O.92, dated 03.07.2007 has already been stayed by this Court and the matter has been pending before the Division Bench in W.P.No.3637 of 2008.

6. When such being the factual position, we do not find any reason to interfere with the order of the learned Single Judge. Thus the Writ Appeal fails and accordingly, the same stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar (Crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration and Water
Supply Department, Secretariat,
Fort St. George, Chennai.

2. The Commissioner,
Tirunelveli Municipal Corporation, Tirunelveli.

+ 1 cc TO Mr. R. Manimaran, Advocate in SR No. 62091

vsn

AE/RSK/SAR4/03.05.2018/3P/4C

**JUDGEMENT MADE IN
W.A (MD) NO. 1640 OF 2011
and
M.P (MD) No. 1 of 2011
and 1 of 2012
18.04.2018**