

In the High Court of Judicature at Madras

Dated : 12.3.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN
Writ Appeal No.2245 of 2010 & MP.No.1 of 2010

The Commissioner, Greater
Chennai Corporation, Chennai

(sole appellant name changed suo
motu vide order of this Court dated
11.4.2018 by KKSJ & RSMJ) ...Appellant

Vs

G.Kumarappan ...Respondent

APPEAL under Clause 15 of the Letters Patent against the
order dated 13.8.2010 made in W.P.No.25660 of 2009.

WP No.25660 of 2009: Writ Petition is filed under Article 226 of
the Constitution of India for issuance of writ of certiorarified
mandamus calling for the records of the respondent relating to
his notice in Na.Ka.No.2611/2008/A1 dated 25.09.2009 and to
quash the same and to direct the respondent to execute the
agreement in favour of the petitioner for the premises i.e.
Commercial Complex-II Floor, Near G.S.T.Road, Alandur, Chennai-
600 016.

For Appellant : Mr.V.C.Selvasekaran

For Respondent : Mr.V.Sanjeevi

JUDGMENT WAS DELIVERED BY T.S.SIVAGNANAM, J

We have heard Mr.V.C.Selvasekaran, learned Standing Counsel
for the appellant and Mr.V.Sanjeevi, learned counsel appearing
for the respondent.

2. Originally, this appeal has been filed by the
Commissioner of Alandur Municipality, since the property, which
is the subject matter of this litigation, is owned by the

Municipality. Subsequently, on account of extension of territorial jurisdiction of the Corporation of Chennai, the area falls within the jurisdiction of the Greater Chennai Corporation. Accordingly, a Division Bench of this Court suo motu changed the cause title vide order dated 11.4.2018.

3. This writ appeal is directed against the order dated 13.8.2010 in W.P.No.25660 of 2009.

4. The said writ petition was filed by the respondent herein challenging a demand notice dated 25.9.2009 wherein the appellant demanded payment of rent for the period from June 2008 to September 2009 in respect of the premises, which was leased/licensed to the respondent herein - writ petitioner pursuant to an auction conducted by the then Alandur Municipality. The respondent herein - writ petitioner also sought for a consequential direction to the erstwhile Alandur Municipality to execute an agreement in favour of him in respect of the premises in question.

5. The premises, which was leased/licensed to the respondent herein - writ petitioner was in the second floor of a commercial complex near GST Road, Alandur, Chennai-16 measuring an extent of 4,532 sq. ft. The property in question was brought for public auction and it appears that an auction was initially conducted and subsequently, it was scarped and a re-auction was conducted. In the re-auction, the respondent herein - writ petitioner was declared as the successful bidder.

6. The case of the respondent herein - writ petitioner was that though he was declared as the successful bidder in June/July 2008, the vacant possession of the premises was not handed over to him by the Municipality immediately. However, it was handed over only in January 2009. It is the further grievance of the respondent herein - writ petitioner that though the premises was handed over in January 2009, the agreement was not executed by the then Alandur Municipality in spite of repeated representations and when the respondent herein - writ petitioner insisted upon execution of the agreement, the demand dated 25.9.2009 was issued.

7. The question before the learned Single Judge was as to whether the Municipality was able to establish that the premises in question was handed over to the respondent herein - writ petitioner immediately after the re-auction i.e. in June/July 2008. After considering the contentions advanced by the Municipality, the learned Single Judge held that there was nothing on record to show that the premises in question was handed over to the respondent herein - writ petitioner in June/July 2008.

8. Even before us, there is nothing on record to show that the respondent herein - writ petitioner was put in possession of the premises in question in June/July 2008. However, we cannot venture into a fact finding exercise in this appeal especially when neither the appellant nor the erstwhile Alandur Municipality was able to establish by producing documents before the learned Single Judge showing the exact date of handing over possession of the premises in question. Therefore, we are of the considered view that the order passed in the said writ petition requires to be confirmed and that the appellant cannot demand any rent/license fee from the respondent herein - writ petitioner for the period from June/July 2008 till December 2008.

9. The next question as to whether the respondent herein - writ petitioner is in arrears of lease rental/license fee payable to the Municipality/ Corporation.

10. According to the appellant, the respondent herein - writ petitioner is in arrears to the tune of about Rs.63 lakhs, which includes goods and services tax.

11. Today, the learned counsel for the respondent herein has filed an additional typed set of papers containing several receipts, in which, there is an annexure giving details of the rent paid by the respondent herein - writ petitioner for different periods and we find that all those payments were effected by cheque and that receipts were issued by the Municipality/ Corporation.

12. In such circumstances, the question would be as to whether at all there are arrears payable by the respondent herein - writ petitioner. However, this is not the subject matter of the present proceedings. Therefore, we leave it open to the appellant to proceed further in accordance with law, if, according to them, there are arrears of lease rental/license fee payable by the respondent herein - writ petitioner. Equally, it is open to the respondent herein - writ petitioner to take appropriate defences in the event any proceedings are initiated in this regard.

13. Accordingly, the writ appeal is dismissed. No costs. Consequently, the connected MP is also dismissed.

14. Before we part with the case, we have to make certain observations. The respondent herein - writ petitioner was inducted as a lessee/licensee in the premises in question initially for a period of three years and the period came to an end in 2012. According to the respondent herein - writ petitioner, he is entitled to continue to be there for two block

periods of three years each. In this regard, a reference was made to G.O.Ms.No.62 dated 03.7.2007. There have been several decisions of this Court wherein it had been held that the stipulations in G.O.Ms.No.62 dated 03.7.2007 is not mandatory and that the very object of augmenting revenue of the Corporation is paramount. Hence, it goes without saying that after expiry of the license period, no licensee/tenant is entitled to continue to be in possession of the premises. The appellant - Corporation is, therefore, bound to bring for re-auction all properties owned by them where the licensees/tenants are overstaying. This is not only applicable to the respondent herein - writ petitioner, but also to all other licensees in the same building as well as in other buildings owned by the appellant Corporation. In this regard, the Commissioner, Greater Chennai Corporation is directed to take appropriate action within a period of four weeks from the date of receipt of the copy of this judgment.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

RS

To
The Commissioner, Greater
Chennai Corporation, Chennai

+1cc to Mr.V.Sanjeevi, Advocate SR.No.22931

WA.No.2245 of 2010
and MP.No.1 of 2010

PA (CO)
GMY (09/04/2019)

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