

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2019

PRONOUNCED ON: 25.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.866 of 2005

and

C.M.P.No.14066 of 2018

Sheik Hussain

... Appellant/First Defendant

Vs.

1. K.Thirugnyanasambanthan 1st Respondent/Plaintiff

2. Gaus Khan

3. The Commissioner,
Thiruvathipuram Municipality,
Cheyyar,
Thiruvannamalai District.

... Respondents 2 & 3/Defendants 2 & 3

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 30.07.2004 made in A.S.No.17 of 2004 on the file of the Subordinate Court, Cheyyar confirming the judgment and decree of the trial court in O.S.No.124 of 2001 dated 30.01.2004 on the file of the District Munsif Court, Cheyyar in so far as the Decree for permanent injunction restraining the appellant from selling meat and chicken in the suit premises.

For Appellant : Mr.R.Mubarak Basha
for M/s.D.Abdullah

For RR1 : Mr.K.G.Senthil Kumar

For R3 : Mr.P.S.Sivashanmugasundaram

For R2 : No appearance
Set exparte
Vide Order dated 28.02.2019

J U D G M E N T

In this second appeal, challenge is made to the judgement and decree dated 30.07.2004 passed in A.S.No.17 of 2004 on the file of the Subordinate Court, Cheyyar, confirming

the judgment and decree dated 30.01.2004 passed in O.S.No.124 of 2001 on the file of the District Munsif Court, Cheyyar, insofar as the decree for permanent injunction restraining the appellant from selling meat and chicken in the suit premises.

2.The second appeal has been admitted on the following substantial questions of law.

1. Whether the judgment and decree of the courts below in decreeing the suit for permanent injunction restraining the appellant from selling meat and chicken in the suit premises are vitiated by their failure to consider section 321 (11) of the Tamil Nadu District Municipalities Act, which clearly stipulates that the license shall stand automatically renewed, if the municipality does not intimate its refusal of pass order in the application for license within the period of 60 days from the date of receipt of the application by the Executive Authority?

2.Are the Courts below justified in granting the relief of permanent injunction restraining the appellant from selling meat or chicken in the suit premises on the sole ground that the appellant had no valid license to carry on business, when admittedly the appellant had paid the renewal license fee and the deeming proviso in section 321 (11) of the Tamil Nadu District Municipalities Act would come into operation and the business carried on by appellant is legal?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. The plaintiff has laid the suit against the defendants 1 and 2 and the Commissioner, Thiruvathypuram Municipality for the reliefs of permanent injunction restraining the defendants 1 and 2 from selling the meat and chicken in the suit shops located opposite to the Government hospital and also sought for the relief of permanent injunction restraining the third defendant, Municipality from granting any license or permission to the defendants 1 and 2 for the running of the chicken and meat stall in the suit shops and sought for the relief of

mandatory injunction directing the third defendant Municipality to remove the abovesaid meat and chicken business of the defendants 1 and 2 from the suit shops.

6. Mainly the plaintiff has complained that the defendants 1 and 2 are running the meat and chicken stall in the suit shops by cutting the same in the suit shops and selling the same and thereby creating nuisance and health hazard and by way of the abovesaid business, the general public including the plaintiff has been seriously affected and the said business endanger their lives on many counts and accordingly seeking for appropriate reliefs, has come forward with the suit.

7. Per contra, the defendants 1 and 2 resisted the plaintiff's suit contending that they had been running the meat and chicken business in the suit shops without creating any problem or health hazard to the general public including the plaintiff and also carrying on the business, however, obtaining necessary permission or license from the Municipality and in such view of the matter, according to the defendants 1 and 2, the plaintiff is not entitled to obtain the relief sought for and prayed for the dismissal of the plaintiff's suit.

8. Based on the materials placed on record and the submissions made, the trial court was pleased to grant the reliefs in favour of the plaintiff. Aggrieved over the same, the first defendant had preferred the first appeal. The first appellate court, on an appreciation of the materials placed on record and the submissions made was pleased to confirm the relief of permanent injunction granted by the trial court restraining the defendants 1 and 2 from selling the meat and chicken in the suit shops and however, set aside the judgment and decree of the trial court, insofar as the grant of the relief of permanent injunction and mandatory injunction against the third defendant as claimed in the plaint. Impugning the same the first defendant has preferred the second appeal.

9. It is put forth by the plaintiff that the defendants 1 and 2 had been carrying on meat and chicken business in the suit shops without obtaining any license or permission from the Municipality concerned and the running of the above said business by the defendants 1 and 2 in the suit shops had caused immense problems and endangered the lives of the general public and considering the lie of the Government hospital opposite to the suit shops and private clinic adjacent to the suit shops and other business activities conducted by various persons in and around the suit shops including the plaintiff, it is put forth that the running and continuance of the abovesaid business by the defendants 1 and 2 had caused numerous problems particularly had caused health problems to the

general public and hence to restrain the same, the suit has come to be laid by the plaintiff.

10. Though it has been claimed by the defendants 1 and 2 that they had been running the meat and chicken stall in the suit shops after obtaining necessary license and permission from the Municipality concerned, however, to evidence the same, for the reasons best known to the defendants 1 and 2, they had not endeavored to produce the said license or permission said to have been obtained by them from the Municipality concerned for running the business in the abovesaid shops. On the other hand, as could be seen from the materials placed on record, it is noted that the first defendant has been convicted by the Judicial Magistrate's Court No.II, Cheyyar for causing health hazard and danger to the general public by running the abovesaid stall in the suit shops by openly cutting the goats and chicken in the suit shops and selling the same, endangering the lives of the patients in the hospital located opposite to the suit shops and to the general public and from the document marked as Ex.A1, it is found that the first defendant had admitted his guilt before the Magistrate's court and paid fine of Rs.25/- in connection with the abovesaid offence. Thus it is noted that by way of Ex.A1, it is evident that the running of the meat and chicken stall by the defendants 1 and 2 in the suit shops had caused or posed a serious danger to the general public in all and therefore the defendants 1 and 2 are bound to establish that they are running the abovesaid stall in the suit shops only by obtaining necessary permission or license from the Municipality concerned. Inasmuch as, the defendants 1 and 2 are found to be running the abovesaid stall without obtaining any license from the Municipality, seeking to initiate the necessary action against them, the plaintiff is found to have sent various communications to the Municipality and the same had been exhibited in the court. Furthermore, complaining about all the causes of danger and nuisance to the general public and the pollution made in the area by the running of the abovesaid stall in the suit shops by the defendants 1 and 2, the first defendant is also found to have levied the complaint to the Tamil Nadu Pollution Control Board, which could be gathered from the document marked as Ex.A8, which is the copy of the complaint forwarded by the plaintiff to the Tamil Nadu Pollution Control Board. Following the same, it is noted that the Tamil Nadu Pollution Control Board after noting that the defendants 1 and 2 are carrying on the abovesaid business in the suit shops by causing nuisance to the general public and thereby create or cause health hazard to the public wholly, accordingly, directed the Municipality concerned to cancel the license, if any, granted to the defendants 1 and 2 in the running of the abovesaid stall in the suit shops and also to take necessary action against them to shift the stall from the suit shops at

the earliest and the same as could be gathered from the order of the Tamil Nadu Pollution Control Board dated 12.03.2001 marked as Ex.A9. Despite all these endeavors on the part of the plaintiff to put an end to the unauthorized running of the meat and chicken stall by the defendants 1 and 2 in the suit shops, inasmuch as the defendants 1 and 2 have been endeavoring in the running of the said stall in the suit shops, it is found that left with no other alternative, the plaintiff has been necessitated to lay the suit against the defendants 1 and 2 as well as the Municipality concerned for appropriate reliefs.

11. In addition to that, as could be seen from the proceedings of the Revenue Divisional Officer of Cheyyar noting that the defendants 1 and 2 had been carrying on the meat and chicken stall in the suit shops and thereby causing public hazard to one and all in the area directing the owner of the suit shops to close the same, the order has come to be passed by the abovesaid authority, which document has come to be marked as Ex.B1 and a direction has also been given by the Municipality to remove the abovesaid stall from the suit shops immediately by taking appropriate action. It is seen that the similar orders had been passed against the various shop owners and aggrieved over the same, they have approached the High Court and the High Court is found to have set aside the abovesaid order of the Revenue Divisional Officer and however, remitted the matter back to the said authority with a direction that he is entitled to take necessary action under section 133 of the Code of Criminal Procedure with reference to the shops run by various persons after providing an opportunity to both the parties to adduce evidence and the same has not been controverted by the parties concerned.

12. Furthermore, as could be seen from the Commissioner's report and plan marked in the suit, the defendants 1 and 2 are found to be running the meat and chicken stall in the suit shops by openly cutting the chicken and meat in the said premises and selling the same and therefore the case projected by the defendants 1 and 2 that they are not cutting the chicken and meat in the suit shops and on the other hand only selling the meat as per the license granted to them by the Municipality cannot be countenanced. Furthermore, when the materials placed on record go to show that by way of the Commissioner's report and plan as well as the other evidence adduced in the matter as above discussed, particularly through the evidence of the Municipality staff examined as D.W.2, in all, it is found that the running of the chicken and meat stall in the suit shops by the defendants 1 and 2 had caused public hazard to the residents nearby and in such view of the matter, it has to be seen whether the defendants 1 and 2 are running the chicken and meat stall in the suit shops after obtaining the

license and necessary permission from the Municipality concerned.

13. Though the defendants 1 and 2 would claim that they had obtained necessary permission and license from the Municipality concerned to run the abovesaid stall in the suit shops, however for the reasons best known to them they had not placed the said license/ permission said to have been obtained by them from the Municipality concerned, other than marking certain receipts of payment of license fee and certain receipts for the payment of professional tax, they had not placed any document to evidence that the Municipality granted them permission to run the meat and chicken stall in the suit shops and if the license/permission said to have been issued in their favour by the Municipality had been produced, we would have been in a position to understand as to on what conditions the said license had been issued in their favour by the Municipality concerned and the period of license and other factors pertaining to the same, However, without placing the said license / permission for consideration, the endeavor of the defendants 1 and 2 to contend that they had been granted license and permission by the Municipality based only on the receipt for the payment of license fee, as such, cannot be straight away accepted for holding that the defendants 1 and 2 have been granted due license / permission to run the abovesaid stall in the suit shops. In this connection, on a reading of section 321 (11) of the Tamil Nadu District Municipalities Act 1920, it is found that the acceptance by the Municipal council of the prepayment of the fee for a license or permission or for registration shall not entitle the person making such prepayment to the license or permission or to registration as the case may be, but only to refund of the fee, in case of refusal of the license or permission or of registration. The position of law being the above, the contention put forth by the defendants that the Court should presume that the defendants 1 and 2 had been granted the license / permission by the Municipality concerned based on the receipts produced by them for the collection of the license fee as such cannot be countenanced, particularly, taking into consideration the bar contained in section 321 (11) of the abovesaid Act in drawing the abovesaid inference or presumption solely based upon the receipt for the collection of the license fee.

14. In the application for the reception of additional evidence filed by the first defendant / appellant in C.M.P.14066 of 2018 also the first defendant had been putting forth the case that he had applied for license before the Municipality and that the Municipality had issued license fee receipt in his favour and accordingly contended that only after obtaining the due permission from the Municipality, he has been running the abovesaid stall in the suit shops. However the defendants have neither in the plaint nor in the application for

the reception of additional evidence has made out any specific case as to on what date they had applied for license to the Municipality, on what date the Municipality had issued the license to their favour and by what authority the license has been issued in their favour and on what conditions, the license had been issued in their favour by the Municipality and whether after the expiry of the period, they had applied for the renewal of the license and if so, on what date they have applied for the renewal of the license and whether the same had been renewed by the Municipality etc., and without placing any facts with reference to, very vaguely they have pleaded in the written statement and in the application of the reception of additional evidence that they have applied for license before the Municipality. But for the reasons best known to them they have not chosen to place the said license alleged to have been issued in their favour by the Municipality other than certain receipts for the payment of license fee. Even in the application for the reception of additional evidence, the first defendant / appellant has come forward with certain receipts issued by the Municipality for the collection of the license fee. However, when as per the section 321 (11) of the abovesaid Act mere acceptance of the fee for license by the Municipality would not tantamount to the grant of the license or permission in favour of the defendants 1 and 2. In such view of the matter, the license fee receipts produced by the defendants in the suit as well as produced by them along with the application for reception of additional evidence would not in any manner be useful to hold that they had been granted a valid license to run the abovesaid stall in the suit shops and only based upon the said license/permission they had been running the abovesaid stall in the suit shops. It is thus noted that there is absolutely no material projected by the defendants 1 and 2 that the Municipality had issued the license / permission in their favour for running the meat and chicken stall in the suit shops and in such view of the matter, the running of the abovesaid business in the suit shops by the defendants 1 and 2 is found to be without proper authorization or permission and against the provisions of law.

15. The defendants 1 and 2 would endeavor to contend that no license had been obtained by any one of similar shop owners in the area from the Municipality and accordingly the arguments has also been put forth by them, they are also running the above stall in the suit shops by paying necessary license fee to the Municipality concerned. But with reference to the their abovesaid contention, there is no material forthcoming on their part. Merely because, the defendants 1 and 2 are not able to place the license said to have been issued in their favour by the Municipality, it cannot be hold that the Municipality not in the habit of grating the license to such

shop owners in the area for running their business. Therefore the abovesaid arguments has been rightly rejected by the Courts below. In the light of the abovesaid discussions, the documents sought to be projected by the first defendant/appellant namely the license fee receipts as additional evidence in support of his case in the second appeal do not merit acceptance and accordingly on that ground, the abovesaid application deserves rejection.

16. In the application for reception of additional evidence, the plea has also been taken by the first defendant/appellant that the plaintiff has vacated the shop and at present an ATM counter of HDFC Bank is functioning therein and therefore the cause of action on which the plaintiff has levied the suit does not survive, further and on that basis, according to him, the suit laid by the plaintiff should be dismissed and resultantly the second appeal preferred by him should be entertained. However, other than marking certain photographs, there is no other materials placed on the part of the first defendant/appellant that the plaintiff had vacated the shop in the area and that at present the ATM counter is functioning therein. Therefore the photographs projected by the first defendant / appellant as additional evidence by themselves would not be sufficient to hold that the cause of action for the levy of the suit on the part of the plaintiff ceased to exist and thereby the defendants 1 and 2 are entitled to succeed in their case. When the defendants 1 and 2 have failed to establish that hey had been carrying on the business of meat and chicken business in the suit shops with a valid license, it is found that their continuance of the said business in the suit shops would pose a health hazard to the general public and the same cannot be allowed to occur in any manner. When the levy of the suit by the plaintiff is found to be for a general cause and when already the first defendant has been prosecuted and convicted for running the meat and chicken stall in the suit ships and thereby had caused health hazard to the general public and also the TamilNadu Pollution Control Board has also initiated necessary action against the first defendant and direct the Municipality to remove the shops run by the defendants 1 and 2 from the area and as abovenoted, when the defendants 1 and 2 have failed to establish that they are running the abovesaid business in the suit shops only based upon the valid license issued in their favour, particularly without providing any valid material or proof with reference to the same as abovenoted and when the license fee receipts projected by them would not constitute the proof that they are having a valid license for running the business in the suit shops, in all, it is seen that the order of permanent injunction granted by the Courts below restraining the defendants 1 and 2 from carrying on the abovesaid business in the suit shops do not warrant any

interference and I do not find any error or mistake in the reasonings and conclusions of the Courts below in granting the abovesaid relief in favour of the plaintiff and against the defendants 1 and 2.

17. In support of his various contentions, the learned counsel for the appellant placed reliance upon the decisions reported in

1.AIR 1967 Madras 290 [Govinda Iyer Vs. Municipal Council, villupuram]

2.2007 (3) MLJ 135 [Municipal Commissioner, Sathyamangalam Municipality, Erode District Vs. S.P.Saravanan and others]

3. 2000 (III) CTC 193 [S.N.Hasan Abubucker Vs. Kottikulam St. Mohideen Pallivasal Therkku Mohindeen Pallivasal, Nirvagi Mutheru Committee through its Secretary M.S.Buhari and another]

4. 2015 (3) CTC 734 [M.Mohammed Ismail (died) rep. By his LRs Vs. K.P.Subbiah (died) rep. By his LRs]

5.AIR 1958 Allahabad 706 [Hashmat Husai and others Vs. Inayatullah and other]

The Principles of law outlined the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

18. In the light of the abovesaid discussions, inasmuch as, the production of license fee receipts by themselves would not constitute or tantamount the obtainment of a valid license by the defendants 1 and 2 in carrying on the abovesaid business in the suit shops and when they have not come forward with any specific case as to when they had moved the Municipality for obtaining the license and for what period they had been issued their license and whether after the expiry of the period, they had moved the Municipality for the renewal of the license etc., The defendants 1 and 2 are not entitled to get umbrage or shelter by referring to the later part of the provisions contained in section 321 (11) of the abovesaid Act, particularly the same would take into effect only if the defendants 1 and 2 had established the factum of their endeavor or steps to obtain the license from the Municipality concerned as stipulated under the abovesaid Act, by placing acceptable materials. When the abovesaid basic facts are absent in the present case purely on the basis of the license fee receipts projected, ipso facto we cannot infer or presume that the defendants 1 and 2 had been granted a valid license by the Municipality concerned to run the abovesaid business in the suit shops and thereby the defendants 1 and 2 are entitled to invoke the later part of section 321 (11) of the abovesaid Act. The substantial questions of law

formulated in the second appeal are accordingly answered against the defendants 1 and 2.

19. In conclusion, the second appeal is found to be devoid of merits and accordingly the same is dismissed with costs. C.M.P.No.14066 of 2018 is also dismissed. Consequently, connected miscellaneous petition, if any, is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Subordinate Court,
Cheyyar.

2.The District Munsif,
District Munsif Court,
Cheyyar.

+1cc to M/s.D.Abdullah, Advocate sr.28775

+1cc to Mr.K.G.Senthil Kumar, Advocate sr.27936

S.A.No.866 of 2005
and

सत्यमेव जयते

C.M.P.No.14066 of 2018

cnr(co)
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