

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 18872 of 2018

and

W.M.P.s 22252 & 22253 of 2018

R.Gayathri

... Petitioner

Vs

1. Greater Corporation of Chennai,
rep. by its Commissioner,
Ripon Buildings,
Chennai-600 003.
2. The Revenue Officer,
Greater Corporation of Chennai,
Ripon Buildings,
Chennai-600 003.
3. Zonal Officer,
Zone XV, Greater Corporation of
Chennai,
Sholinganallur,
Chennai-600 119.
4. Mohammed Shuaib Musveen,
S/o. Late M.Ebrahim Musveen,
No.4, Goldenshore Avenue,
Akkarai, Chennai-600 119.
5. Shagufta A.Musveen,
W/o. Shuaib Musveen,
No.4, Goldenshore Avenue,
Akkarai, Chennai-600 119.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the entire records relating in the impugned notice dated 11.07.2018 issued under section 379-A of the Madras City Municipal Corporation Act, 1919 on the file of the 3rd respondent and quash the same direct the respondents 1 to 3 herein to issue

license to the petitioner accepting the application dated 24.05.2018 and the demand draft for a sum of Rs.3,250/- for the kitchen being run by the petitioner in premises bearing New No.12, Old No.33, Nehru Street, Sholinganallur, Chennai-600 119.

For Petitioner : Mr.K.Shivakumar

For Respondents : Mr.V.C.Selvasekaran,
Standing Counsel for R1 to R3

O R D E R

This Writ Petition has been filed challenging the notice dated 11.07.2018 issued under Sec.379-A of the Chennai City Municipal Corporation Act, 1919 (hereinafter called as 'Act') directing the petitioner to discontinue from running the mess in the premises situated at New No.12, Old No.33, Nehru Street, Sholinganallur, Chennai-600 119.

2. The grievance of the petitioner is that, she is running a ladies hostel in the aforesaid premises belong to the respondents 4 and 5 under lease agreement dated 24.03.2017. The petitioner has filed an application on 24.05.2018, before the respondents 2 and 3 seeking for license to run a mess in the aforesaid premises, which is still pending. Without considering the petitioner's application, the impugned notice dated 11.07.2018 under Sec.379-A of the Act, has been issued by the 3rd respondent. Earlier, this Court had passed an interim order dated 01.08.2018 in W.M.P. No.22252 and 22253 of 2018, directing the respondents to remove the lock of the mess. Pursuant to the same, the lock and seal was removed. The respondents 1 to 3 without considering the petitioner application for grant of license now issued the impugned notice.

3. According to the respondents 4 and 5, in the lease agreement, there is a specific condition that, the petitioner has to obtain license to run the ladies hostel and mess in the aforesaid premises, but the petitioner failed to obtain the license. In the above circumstances, they have terminated the lease agreement, and they are not in a position to grant no objection certificate to the petitioner. Now, they have also filed a suit for recovery of the possession of the premises before the District Court, Chenglepet, which is pending.

4. According to the learned standing counsel for Chennai Corporation, the lease agreement has been terminated by the landlord as there was a serious dispute between them. Further, the petitioner is running the Ladies hostel as well as mess

without obtaining any license from the authority concerned and with a no objection certificate from the landlords, the petitioner application for grant of license cannot be considered.

5. It is an admitted fact that the petitioner, and respondents 4 and 5, the landlords have entered into lease agreement to run a ladies hostel and a mess in the aforesaid premises. Now, the lease agreement has been terminated by the landlord and the landlord has also filed a suit for recovery of possession, which is pending before the District Court, Chenglepet. The application filed by the petitioner seeking for license for the mess is still pending before the Corporation for want of no objection certificate from the landlord.

6. Now, the question is whether the tenant is required to obtain no objection certificate from the landlord for obtaining a trade license from the local body. Recently, the Honourable Supreme Court in the matter of Sudhakaran Vs. Corporation of Trivandrum and another in Civil Appeal No.5435 of 2016 dated 05.07.2016 has held that merely because, the landlord refused to give no objection certificate, the tenant need not be deprived of running lawful business in the premises, for which he has entered into a lease agreement. The relevant portion of the judgment reads as follows :-

"8. After due consideration of the issues involved, we find merit in the submission made on behalf of the appellant. The statutory provision already quoted above shows that the requirement of consent of landlord is applicable only when a person intends to obtain a license for the first time. Renewal or subsequent application for obtaining license on expiry of the period of the existing license, during the currency of the tenancy is not applicable for obtaining license. Even in the case of application for obtaining license for the first time, the tenant cannot be deprived of running lawful business merely because the landlord withheld the consent. Valid tenancy itself has implied authority of the landlord for legitimate use of the premises by the tenant."

7. Considering the fact that the petitioner is in possession of the property as a statutory tenant, and he cannot be deprived of getting the trade license. In the above circumstances, the 2nd and 3rd respondents are directed to consider the petitioner's application for granting license without insisting no objection certificate from the landlords and pass suitable orders on merits and in accordance with law within a period six weeks from the date of receipt of the copy of this order. Till then, the respondents are directed not to disturb the petitioner from running the ladies hostel and mess.

8. In the result, the present Writ Petition stands disposed of with the above direction. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

rpp/lbm

To

1. The Commissioner,
Greater Corporation of Chennai,
Ripon Buildings,
Chennai-600 003.
2. The Revenue Officer,
Greater Corporation of Chennai,
Ripon Buildings,
Chennai-600 003.
3. Zonal Officer,
Zone XV, Greater Corporation of
Chennai, Sholinganallur,
Chennai-600 119.

+1cc to Mr.A.Amizhdhu, Advocate SR.No.6574

+1cc to Mr.K.Shivakumar, Advocate SR.No.7047

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of 2018

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SAI(CO)
GMV(23/03/2019)