



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.09.2019	Pronounced on: 04.10.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.21216 of 2019
& W.M.P.No.20424 of 2019

1. R.Kamaraj,
S/o.Rathinasamy,
Old Door No.11/2, New Door No.33,
Raghavan Street, Perambur,
Chennai - 600 011.
2. R.Ettaraja,
S/o.Rathinasamy,
No.120, Madhavaram High Road,
Perambur, Chennai - 600 011. Petitioners

/versus/

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.
2. The District Revenue Officer,
Zone VI, Greater Chennai Corporation,
No.5, Anderson Road,
Ayanavaram, Chennai - 600 023.
3. The Assistant Revenue Officer,
Zone VI, Greater Chennai Corporation,
No.5, Anderson Road,
Ayanavaram, Chennai - 600 023.
4. M.K.Kanmani,
D/o Kubendran.
5. Kubendran,

Respondents No. 4 & 5 are residing at,
A-3, "Sam Mashach Towers",
No.11, Siruvallur High Road,
Perambur, Chennai - 600 011.

.... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records of the impugned notice dated 17.12.2018 issued by the respondents 2 & 3 under Ref.No.Ma.A.6.Na.Ka.No.R/3618/2018, dated 17.12.2018 and to quash the conditions 2 and 3 therein, in respect of the fast food business under the name and style of "Ganesh Fast Food" at Door No.120, Madhavaram High Road, Perambur, Chennai 600 011, and consequently direct the 3rd respondent to forthwith issue trade license to the petitioners under the name and style of "Ganesh Fast Food."

For Petitioner : Mr.Ashok Menon.

For R1 to R3 : Mrs.Karthika Ashok,
Standing Counsel

For R4 & R5 : Mr.S.Ayyathurai.

O R D E R

Heard the Learned Counsel for the Petitioners and the Learned Counsel for the Respondents.

2. The 1st petitioner and the 4th respondent had entered into a rental agreement on 01.07.2016 in respect of the premises bearing door No.120/1, (Ground floor), Madhavaram High Road, Perambur, Chennai. The 4th respondent the owner of the building, has agreed to rent out the premises for a monthly rent of Rs.35,000/- to the 1st petitioner to run a Fast Food Hotel. The rental agreement commenced on 10.07.2016. The initial tenure of the agreement was 11 months which is renewable thereafter, if both parties agree. The tenant was restraint from subletting the premises.

3. While so, on expiry of the 11th month, the agreement was not renewed. The petitioner has filed suit for injunction against the landlord not to evict and the said suit O.S.No.6745 of 2018 before the V Assistant Judge, City Civil Judge, Chennai is pending. By virtue of injunction order, the petitioner continues to be in occupation. The 4th and 5th respondents have filed petition for eviction before the Rent Control Tribunal, in R.C.O.P.No.169 of 2019 before the Small Causes court, Chennai and same is also pending.

4. The petitioners have obtained licence from the Tamil Nadu Food Safety and Drug Administration Department, Government of Tamil Nadu, which was valid upto 06.05.2019. The petitioners contention in this Writ Petition is that, they applied for Trade License from the Corporation on 20.08.2019. The Corporation, instead of considering their application for Trade License, has caused notice dated 04.12.2018, as if, the petitioners are running fast food business without license and if they don't apply for License within 7 days, action will be taken under Section 379-A of the Chennai City Municipal Corporation Act, 1919.

5. On receipt of the notice, the 1st petitioner replied to the Corporation vide his letter dated 10.12.2018, pointing that his application for license is pending with them and sought one month time to furnish documents which are required. The Corporation, on considering his request, rejected the application, vide proceedings Ma.A.6 Na.Ka.No.R/3618/2018, dated 17/12/2018, listing out 6 documents not furnished and informed the petitioners, that they have to close down their shop or else it will be sealed, required for getting Trade License.

6. Aggrieved by the above proceedings of the Chennai Corporation, dated 17.12.2018, the petitioners have filed the above petition stating that, since the landlord has already filed petition for eviction, he has induced the Corporation to cause the impugned notice and sealed the premises. The landlord, refuse to give 'No Objection Certificate' and the tax receipt for the building. Therefore, the Corporation should consider his application for Trade License without insisting for NOC from the land lord and Tax receipt for the building and grant the same.

7. The Learned Counsel for the Petitioners submitted that, nowhere in the Chennai City Municipal Corporation Act, or any other act, it has been stipulated that, a tenant has to produce 'No Objection Certificate' from the landlord and evidence, the landlord has paid tax for the building. Further, in a similar case, this Court in W.P.No.12729 of 2013 (K.Devan Vs. The Commissioner, Corporation of Chennai and others) has directed the Corporation of Chennai, to consider the application for Trade License, without insisting of 'No Objection Certificate' from the landlord.

8. The Learned Standing Counsel for the Corporation submitted that, the petitioners were running Fast Food Hotel without Trade License. When directed to get license, they applied without relevant documents such as rental agreement, No Objection Certificate from the landlord, Tax receipt for the building, Affidavit of Undertaking, No Objection Certificate from Fire Safety and Rescue Department and Professional Tax receipts. When there is no documents to show the petitioners are lawful occupant of the premises with the consent of the landlord, the application has been rightly rejected.

9. The Learned Standing Counsel for the Corporation would point out that, the judgement relied by the petitioners relates to lease agreement in force, but the landlord was not willing to give consent. Whereas, in this case, the petitioners have no valid rental agreement with his landlord. To carry any trade within the jurisdiction of Greater Chennai Corporation, Trade License has to be obtained from the Corporation. The petitioners, without trade license has been running a Fast Food Hotel illegally. The same was closed after due notice. Being Hotel business, 'No Objection Certificate' from the landlord, NOC from Fire safety department, building Tax receipts are all necessary documents. The petitioners, without these documents have no right to seek trade license.

10. The 4th and 5th respondents, in their counter affidavit has stated that, the rental agreement was only with the 1st petitioner. Whereas, he has sublet the premises to third party. The petitioners have committed wilful default in payment of rent. After the expiry of 11 months period, the petitioners were asked to vacant the premises since, it was required for the 4th respondent use to set up Clinic for his daughter. Therefore, the 4th respondent has filed R.C.O.P.No.169 of 2019 against the petitioner for eviction. The petitioners were running the Hotel without license. Hence, the Corporation has taken action against them. Being ranked trespasser, the petitioners are not entitled for the relief sought in the writ petition.

11. Heard the Learned counsels and their rival submission.

12. The 1st petitioner is the rental agreement holder. The agreement has expired on 09.06.2017. Eviction petition is pending against the petitioner. The License issued by the Food

Safety Department also not in force as on date. K.Devan case, referred by the learned counsel for the petitioners, the case is in respect of renewal of Trade License. Therefore, when the landlord refused to give 'No Objection Certificate' for renewal, the Court has directed the Corporation of Chennai, to consider the application without insisting 'No Objection Certificate' from the landlord. Whereas, in this case, the petitioners have never obtained Trade License from the Corporation. By the time, he applied for Trade License, the lease period has expired. The landlord has refused to renew the lease and filed petition for eviction.

13. The Learned counsel for the petitioners submitted that, after expiry of the lease period, the petitioners become statutory tenants, after expiry of the lease period, hence their occupation cannot be termed as trespassers. The said submission of the petitioners are legally correct. They are not trespassers. However, when the petitioners had never obtained Trade License when the rental agreement was in force, after expiry of lease, he cannot have a better right than what he enjoyed during the lease period. The petitioners can neither force the landlord to give No objection nor can seek direction from the Court to the Corporation to give Trade License, without 'No Objection Certificate' from the landlord or 'No Objection Certificate' from the Fire and Safety Department.

14. The Corporation of Chennai, is empowered to regulate trades involving Hazardous materials, Fire, Sanitary and Hygiene. The Hotel Trade fall under the said category. Therefore, the Corporation has power to insist, "No Objection Certificate." The petitioners might have the right, a legitimate expectation of renewal of Trade License only if he had already obtained Trade License and could not able to renew it, due to refusal of the landlord to give No Objection Certificate. Contrarily, after expiry of rental agreement, the Court cannot direct the Corporation to entertain fresh application for Trade License without rental agreement or NOC from the landlord. As far as the Corporation records are concerned, it is fresh request for Trade License and at the time of application, there was no contract between the petitioners and his landlord was in force.

15. Therefore, for the above said reasons, this Court finds the petitioners has no legal right to insist the Corporation to grant Trade License, without necessary documents

mentioned in the order impugned. Hence, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

bsm

To,

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai - 600 003.

2. The District Revenue Officer,
Zone VI, Greater Chennai Corporation,
No.5, Anderson Road,
Ayanavaram, Chennai - 600 023.

3. The Assistant Revenue Officer,
Zone VI, Greater Chennai Corporation,
No.5, Anderson Road,
Ayanavaram, Chennai - 600 023.

+1 cc to Mrs.Karthika Ashok Advocate sr85024

+1 cc to Mr.Ashok Menon Advocate sr85657

+1 cc to Mr.S.Ayyathurai Advocate sr85141

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