

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

CORAM:

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

W.P.No.30763 of 2018

and

W.M.P.Nos.35908,35910 and 36053 of 2018

Gowshinisha

... Petitioner

Vs.

1. The Corporation of Chennai,
Rep.by Commissioner,
Ripon Building, Chennai.

2.The Assistant Revenue Officer,
Zone IX, Greater Corporation of Chennai,
No.1, Lake Area 4th Cross Street,
Nungambakkam, Chennai - 34.

3.Noorjehan

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent proceedings Ma.Aa.9 Va.Thu.Na.Ka.No.R3/13120/18 dated 07.11.2018 and quash the same and consequently direct the respondents 1 and 2 to renew the of license for running a fast food at premises bearing Door No.13/6, Jani Jaan Khan Road, Chennai -14.

For Petitioner : Mr.N.A.Nissar Ahmed

For Respondents : Mrs.Karthikaa Ashok
Standing Counsel for R1& R2

: Mr.R.Balasubramanian for R3

O R D E R

This writ petition has been filed challenging the order passed by the second respondent/ Assistant Revenue Officer ordering eviction of the petitioner from the lease hold premises and also to close the business.

2. The grievance of the petitioner is that she is a tenant under the third respondent herein and earlier, when the third respondent's husband had taken steps to evict the petitioner, she has filed a suit in O.S.No.1379 of 2014, before the IV Assistant City Civil Court, Chennai, seeking permanent injunction restraining the landlord from evicting her, and the same was dismissed on 08.01.2016. Challenging the judgment and decree, she has filed an appeal in A.S.No.48 of 2016 on the file of the XV Additional City Civil Court, Chennai, and the said appeal was allowed on 24.10.2016 and the suit was decreed as prayed for. Subsequently, the third respondent filed a proceedings for eviction under the Tamil Nadu Lease and Rent Control Act in R.C.O.P.No.1327 of 2016 on the file of XII Small Causes Court, Chennai, on the ground of demolition and reconstruction of the building and the same is pending. While so, the licence granted in favour of the petitioner to run a tea shop has been expired on 31.03.2017. Hence, she has filed an application for renewal of licence before the second respondent and that application was not considered. Hence, she filed a writ petition before this Court in W.P.No.5768 of 2017, seeking renewal. Simultaneously, the third respondent has also filed a writ petition in W.P.N.9606 of 2017 seeking a direction to the third respondent to cancel the licence and both the writ petitions were heard together and this Court disposed of the same by a common order dated 20.07.2018, directed the second respondent to consider both the applications filed by the petitioner as well as the third respondent and pass appropriate orders on merits and in accordance with law after affording opportunity of hearing to them. Pursuant to the order of this Court, the second respondent passed the impugned order stating that the disputed premises is in dilapidated condition and hence, directed the petitioner to close the shop. Now, challenging that order, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner submitted that when the eviction proceedings initiated by the third respondent on the ground of demolition and re-construction is pending, the second respondent cannot come to a conclusion that the building is in dilapidated condition and it requires demolition and directed the petitioner to close the shop. That apart, so far as the petitioner's application for renewal of licence is concerned, no order has been passed by the second respondent.

4. The learned counsel appearing for the third respondent vehemently contended that after expiry of the lease period, the petitioner has no right to continue in the lease hold premises. Apart from that, the petitioner has also not paid the rent regularly, even though she has given undertaking to pay the rent regularly. Considering all those facts, and also

the condition of the building, the second respondent passed the impugned order directing the petitioner to close the shop and there is no irregularity in the order passed by the second respondent.

5. Heard the rival submissions made on both sides and perused the materials available on records carefully.

6. It is an admitted fact that the petitioner is the tenant under the third respondent. Now, an eviction proceedings under the Tamilnadu Lease and Rent Control Act, is pending before the Rent Control Court in R.C.O.P.No.1327 of 2016. It is also admitted that the said eviction petition has been filed on the ground of demolition and reconstruction. When the eviction petition, filed by the landlord, on the ground that the building is in dilapidated condition and it requires demolition, is pending, now the second respondent cannot come to a conclusion without any material whatsoever that the building is in dilapidated condition and directed the petitioner to vacate the premises, and he has no jurisdiction to pass such order. In such circumstances, the impugned order passed by the second respondent is liable to be set aside.

7. So far as the application filed by the petitioner seeking renewal of licence is concerned, the second respondent has not passed any order, even though, this Court has specifically directed the second respondent to consider the petitioner's application for renewal. Hence, the second respondent is directed to consider the petitioner's application seeking renewal of licence, after giving opportunity to the petitioner as well as the third respondent and pass suitable orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order. So far as the eviction is concerned, it is always open to the third respondent to pursue her remedy before the Rent Control Court.

8. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai.

2.The Assistant Revenue Officer,
Zone IX, Greater Corporation of Chennai,
No.1, Lake Area 4th Cross Street,
Nungambakkam, Chennai - 34.

+1 cc to Mr.R.Balasubramanian, Advocate Sr.No.2455

+1 cc to Mr.N.A.Nishar Ahmed, Advocate Sr.No.2476

+1 cc to Mrs.Karthikaa Ashok, Advocate Sr.No.2478

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PA(CO)
CSL/12.03.2019



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