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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2019

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

WP(MD).No.9504 of 2018
and
WMP(MD).No.8756 of 2018

M.Pappathi Ammal .. Petitioner

vs.

The Commissioner,
Karur Municipality, Karur. .. Respondent

PRAYER:- This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned notice issued by the respondent herein in his proceedings in Na.Ka.No.2196/2016/A6, dated 04.07.2017 and quash the same as without jurisdiction and direct the respondent herein to regulate and protect the petitioner Shop No.5 in Vekateshwara Road Western Side, Karur Town as per Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and Tamil Nadu Street Vendors (Protection of Livelihood and Regulation of Street Vending) Rules, 2015.

For Petitioner : Mr.V.Meenakshisundaram
For Respondent : Mr.Senthil Kumariah,
Standing Counsel

ORDER

This writ petition has been filed to quash the impugned notice issued by the respondent herein in his proceedings in Na.Ka.No.2196/2016/A6 dated 04.07.2017 and further direct the respondent herein to regulate and protect the petitioner's Shop No.5 in Venkateshwara Road Western Side, Karur Town as per Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and Tamil Nadu Street Vendors (Protection of Livelihood and Regulation of Street Vending) Rules, 2015.

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2.The case of the petitioner is that he is running a road side shop in Karur Town near Jawahar Bazaar in market road. The petitioner's shop situated in T.S.No.560/644. Behind this shop, there is one channel which is now converted as drainage. He is running the shop for more than four decades and the petitioner is paying "Kurai Vari" to the Municipality and later, the respondent issued receipts as "Non-tax" receipts and "Tharai Vari" to the Revenue Department. Upto July 2017, the petitioner has not paid any rent as fixed by the respondent Municipality. No permanent structure or building is constructed by the respondent municipality in that road, but the individual persons were occupying the said place and have put up some constructions, which was not questioned by the Municipality till date. The respondent municipality suddenly issued the impugned notice in Na.Ka.No.2196/2016/A6 dated 04.07.2017 holding that they were lessee under the respondent municipality for nine years on monthly rent basis and by the impugned notice the monthly rent was re-fixed with effect from June, 2016 for further extension.

3.The learned counsel for the petitioner would further submit that the monthly rent was fixed for the petitioner's shop No.5, admeasuring 77 sq.ft., as Rs.3,000/- per month is exorbitant and further he was directed to deposit Rs.36,000/- with G.S.T. of Rs.510/- as security deposit for extension of lease. The same was challenged by the petitioner in this writ petition stating that they have no jurisdiction and the impugned order is passed without any application of mind. Ordering the petitioner to pay enhanced rate of rent without giving an opportunity, has to be struck down. The respondent municipality collected only "Kurai Vari" and issued only "Non- tax" receipts for all the shops in Venkateshwara Road Western side, Karur. He would further submit that the impugned order was passed by the respondent herein on 04.07.2017 and the same was served belatedly by the Municipality. Similarly placed shop owners have also filed the writ petitions and in those writ petitions, this Court has granted an order of interim stay. Following the same, in this case also, an order of interim was granted.

4.The learned counsel for the respondent has filed a counter wherein the respondent has denied the averments in the writ petition and he would submit that the lands in T.S.No.644 and T.S.No.560 in Karur Town was encroached by the petitioner and others in the form of 54 shops from the year 1970 . Since the petitioner was an encroacher and by that Karur Municipality has imposed a tax (Tharai Vari) of Rs.2 per sq.ft upon the petitioner and the same was collected from the petitioner's shop by the Municipality. On 27.08.1986, Karur Municipality has passed a resolution by increasing Tax as Rs.5 per Sq.ft and the petitioner was paying the same. The Regional Director of Municipality Administration, Salem has issued circular in Na.Ka.No.4162/2016/A3 dated 22.03.2017. Based on the same, the said shop was brought under the control of Municipality and a committee was formed to

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look into the affairs of the said shops. As per the committee report Municipal shop's rent was directed to be refixed as per G.O (Ms) No.92 dated 03.07.2007. The said G.O clearly states that for a period of every 9 years the shops which are under the control of Local Authorities in Tamil Nadu, their rent must be re-fixed based upon the current market value. From the current market value, 15% of amount must be added with the previous rent and for which the lease holder must deposit with the enhanced amount in order to extend their lease period.

5.The learned counsel for the respondent would further submit that Survey No.560 is classified as Vaikal Poromboke in revenue records and was in the control of PWD Department. The District Collector, Karur has passed executive proceedings in Na.Ka.A1/22665/2005 dated 18.10.2005 stating that the land in S.No.560 has to be used for public purpose and the same should be maintained by the Karur Municipality. As per the said order, the Karur Municipality was maintaining the said land under their control. In Karur Municipality road ledger, the land in S.No.644 was maintained as municipal road. The said areas have been maintained and the wastage has been collected by the Municipality. There are totally 50 shops, in S.No.560, there are two shops and in S.No.644, there are 42 shops and further 6 other shops are located in the above said survey numbers. As per circular and the guidelines laid down in G.O, the respondent Municipality issued notice in Na.Ka.No.2196/2016/A6 dated 04.07.2017 to the petitioner for re-fixation of shops rent. Aggrieved by the same, the petitioner has approached this Court by way of writ petition and seeking for regulating the shop in Venkateshwara Road side, Karur Town as per Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, and Tamil Nadu Street Vendors (Protection of Livelihood and Regulation of Street Vending) Rules 2015.

6.He would further submit that the shops are not movable in nature and they have made a pucca construction in the said area, which is a permanent structure and they cannot invoke the Street Vendors Act. The respondent have enough power to regularize the same and enhance the rent. He would also submit that the petitioner has a pucca construction and has got electricity connection and few other shop owners have obtained trade license also. Hence, the petitioner will not fall under the Street Vendors Act.

7.The learned counsel for the respondent would submit that the respondent is intending to regularize the shop and they will issue orders after hearing the parties concerned after affording an opportunity of hearing, within a period of eight weeks from the date of receipt of a copy of this order and appropriate orders will be passed based on the area of occupation by the petitioner

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and also the nature of building. They will fix appropriate rent for the same.

8.In view of the above submissions, this writ petition is disposed of. The petitioner is directed to co-operate with the respondent while conducting an enquiry. Till then, the respondent is directed not to take any coercive steps to remove the petitioner's shop. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The Commissioner,
Karur Municipality, Karur.

CP

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