

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.05.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.11217 of 2021

and W.M.P.Nos.11869 and 11870 of 2021

Shanmugasundram

.... Petitioner

-Vs-

1. The State of Tamil Nadu

Rep. by the Commissioner,

Department of Municipal Administration &

Water Supply,

4th Floor, Ezhilagam (Annexure Building),

Fort St. George, Chennai - 600 009.

2. The Municipal Commissioner

Sathyamangalam Municipality,

Mysore Trunk Road,

Rangasamuthiram,

Sathyamangalam - 632 458.

....Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records from the second respondent pertaining to the impugned order Naa.Ka.No.1200/2020/A3, dated 22.04.2021 and to quash the same.

For Petitioner : Mr.R.Ganesan

For Respondent : Mr.Kamalesh Kannan
Govt. Advocate for R1

Mr.M.Elumalai

Additional Government Pleader for R2

ORDER

The prayer sought for herein is for a writ of certiorari, calling for the records from the second respondent pertaining to the impugned order Naa.Ka.No.1200/2020/A3, dated 22.04.2021 and to quash the same.

2. The petitioner is one of the lessee for a shop which has been constructed and let of by the second respondent Municipality at their bus stand. In order to run the shop taken by lease from the second respondent, Municipality, the petitioner had already paid rental advance as demanded by them and had been paying the monthly rent regularly.

3. However at one point of time, i.e., from June 2020 onwards, there has been a rental arrears. Though it was demanded by the second respondent Municipality, the same could not be paid by the petitioner for variety of reasons as projected by the petitioner.

4. However, the fact remains that, having waited for sometime to get the rental arrears from the petitioner, the second respondent Municipality seems to have adjusted the advance paid by the petitioner for the rental arrears up to 31.03.2021 and since the entire advance amount deposited by the petitioner having been adjusted towards the rental arrears up to 31.03.2021, the petitioner from 01.04.2021 has no right to continue the shop and therefore, the second respondent Municipality had issued a notice, dated 22.04.2021, whereby directed the petitioner to vacate the shop within seven days, otherwise he will be forcibly evicted from the shop concerned.

5. Challenging the same, the present writ petition has been filed with the aforesaid prayer.

6. Heard Mr.R.Ganesan, learned counsel appearing for the petitioner who would submit that, due to COVID-19 situation, for the past more than one year, the shop could not run properly, therefore there has been an arrear of rent, nevertheless the said rental arrears up to 31.03.2021 since has been admittedly recovered from the petitioner, by way of adjusting the same from the rental advance paid by the petitioner and in view of the said adjustment since there has been no arrear of rent up to 31.03.2021, the petitioner can continue the lease in respect of the shop concerned from 01.04.2021 or beyond 31.03.2020, provided if the petitioner come forward to deposit the rental advance, ofcourse by way of some installments.

7. Mr.M.Elumalai, learned Additional Government Pleader, takes notice for the second respondent. I have heard Mr.Kamalesh Kannan, learned Government Advocate appearing for the first respondent who would submit that, admittedly there has been a huge rental arrears from the petitioner, which he has not paid despite several reminders to that effect made by the second respondent Municipality and ultimately having no other option, the Municipality has adjusted the rental advance towards the rental arrears up to 31.03.2021. Therefore beyond that date, the petitioner has no right to continue in the shop and therefore the impugned notice, ofcourse rightly has been issued by the second respondent, hence, he submits that, no interference shall be warranted in the said impugned order.

8. I have considered the said rival submissions made by the

learned counsel appearing for the parties and have perused the materials placed before this Court.

9. No doubt, there has been a rental arrears from the petitioner towards the second respondent Municipality and according to the petitioner, due to COVID-19 situation, he could not pay the same in time. Nevertheless, the entire rental arrears up to 31.03.2021 has been recovered from the petitioner by way of adjusting the same from the rental advance, which was available with the second respondent and therefore, up to 31.03.2021, there is no rental arrears as of now, as admittedly stated in the impugned order itself.

10. However, whether the petitioner can continue beyond 31.03.2021, even without paying the rental advance as well as the current rent is concerned, though it was claimed by the learned counsel appearing for the petitioner, some longer installments can be provided to the petitioner for making the rental advance, this Court feels that, by taking note of the COVID-19 situation, two installments can be given to the petitioner, each for one month period, within which the entire rental advance of Rs.4,28,000/-, subject to confirmation shall be deposited by the petitioner and on such deposit being made, there can be no impediment for the petitioner to continue in the shop, provided if he continue to pay the current rent and future rent regularly every month.

11. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order :

(i) That the impugned order is quashed with the following further direction that, the petitioner shall pay the 50% of the rental advance, i.e., Rs.2,14,000/-, on or before 05.06.2021 at the second respondent Municipality and the remaining 50%, i.e., another Rs.2,14,000/-, being the 50% of the total rental advance quantified as Rs.4,28,000/-, provisionally, on or before 05.07.2021.

(ii) It is made clear that, if any one of the aforesaid payment is not made, either the first installment or the second installment, the moment the aforesaid relief granted to the petitioner shall not stand in the way and it is open to the second respondent Municipality to take any coercive step to evict the petitioner from the shop concerned forthwith.

(iii) It is also made clear that, the monthly rent from April-2021 shall be paid

by the petitioner to the second respondent Municipality on or before 10th of every succeeding English calendar month without fail.

12. With these observation and direction, this writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Commissioner,
Department of Municipal Administration &
Water Supply,
4th Floor, Ezhilagam (Annexure Building),
Fort St. George, Chennai - 600 009.
2. The Municipal Commissioner
Sathyamangalam Municipality,
Mysore Trunk Road,
Rangasamuthiram, Sathyamangalam - 632 458.

+1 cc to Mr.N.MahendraBabu, Advocate, SR.NO.27104

W.P.No.11217 of 2021

KJ(CO)
NS(17/05/2021)

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