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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.7301 OF 2020

AND

W.M.P.NOS.8717 & 8718 OF 2020

G.Kumarappan

...Petitioner

Vs

1.The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai - 600 003.

2.The Revenue Officer,
Greater Chennai Corporation,
Ripon Building,
Chennai - 600 003.

3.The Assistant Commissioner / Zonal Officer,
Zonal Office - 12,
Greater Chennai Corporation,
No.1, New Street,
Alandur, Chennai - 600 016.

4.The Assistant Revenue Officer,
Zonal Office - 12,
Greater Chennai Corporation,
No.1, New Street, Alandur,
Chennai - 600 016.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 4th respondent relating to the letters in Ref.ம.அ.12 வ.து.ந.க.எண்.ஆர்.4081/2020 dated 21.01.2020 and ம.அ.12 வ.து.ந.க.எண்.ஆர்.4/0081/2020 dated .01.2020 signed on 20.02.2020, quash the same, direct the respondents to remove the lock and seal put in the Super Bazaar Complex - Shop No.10 (Ref.N12-160-273-10), Alandur, Chennai - 600 016, within the time fixed by this Court.

For Petitioner : Mr.V.Sanjeevi

For Respondents : Mrs.Kaarthika Ashok



O R D E R

The prayer sought for herein is for a writ of certiorarified mandamus calling for the records of the 4th respondent relating to the letters in Ref.ம.அ.12 வ.து.ந.க.எண்.ஆர்.4081/2020 dated 21.01.2020 and ம.அ.12 வ.து.ந.க.எண்.ஆர்.4081/2020 dated .01.2020 signed on 20.02.2020, quash the same, direct the respondents to remove the lock and seal put in the Super Bazaar Complex - Shop No.10 (Ref.N12-160-273-10), Alandur, Chennai - 600 016, within the time fixed by this Court.

2. The petitioner was originally allotted a shop in a Shopping Complex called Super Bazaar Complex by the respondent Corporation. Originally, it was Alandur Municipality subsequently has been annexed to the respondent Corporation sometime in 2008. The total extent of the Shop No.10 at Super Bazaar was mentioned as 1332 sq.ft., for which, the rent was fixed at Rs.11/- per sq. ft. Therefore, total monthly rent was fixed at Rs.14,652/-.

3. However, the petitioner on 11.03.2009 has brought to the notice of the respondent Corporation that, the extent of the shop is not 1,332 sq.ft. but only 1088 sq.ft. Therefore, accordingly the rent can be calculated and be demanded from the petitioner.

4. Having accepted the same, the rent at the rate of Rs.11/- per sq.ft. for the said 1088 sq.ft. having been calculated, was fixed at Rs.12,694/- per month.

5. The said rent, according to the petitioner, had been regularly paid. At one point of time, there has been some arrears due to the enhancement of the rent after three years period. Therefore, the case of the respondent Corporation, who had enhanced the same at the rate of 15% on completion of three years, is that, the arrear amount including the current rent claimed to have been paid by the petitioner was to the extent of Rs.1,43,220/- as on 20.11.2009.

6. However, at the time since already some amount was paid, the claim of the respondent Corporation was that, still there has been an arrear to the extent of Rs.72,578/-.

7. Accepting the same, the petitioner had paid that amount i.e., Rs.72,578/- also by way of two Demand Drafts dated 13.12.2009. Therefore, as on 20.11.2009, the entire arrear has been paid by the petitioner and the petitioner had been continuously keeping the shop and has been doing the business.



8. When that being so, since another shop also had been taken for lease by the petitioner, where, there is a rental arrears, according to the respondent Corporation, in respect of the same, since there has been a dispute with regard to the fixation of the arrears between the petitioner and the respondent Corporation, the respondent Corporation has come forward to seal both the shops viz., other shop as well as the present shop i.e., Shop No.10 on 06.09.2019.

9. Therefore, the shop in question covered in this writ petition i.e., Shop No.10 of Super Bazaar Complex taken out lease by the petitioner from 2008 onwards has been sealed on 06.09.2019 and till date, it is under lock and seal.

10. In this context, the case of the petitioner is that, the petitioner had sought for clarification and calculation memo as to the arrears of rent payable by the petitioner, because, upto the sealing of the premises on 06.09.2019, the petitioner had paid the rent upto date and there could be no arrears payable by the petitioner.

11. However, in response to the same, the 4th respondent has issued a communication dated 21.01.2020, where, they have stated that, the petitioner still has the arrear of Rs.2,82,300/-. Along with that, there is a calculation memo annexed, according to the respondents.

12. However, it was the stand of the petitioner that, along with the said communication, there was no calculation memo annexed. Therefore, this was brought to the notice of the respondents by the petitioner on 18.02.2020 and thereafter, once again the said impugned order/ communication along with the calculation memo had been annexed and served on the petitioner. On receipt of the same, the petitioner came to understand that, the respondents has calculated the rental arrears not only upto 06.09.2019, the date on which the premises was sealed, but also beyond 06.09.2019 till date i.e., till the impugned order was issued, by stating that, the total arrear was Rs.2,82,300/-. Therefore, felt aggrieved over such a calculation of arrears, as stated by the respondents in the impugned communication and also to desal the shop, the present writ petition has been filed.

13. Heard Mr.V.Sanjeevi, learned counsel appearing for the petitioner, who, having reiterated the aforesaid factual matrix, would further, on instructions, submit that, the petitioner is ready and willing to pay, whatever the arrear which accrue, if any, as on 06.09.2019, the date on which the premises was sealed.



14. However, as per the calculation memo, the respondent Corporation has given as if there has been an arrear even beyond 06.09.2019 till the order impugned and during the said period admittedly the shop was sealed, hence the question of any rental arrears does not arise. Therefore, the learned counsel appearing for the petitioner seeks indulgence of this Court against the impugned order by giving a direction to the respondents to desal the premises, of course on condition that, if any arrear payable by the petitioner as on 06.09.2019, the petitioner would ready and willing to pay the same and after receipt of such payment, such desealing process can be directed to be undertaken, he submitted.

15. However, Mrs.Kaarthika Ashok, learned Standing Counsel appearing for the respondent Corporation would contend that, the petitioner not only has taken the present shop for lease, but earlier taken other shop. In respect of the other shop, there has been a huge arrears payable by the petitioner. Therefore, in order to take action to recover the arrear from the petitioner, the respondent Corporation decided to seal the premises of both the shops, accordingly this shop also was sealed on 06.09.2019.

16. In this context, because of the attitude on the part of the petitioner, since there has been huge arrears in respect of the other shop, it become necessitated to seal both the shops and therefore, not only upto 06.09.2019 but also beyond 06.09.2019, the petitioner is liable to pay the rental arrears including the latest rental arrears and upto the date of order impugned since it was accrued to Rs.2,82,300/-, that amount was shown as an arrears to be paid, through the impugned order. Therefore, that order is to be sustained as it does not warrant any interference from this Court. The learned Standing Counsel would further submit that, if the said arrears, as demanded is paid by the petitioner, the respondent may consider for desealing the premises, but, without paying the arrears, the question of desealing the premises does not arise, the learned Standing Counsel contended.

17. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

18. Upto 20.11.2009 there has been no dispute with regard to the payment of any arrears, because, the entire arrears demanded by the respondents have been paid by the petitioner, which is an admitted fact.

19. However, after 20.11.2009, periodically the rent has been revised in every three years as per the power vested with the respondent Corporation through the Government Order in this regard.



20. According to the petitioner, even the enhancement rent has been regularly paid upto date and all of a sudden, on 06.09.2019 the premises was sealed by the respondent Corporation for the reasons best known to them.

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21. In this context, it is the stand of the respondent Corporation that, still there has been a huge arrears on the part of the very same petitioner in respect of other shop. In order to recover the amount, the shop where there has been a huge arrears as well as the present shop were decided to be closed by way of sealing the premises, accordingly, they sealed the premises, otherwise the petitioner would transfer the goods available in the other shop to this shop. In order to avoid the same, the present shop also was sealed by the respondent Corporation.

22. Be that as it may, insofar as this shop is concerned, it is covered by the terms and conditions i.e. a contract between the lessor and lessee, under which, the shop has been entrusted by way of lease to the petitioner, the extent has been fixed, the rental rate has also been fixed and accordingly, there is a privity of contract between the petitioner and the respondent Corporation as lessor and lessee covered under the conditions of tender. Therefore, insofar as this shop is concerned, it is a separate transaction, if there is any arrear of rent payable by the petitioner, the respondent Corporation is entitled to recover the same in the manner known to law.

23. In this context, it is the admitted fact that, on 06.09.2019 the shop in question was sealed for no plausible reason on the part of the respondent Corporation except the reason stated by them. In respect of this shop except to say the reason that, the petitioner has got an arrear of payment of rent in respect of other shop, no other reason is available to seal the shop.

24. That kind of any punitive action cannot be taken against the petitioner in respect of the present shop, because, the conditions imposed by the respondent being the lessor against the petitioner as a lessee is governed by the contract between the petitioner and the respondent, therefore, under which, if there is any arrear payable by the petitioner in respect of the present shop, then only such kind of action in sealing the premises could have been taken.

25. Anyhow, now on 06.09.2019 the shop was sealed and therefore, from 06.09.2019 the petitioner could not run the shop or do the business. Therefore, whatever the arrears of rent if any accrued as on 06.09.2019 payable by the petitioner, the respondent Corporation is entitled to claim the same and that



arrear amount the petitioner counsel also, with the instruction, has come out fairly to submit that, the entire arrear if any payable by the petitioner as on 06.09.2019, the date on which the shop was sealed, would be paid by the petitioner forthwith.

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26. However, insofar as the future arrears, as claimed by the respondents through the impugned order, beyond 06.09.2019, this Court feels that, that kind of demand cannot be made by the respondent Corporation from the petitioner as that would go as an unjust enrichment, because, admittedly it is their own action, under which, the premises was sealed and the petitioner was not at fault in respect of the shop in question is concerned. Therefore, this Court feels that, insofar as the impugned order in this writ petition demanding a sum of Rs.2,82,300/- is concerned, that amount minus (-) the rental arrears from 06.09.2019 till the date of impugned order if any still there, that amount can be treated as an arrear, which can be directed to be paid by the petitioner to the respondent Corporation forthwith. On receipt of that amount, the respondent shall desearl the premises allowing the petitioner to run the shop.

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

(i) That the impugned order to the extent as indicated above is set aside and the matter is remitted back to the respondent Corporation for reconsideration. While re-considering the same, the respondent Corporation shall calculate the arrears payable by the petitioner if any till 06.09.2019 and the same shall be intimated to the petitioner within a period of one week from the date of receipt of a copy of this order and on receipt of such communication with regard to the arrears of rent if any till 06.09.2019, such arrears to be indicated by the respondent Corporation shall be paid by the petitioner within one week thereafter i.e. on receipt of such communication.

(ii) On such payment being made by the petitioner as indicated above, the respondent Corporation shall desearl the premises within one week from the date of receipt of that amount from the petitioner and permit the petitioner to run the shop in question till third party right if any is accrued by way of public auction in the manner known to law.

(iii) It is made clear that, the order passed in this writ petition will have no repercussion in the other issue pertaining to the other shops, for which, the petitioner is the lessee under the respondent Corporation as the said issue is separately challenged in the writ petition in W.P.No.7297 of 2020 which would be dealt with on its own merits.



(iv) It is made clear that, the aforesaid direction shall be complied with by the respondents, of course with the cooperation of the petitioner by paying the arrear to be indicated by the respondent Corporation as per the terms mentioned above and after permitting the petitioner to run the shop after desealing the premises, then only the process to go for fresh auction if they decide can be initiated.

(v) It is further made clear that, if the respondent Corporation wants to go for a public auction, as directed or indicated by an order passed by a Division Bench of this Court in W.A.No.2245 of 2010, it is open to the respondent Corporation to go ahead with the public auction in respect of all the shops at one go and the petitioner shop alone shall not be picked up for the purpose of public auction.

28. With these observations and directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

Sgl

To

1.The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai - 600 003.

2.The Revenue Officer,
Greater Chennai Corporation,
Ripon Building,
Chennai - 600 003.

3.The Assistant Commissioner /
Zonal Officer,
Zonal Office - 12,
Greater Chennai Corporation,
No.1, New Street,
Alandur,
Chennai - 600 016.



4.The Assistant Revenue Officer,
Zonal Office - 12,
Greater Chennai Corporation,
No.1, New Street, Alandur,
Chennai - 600 016.

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+1cc to Mr.V.Sanjeevi, Advocate SR.No.2053

+1cc to M/s.Karthikaa Ashok, Advocate SR.No.1924

W.P.No.7301 of 2020

JPL(CO)
RVM(12/01/2022)