



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD)Nos.761 and 2421 of 2022

and

W.M.P. (MD)Nos.600, 2025, 2097 and 2099 of 2022

WEB COPY

W.P. (MD)No.761 of 2022:-

Dheenadhayalan

... Petitioner

vs.

The Commissioner,
Madurai Corporation,
Aringnar Anna Maligai, Madurai

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondent to reopen the premises of Block No.3, Ranimangammal Chathiram, Madurai, belongs to the respondent and refix the rent to the above premises.

For Petitioner :Mr.S.Sukumar

For Respondent :Mr.R.Murali,Standing Counsel

W.P. (MD)No.2421 of 2022

Dheenadhayalan

... Petitioner

vs.

1.The Commissioner,
Madurai Corporation,
Aringnar Anna Maligai, Madurai.

2.The Assistant Commissioner,
Madurai Corporation, Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned notice of the first respondent, dated nill Proceedings Nill and the consequential notice issued by the second respondent, dated 18.12.2021 and set aside the same as illegal and consequently, to direct the respondents to unlock the premises of Block no.3, Ranimangammal Chatiram, Madurai.

For Petitioner :Mr.S.Sukumar

For Respondents :Mr.R.Murali,Standing Counsel



C O M M O N O R D E R

W.P.(MD)No.761 of 2022 has been filed seeking for a Writ of Mandamus to direct the respondent to reopen the premises of Block No.3, Ranimangammal Chathiram, Madurai, belonging to the petitioner and refix the rent after affording a fair hearing to the petitioner.

2.W.P.(MD)No.2421 of 2022 has been filed challenging the impugned notices of the first respondent/Commissioner, Madurai Corporation, dated Nil, proceedings Nil, and the consequential notice of demand, dated 18.12.2021 issued by the second respondent/Assistant Commissioner, Madurai Corporation, calling upon the petitioner to pay a sum of Rs.99,72,942/- as arrears of rent.

3.Since the subject matter of the property in both the Writ Petitions are one and the same, both the Writ Petitions are disposed of by a common order.

4.The petitioner's father was a licensee under Madurai Corporation in respect of Block No.3, Ranimangammal Chathiram, Madurai, having a built up area of 1,373 sq.ft., which belongs to the respondent Corporation. According to the petitioner, ever since 23.03.1992, his late father, Govindarajan, was a licensee in respect of the above referred premises under the Madurai Corporation and the license has been renewed periodically.

5.It is the case of the petitioner that his father was running a business in the said premises in the name and style of "Mohana Watch Palace". According to the petitioner, his father was paying the rent to the respondent Corporation at Rs.25,417/- per month, till his death, ie., on 19.09.2017. Pursuant to G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, the respondent Corporation has revised the rent payable in respect of the licensed property and has intimated the same to the father of the petitioner, who was the licensee. The revised rent was made under the impugned proceedings in the year 2017. The petitioner, after the death of his father, was in possession and enjoyment of the licensed premises. According to the respondent, despite the revision of rent and demand notices having been given, the petitioner failed to pay the arrears of rent and hence, they had locked and sealed the premises licensed to the petitioner's father. Hence, the petitioner has filed W.P.(MD)No.761 of 2021 for a Mandamus seeking for a direction to the respondent to reopen the licence premises which were locked and sealed by the respondent.

6.Subsequent to the filing of W.P.(MD)No.761 of 2022, the petitioner has also filed W.P(MD)No.2421 of 2022 challenging the proceedings of the Madurai Corporation, under which rent was revised as per G.O.Ms.No.92, referred to supra, in the year 2017 and he has



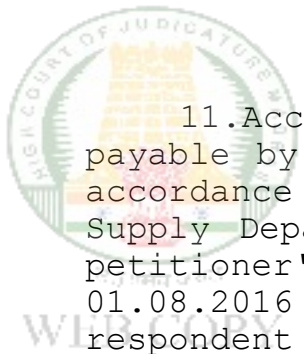
challenged the consequential, demand notice issued by the second respondent, dated 18.12.2021 in W.P.(MD)No.2421 of 2022.

7.The contention of the petitioner is that the revision of rent has been hiked by 500% without affording any opportunity of hearing to the petitioner. He has also stated that his late father, Govindarajan, who was the licensee, did not also accept the revised rent and has submitted his objection to the same on 18.09.2017 itself. But, according to the petitioner, under the impugned proceedings of the Madurai Corporation, under which licence charges were revised, the objection raised by the petitioner's late father for revision of rent was not considered.

8.It is also the contention of the petitioner that notices were sent by the Madurai Corporation to a dead person, when the petitioner's father, who was the licensee, was not alive. According to the petitioner, arbitrarily after four years from the date of the receipt of the objection made by the petitioner's late father for revision of rent, the respondent Corporation locked and sealed the premises. According to the petitioner, the articles belonging to him, worth about more than Rs.10,00,000/-, are kept inside the locked premises. According to the petitioner, the other similarly placed licensees in the same building complex have not been issued eviction notices and therefore, there is discrimination on the part of the respondent Corporation by picking and choosing the petitioner alone. The grounds raised by the petitioner in W.P.(MD)No.2421 of 2022 were similarly raised by the petitioner in W.P.(MD)No.761 of 2021 also.

9.An application, namely, W.M.P.(MD)No.2025 of 2022 has been filed by the Madurai Corporation in W.P.(MD)No.761 of 2022 seeking to vacate the interim direction granted by this Court in favour of the Writ Petitioner on 12.01.2022 in W.P.(MD)No.761 of 2022. As per the interim direction, the Madurai Corporation was directed to remove the lock and seal of the licensed premises, which is the subject matter of these Writ Petitions to enable the petitioner to remove the mobile phones and other accessories, which were kept inside the licensed premises. Aggrieved by the same, it is also brought to the notice of this Court that the respondent Corporation has preferred a Writ Appeal, which was also came to be dismissed.

10.The learned Standing Counsel for the respondent Corporation would submit that the affidavit filed in support of the vacate interim direction petition, namely, W.M.P.(MD)No.2025 of 2022 may be treated as a counter affidavit in the main Writ Petitions, namely, W.P(MD)Nos.761 and 2421 of 2022. The said statement is recorded by this Court. Accordingly, this Court is treating the affidavit filed in support of the vacate interim direction petition, namely, W.M.P. (MD)No.2025 of 2022, as a counter to the main Writ Petitions.



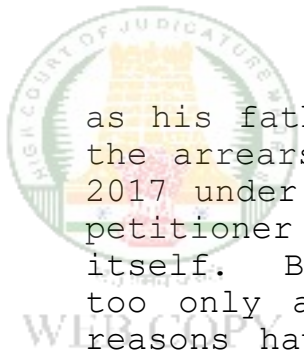
11. According to the respondent Corporation, the arrears of rent payable by the petitioner upto January 2022 is Rs.91,94,046/-. In accordance with G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, the rent was revised for the petitioner's shop to Rs.1,45,068/- per month with effect from 01.08.2016 together with applicable GST. It is the case of the respondent that sufficient notices were sent to the petitioner as well as to his father calling upon them to pay the arrears of rent. But despite the notices, they have failed to pay the arrears of rent and only in those circumstances, the Writ Petitioner's shop was locked and sealed by the Corporation.

12. It is also the case of the respondent Corporation that a mobile shop was functioning in the licensed premises and it was being operated by the petitioner till it was sealed by the respondent Corporation. It is also the case of the respondent Corporation that the proceedings of the Corporation is of the year 2017 and the Writ Petitioner did not challenge the said proceedings earlier and has only challenged the same in the year 2022 by filing W.P.(MD)No.2421 of 2022, that too after filing of W.P.(MD)No.761 of 2022, which was filed for a Mandamus, wherein, interim direction was issued by this Court to enable the Writ Petitioner to remove the articles kept inside the licensed premises.

13. According to the respondent Corporation, no indulgence can be shown to the petitioner by this Court, as already several opportunities were granted by the Corporation to him to pay the arrears of rent, but he failed to do so. According to them, the income received from the licensed premises will enable the Madurai Corporation to provide basic amenities to the public. Having committed default and having not paid the arrears of rent, which runs to several lakhs of rupees, there is no merit in both the Writ Petitions.

14. Admittedly, the proceedings of the Madurai Corporation under which the rent was revised is of the year 2017. The petitioner has challenged the same only in W.P.(MD)No.2421 of 2022, after the lapse of almost five years. In the first Writ Petition filed by the petitioner in W.P.(MD)No.761 of 2022, he had sought only for a Mandamus and not challenged the proceedings of the year 2017, under which the Madurai Corporation revised the rent, which according to the petitioner was arbitrary and has revised the rent 500% higher than the existing rent and the said revision was made without affording any opportunity to the petitioner or his late father Govindrarajan, who was the licensee of the subject premises. The petitioner's father died in the year 2017 and admittedly, ever since his death, the petitioner was in possession and enjoyment of the very same property.

15. It is the case of the respondent that several letters of ~~several letters of~~ ~~by the Corporation to the Writ Petitioner as well~~ ~~by the Corporation to the Writ Petitioner as well~~



as his father calling upon them to pay the revised rent as well as the arrears. If aggrieved by the impugned proceedings of the year 2017 under which the Madurai Corporation has revised the rent, the petitioner ought to have challenged the same in the year 2017 itself. But, the same was challenged only in the year 2022, that too only after filing W.P.(MD)No.761 of 2022. Eventhough certain reasons have been given in the affidavit filed in support of the Writ Petition in W.P.(MD)No.2421 of 2022, for not filing the Writ Petition challenging the proceedings of the year 2017, the said reasons given are unbelievable, in view of the fact that the Writ Petition has been filed only in the year 2022, when the proceedings is of the year 2017 and the petitioner was also in possession and enjoyment of the licensed premises ever since 2017 subsequent to the death of his father, Govindarajan, who was the licensee with the Madurai Corporation. More than almost five years has lapsed, since the impugned proceedings was issued, under which the license charge was revised by the Madurai Corporation.

16.Admittedly, the petitioner has been paying only the existing rent from 2017 onwards till 07.01.2022, when the premises was locked by the Madurai Corporation. Any tenant for that matter knows that there will be periodical revision of rent. Therefore, he cannot continue to pay the existing rent of Rs.25,417/- which is paid by he petitioner's father till his death in the year 2017. The revised rent is Rs.1,45,068/-. The petitioner is occupying a property just opposite to the Madurai Railway Junction and is situated in a prime locality in the city of Madurai. Therefore, even if minimum revision of the existing rent is made every year, by now, after the lapse of five years, the rent could have been revised substantially. After the lapse of five years from the date of the revision made by the Madurai Corporation in the year 2017, if the petitioner was really interested in payment of rent and was interested to continue with the licence, as a prudent tenant, he would have approached the Madurai Corporation for the same. Having slept over his rights for almost five years, the petitioner cannot seek remedy from this Court at this stage.

17.The learned Standing Counsel for the respondent Corporation also brought to the notice of this Court that with regard to the similarly placed licensee and in particular, he referred to an order, dated 21.02.2018 passed in a batch of Writ Petitions in W.P. (MD)Nos.2837 to 2846 of 2018, dated, 21.02.2018, by a learned Single Judge of this Court, wherein, the learned Single Judge has held as follows:

"8.In such circumstances, the petitioners now cannot question the licence fees revised by the respondent Corporation. If the petitioners are willing to accept the offer made by the respondent Corporation, they can submit their consent before the respondent Corporation, and get the



licence renewed, if they are not willing to accept the offer, the petitioner should necessarily vacate the shops enabling the corporation to bring the shops for public auction.

18.The case on hand is also similar to the case dealt with by the learned Single Judge in the aforementioned order. Here also, the petitioner is not willing to accept the offer of the Madurai Corporation for payment of the revised rent as per G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007. Therefore, the petitioner should necessarily vacate the shop to enable the Corporation to bring the shop for public auction.

19.The petitioner has also raised other grounds, namely, that the notices sent by the respondent Corporation were to a dead person, that is his father. The said contention cannot be raised at this stage after a lapse of almost five years, when admittedly, the petitioner's father died in the year 2017 and the petitioner thereafter was in possession and enjoyment of the subject matter ever since the death of his father. The property is owned by the Madurai Corporation and any income generated out of the same is not for any private interest, but in public interest. Therefore, this Court is of the considered view that on the ground of laches, both the Writ Petitions cannot be entertained at this stage. The arrears of rent payable by the petitioner is also mounting day by day. Therefore, no further indulgence can be shown to the petitioner by this Court, as already the Madurai Corporation has suffered revenue loss on account of the non payment of the revised rent by the petitioner.

20.However, with regard to the removal of articles belonging to the petitioner is concerned, the petitioner is already having a benefit of interim direction issued by this Court, which was challenged in a Writ Appeal and came to be dismissed. Therefore, the Writ Petitioner must be permitted to remove the articles which is lying in the licensed premises.

21.Though the said removal of articles was vehemently opposed by the learned Standing Counsel for the respondent Corporation, this Court after giving due consideration to the fact that already there was an interim direction given by this Court for removal of articles, the petitioner must be permitted to remove the articles from the licensed premises.

22.For the foregoing reasons, this Court does not find any merit in both the Writ Petitions and both the Writ Petitions are dismissed. However, liberty is granted to the petitioner to make a request to the respondent Corporation for removal of articles lying inside the licensed premises by giving a representation within a period of one week from the date of receipt of a copy this order.



On receipt of the same, the respondent Corporation shall permit the petitioner to remove the articles after taking inventory of the removed articles. With regard to the arrears of rent claimed by the respondent Corporation, liberty is granted to the respondent Corporation to seek recovery of the same from the petitioner in the manner known to them under law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cmr

To

1.The Commissioner,
Madurai Corporation,
Aringnar Anna Maligai, Madurai.

2.The Assistant Commissioner,
Madurai Corporation, Madurai.

+1 CC to M/s.R.MURALI, Advocate (SR-6390[F] dated 16/02/2022)

+1 CC to M/S.S.SUKUMAR, Advocate (SR-6579 dated 16/02/2022)

W.P. (MD) Nos.761 and 2421 of 2022
15.02.2022

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