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W.P.No.119 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4/1/2023

CORAM:

THE HONOURABLE Mr.JUSTICE N. SATHISH KUMAR

W.P. No.119 of 2023

a n d

W.M.P.Nos.108 and 109 of 2023

S. Rajkumar

...

Petitioner

Vs

1. The Commissioner
Greater Chennai Corporation
Ripon Building
Chennai 600 003.
2. The Zonal Officer
Revenue Department
Greater Chennai Corporation
Zone 13 Dr. Muthulakshmi Salai
Adyar
Chennai 600 020.

...

Respondents

PRAYER: Petition filed under Article 226 of Constitution of India, praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the second respondent notice under Section 379 (A) of the Chennai City Municipal Corporation Act, 1919, dated 28/12/2022 and quash the same and consequently, direct the respondents to remove the lock and



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seal of shop bearing trade licence number 13-175-001709 at No.9/112, Sardar Patel Road, Adyar, Chennai 600 020 within the time prescribed by this Court.

For Petitioner	...	Mr.K.Sakthivel
For Respondents	...	Mrs.P.T.Ramadevi

ORDER

This Writ Petition has been filed to quash the order, dated 28/12/2022, passed by the second respondent, under Section 379 (A) of the Chennai City Municipal Corporation Act, 1919, and consequently, direct the respondents to remove the lock and seal of the petitioner's shop at No.9/112, Sardar Patel Road, Adyar, Chennai 600 020, bearing trade licence number 13-175-001709

2. Heard Mr.K.Sakthivel, learned counsel for the petitioner and Mrs.P.T.Ramadevi, learned Standing Counsel for the respondents 1 and 2.

3. By consent of both parties, writ petition is taken up for final disposal, at the admission stage itself.



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4. Learned counsel appearing for the petitioner, producing a copy of the order, dated 6/10/2022, passed in W.P.No.26939 of 2022, submitted that on an earlier occasion, similar notice was issued, under Section 379 (A) of the Chennai City Municipal Corporation Act, 1919 (hereinafter referred to as CCMC Act), on the ground that shop of the petitioner being run in an unhygienic manner. Vide, order, dated 26/9/2022, this Court had granted interim stay of the impugned notice, issued by the second respondent and directed the respondents therein, to de-seal the shop of the petitioner forthwith.

5. In continuation of the above, Zonal Officer – XIII Greater Chennai Corporation, after perusal of the documents available on record, vide, order, dated 3/12/2022, passed an order and the operative portion of the same, reads as follows:-

“10. As on date Th.Rajkumar running the eatery shop with food safety licence.

11. In consideration of non production of planning permit said premises, GCC have prepared Form – 1 Notice for production of document



regarding unauthorised development of premises for the purpose of taking action under Sections 56 and 57 of the Act.

12. Th.Rajkumar is running a eatery in the western side of existing building which is housing nearly 11 nos of shops and their portion was lease out to his father TMV.Subbaiya by one Th.Ameer Ali and 4 others by way of unregistered lease deed dated 14/8/1977. In the context, the claim of petitioner Th.Feroz Ebrahim is unauthorised encroachment in their premises is not eligible and further it is stated that entire premises at 9/112 Sardar Patel Road, Adyar, which is housing residential and commercial shops are existing till date without any proper planning permit or building permit issued by the local body and this shop eatery alone cannot be termed as unauthorised encroachment.

Final decision have to be taken based on the outcome of case in W.P.No.18913 of 2021 orders in which Regional Deputy Commissioner (South) has passed orders to initiate enforcement action in the entire building in premises.



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6. The main grievance of the petitioner is that despite the above order passed, once again notice has been issued by the second respondent and the petitioner's shop has been sealed. The respondents having accepted the Professional Tax and also the Trade Renewal Licence fee, ought not to have sealed the shop of the petitioner.

7. Learned Standing counsel appearing for the respondents submitted that eatery shop of the petitioner was inspected and having found that the shop was running in an unhygienic manner, notice was issued on 10/5/2022, under Rule 44 of Tamil Nadu General Health Act, 1839. Sealing of the shop was made only pursuant to the oral direction of the Division Bench, while dealing with Contempt Petition in Cont.P.No.1839 of 2022.

8. It is his further contention that Contempt Petition has been initiated by the third party against the petitioner on the ground that eatery shop is running in a private land. When the petitioner is running an eatery shop, the so called third party who initiated contempt proceedings has to follow due process of law to evict the person who is in settled possession of



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the property. His remedy lies elsewhere and not in the writ petition or contempt petition.

9. Perused the materials available on record.

10. When this Court has already granted interim stay and directed the respondents in W.P.No.26939 of 2022, to de-seal the shop of the petitioner, forthwith, once again, sealing the shop of the petitioner, by the second respondent, is not in accordance with law. Even a bare perusal of the order of the Hon'ble Division Bench does not indicate to seal the shop of the petitioner.

11. Considering the fact that the petitioner has paid the professional tax for the year 2022 – 2023; possessing the certificate of licence for the year ending 31/3/2023 and Food Safety Licence upto 31/3/2023 and also considering the fact that in view of the Proceeding, dated 3/12/2022, passed by the Zonal Officer – XIII Greater Chennai Corporation, this Court is of the considered view that act of sealing the shop of the petitioner by the second respondent is not in accordance with law. Hence, action of the



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second respondent cannot be permitted in the eye of law. If at all any third party has any grievance, the same has to be agitated only by way of proper legal course. When the writ petitioner is in settled possession, he cannot be thrown out under the premise of Contempt Petition No.1839 of 2022 stated to be filed by the owner of the property. Writ petitioner can be evicted only by way of due process of law,

12. In such a view of the matter, respondents are directed to de-seal the shop of the petitioner, at No.9/112, Sardar Patel Road, Adyar, Chennai 600 020, forthwith.

13. With the above direction, this writ petition is disposed of. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

4/1/2023

mvs.

Index: Yes/No

Internet: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

Note: Issue today.



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N. SATHISH KUMAR, J

mvs.

To

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