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W.P.No.8147 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.8147 of 2022
and W.M.P.No.8135 of 2022

M.Thirumooruthi

...Petitioner

Vs

The Executive Officer,
O/o.Annur Town Panchayat,
Annu, Coimbatore – 641 653.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent pertaining to their letter Na.Ka.No.19/2022/E dated 11.03.2022 herein and to quash the same and thereby direct the respondent to collect the same rent by fixing a date on which they rectify the error and handed over the possession in good condition with electric connection or direct them to return the entire payment of Rs.1,00,000/- and Rs.2,57,040/- which was paid as rent in advance.

For Petitioner : Mr.A.S.Balaji

For Respondents : Mr.N.Naveen Kumar
Government Advocate

ORDER



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This writ petition has been filed challenging the impugned letter issued by the respondent in Na.Ka.No.19/2022/E, dated 11.03.2022 directing the petitioner to pay a sum of Rs.2,69,892/- and for a consequential direction to the respondent to hand over the possession of the shop with electricity connection or in the alternative to return back the entire amount that was received by the respondent as advance.

2. The grievance of the petitioner is that despite the petitioner being the successful bidder in auction with respect to shop No.1, the shop did not have electricity connection. The period of lease was from 01.07.2019 to 31.03.2022. In view of the same, the petitioner was not able to occupy the shop and the petitioner was giving repeated representations in this regard from 07.01.2020 onwards till December 2021. Thereafter, the petitioner has also issued a legal notice dated 07.01.2022 and called upon the respondent to hand over the shop by restoring the electricity connection at shop No.1. The respondent through letter dated 07.01.2022 informed the petitioner that the petitioner is utilizing the electricity connection from shop No.3 and is using it for shop No.1 also and hence, the petitioner was directed to pay the



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accumulated arrears of lease amount. Subsequently, the impugned notice dated 11.03.2022 was issued directing the petitioner to pay a sum of Rs.2,69,892/-. Aggrieved by the same, the present writ petition has been filed before this Court.

3. The respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

7. It is respectfully submitted that the respondent leased the Shop No.1 and 3 to the petitioner herein at Peruratchi Anna Renaissance Project Commercial Complex on Mettupalayam Road from 2018-2019 as he was successful bidder. Since from the date of rent out the shops, the electricity connection of shop No.3 is being used for shop No.1. The power supply to the shop was disconnected at June Month of 2021 as electricity bill was not paid. Immediately steps were taken by the respondent to sort the issues and approached the Electricity Board and due to technical issues, the charges were accepted on 03.03.2022 vide Receipt No.0786839 and 0786840. Thereafter, Electricity connection has been made available to the shop No.1 till date. Thereafter, there is no electricity meter and electricity connection problem was prevailing and the



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petitioner falsely mentioned in his affidavit.

8. With regard to averments made in paragraphs 9 to 13 of the petitioner's affidavit, it is respectfully submitted that the petitioner had not paid the rent till date which is causing heavy loss to the Annur Town Panchayat. The respondent had issued Notices to the petitioner vide Na.Ka.No.19/2022/E dated 11.03.2022 and 03.04.2022 causing him to pay the rent to the tune of Rs.2,69,892/- in respect of Shop No.1 at Annur Town Panchayat for the period from 2021-2022. But, the petitioner had not paid the monthly rental instalments and Town Panchayat is suffering heavy loss and the shops were handed over to the petitioner on condition that the lessee should pay the pending instalments. The details of the payment as follows:

<i>Lease Period</i>	<i>Payable amount (including Tax)</i>	<i>Paid (Including tax)</i>	<i>Balance (Rs.)</i>	<i>Remarks</i>
2019-2020	1,26,000	1,49,940	0	Rs.3,64,140/- Adjusted from his deposit amount Rs.1,00,000 + Rs.2,57,040 + Rs.7,100 total Rs.3,64,140/-
2020-2021	1,80,000	2,14,200	0	
2021-2022	2,69,892	0	2,69,892	Till date balance including tax)



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4. Heard Mr.A.S.Balaji, learned counsel appearing for the petitioner and Mr.N.Naveen Kumar, learned Government Advocate appearing for the respondent.

5. The short issue that arises for consideration in this writ petition is as to whether the stand taken by the petitioner as if shop No.1 was never put to use due to lack of electricity connection, is sustainable.

6. There is no dispute with regard to the fact that the petitioner was allotted shop No.1 and shop No.3. The period of license was from 01.07.2019 to 31.03.2022. It is also not in dispute that the petitioner was in occupation of shop No.3 and there was no rental arrears insofar as this shop is concerned. The dispute revolves around shop No.1, which according to the petitioner was not occupied by him due to lack of electricity connection.

7. The stand taken by the respondent is that the petitioner was utilizing shop No.1 by drawing electricity from shop No.3. That apart, the petitioner never paid the rent for shop No.1 and for the period from



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2019 -2021, the arrears of rent was adjusted from the deposit amount made by the petitioner. The balance arrears for the year 2021-2022 is sought to be recovered from the petitioner.

8. On carefully going through the terms and conditions of the auction notification, it is seen that the licensee/lessee has to pay the monthly rental on or before 10th day of every following month, failing which, the same has to be paid with interest. If really, the petitioner had not paid any rents from July 2019 onwards, it is quite unnatural or improbable that the respondent would have kept quiet without demanding for the monthly rent. Even as per the counter affidavit filed by the respondent, the petitioner has not even paid single penny for shop No.1 from 01.07.2019 till 31.03.2022. The petitioner was giving repeated representations to the respondent stating that he is not able to run the business in shop No.1 due to lack of electricity. To substantiate the same, the learned counsel for the petitioner also brought to the notice of this Court the summary of the details provided by the Electricity Department, which shows that electricity was disconnected for the shop No.1 as early as on 10.01.2019 due to non-payment of dues. This was much prior to the



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lease period of the petitioner, which started only from 01.07.2019. It is also seen that on 16.07.2021, the meter was also removed for the reason that the electricity dues were not paid. This document was not prepared by the petitioner and it is a document that was furnished by the electricity department.

9. It is apparent from the counter affidavit of the respondent that the electricity connection was ultimately restored on 03.02.2022 after the payment of the charges by the respondent. Hence, if really the petitioner was utilizing the electricity connection from shop No.3 to Shop No.1, it is quite improbable that the respondent would have kept quiet for such illegal dragging of electricity for such a long time. Each shop is provided separate electricity connection and if some one draws the electricity from a different shop, it will amount to illegal tapping of electricity and neither the electricity Department nor the respondent would have allowed this to continue for nearly two years. Therefore, the stand taken by the respondent as if the petitioner was utilizing the electricity connection from shop No.3 is unsustainable and unbelievable.



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10. The respondent for the first time responded to the petitioner only through their letter dated 07.01.2022, wherein they informed the petitioner that the petitioner has not paid electricity dues and the petitioner is utilizing the electricity connection from shop no.3. This communication was given by the respondent at the fag end of the license period, where the license period was about to end on 31.03.2022. For this notice dated 07.01.2022, the petitioner has also issued a legal notice dated 01.02.2022 by explaining all the facts and had called upon the respondent to return back the entire deposit amount with interest at the rate of 18% per anum.

11. A cumulative reading of the facts and circumstances of this case along with the materials which are available on record, clearly shows that the shop No.1 was never utilized by the petitioner due to lack of electricity connection. The respondent has conveniently deducted the rent from the deposit amount for the period from 2019-2021. The respondent is seeking to recover the rental only for period 2021-2022. Hence, the respondent has indirectly acknowledged the fact that the petitioner never paid any rents and this is due to the fact that the



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petitioner was not able to occupy the shop to run the business. The preponderance of probability clearly shows that the stand taken by the petitioner is believable and sustainable.

12. In the light of the above discussion, the impugned notice dated 11.03.2022 issued by the respondent is hereby quashed and there shall be a direction to the respondent to return back the entire advance amount received from the petitioner for shop No.1 with interest at the rate of 7.5% per annum from the date of deposit till the date of repayment of the amount. This repayment will be made within a period of six(6) weeks from the date of receipt of a copy of this order.

In the result, this writ petition is allowed in the above terms. No costs. Connected miscellaneous petition is closed.

30.06.2023

Index:Yes/No
Speaking order/Non-speaking order
mp



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N.ANAND VENKATESH,J.

mp

To

The Executive Officer,
O/o.Annur Town Panchayat,
Annu, Coimbatore – 641 653.

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