



W.P.No.17071 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.17071 of 2023
and WMP No.16244 of 2023

Mr.Mohan

... Petitioner

.Vs.

Dharapuram Municipality
Rep. by its commissioner
Dharapuram
Tiruppur District.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of order dated 11.05.2023 in Na.Ka.No 1183 / 2023 / A3 and consequential order dated 30.05.2023 in Na.Ka.No. 1183 / 2023 / A3 on the file of Respondent and quash the same

For Petitioners Mr.N.Ponraj

For Respondent Mr.P.Srinivas
Standing Counsel



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ORDER

This writ petition has been filed challenging the impugned proceedings dated 11.05.2023 and the consequential proceedings dated 30.05.2023 of the respondent, wherein, the petitioner has been directed to pay the arrears of rent, failing which, proceedings will be initiated under the Tamil Nadu Revenue Recovery Act, 1864 (hereinafter referred to as 'the Act').

2.Heard Mr.N.Ponraj, learned counsel for the petitioner and Mr.P.Srinivas, learned Standing Counsel appearing on behalf of the respondent.

3.The petitioner had taken a Shop on lease from the Municipality in the year 1989. During the year 2010, a notice came to be issued to the petitioner directing the petitioner to pay a sum of Rs.9,00,070/- towards arrears of rent. The petitioner was only able to pay the part of the amount and hence, yet another notice dated 04.02.2010, was issued to the petitioner directing the petitioner to pay a sum of Rs.7,94,590/- within three days, failing which, the petitioner was informed that the restaurant will be locked and sealed.



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4.The petitioner filed WP.No.2794 of 2010, challenging the notice dated 04.02.2010. When this writ petition was pending, the petitioner was evicted and the respondent Municipality took over possession of the property. This fact was recorded, when the matter came up for hearing on 03.07.2018 and the writ petition was closed.

5.By virtue of the impugned proceedings, the petitioner has been directed to pay a sum of Rs.9,99,847/- failing which, revenue recovery proceedings will be initiated against the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.

6.The learned counsel for the petitioner specifically raised the question of limitation on the ground that the amount that is sought to be recovered from the petitioner pertains to the arrears of rent for the period 2004-2005 and 2009-2010 and that it is barred under Article 52 of the Limitation Act, 1963.

7.In the considered view of this Court, the ground of limitation that has been raised by the learned counsel for the petitioner, will not come to the aid of the petitioner. This is in view of the fact that the petitioner had already put to challenge the demand that was made in the year 2010 and the writ petition came to be closed by an



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order dated 03.07.2018. Thereby, the demand that was made against the petitioner has become final. The petitioner ought to have agitated the demand made in the earlier writ petition and in the absence of the same, the petitioner cannot be allowed to once again question the demand in this writ petition. The principles of constructive *res judicata* will equally apply even for a writ petition. If an issue was available even at the time of agitating the earlier writ petition and that issue is not canvassed, the petitioner will be barred from raising that issue in a subsequent writ petition. The learned counsel for the petitioner submitted that several articles/materials belonging to the petitioner was inside the property and they were brought for auction and according to the petitioner, the same was not even given credit, when the demand was made against the petitioner. The petitioner has also given a representation in this regard on 28.04.2023. While making the final recovery, this representation made by the petitioner shall also be considered and if any amount has already been recovered by way of auction, the same shall be given due credit.

8.The proceedings initiated under the Act is not in the nature of a fresh demand and it is in the nature of executing an earlier demand that has already been made. Section 345 of the Tamil Nadu District Municipality Act, 1920, provides for 12 years limitation for



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recovering the dues. Therefore, the impugned proceedings does not suffer from any illegality and it is not barred by limitation as claimed by the petitioner.

9.In the light of the above discussion, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.06.2023

KP

Internet : Yes/No

Index : Yes/No

Neutral Citation :Yes/No

To

Dharapuram Municipality
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N.ANAND VENKATESH, J.
KP

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