



S.A.No.853 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2023

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.853 of 2023
&
C.M.P. No. 27064 of 2023

U.Sekar

...Appellant

Vs.

1.Chairman,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai – 600 001.

2.Member Secretary,
Chennai Finishing Harbour,
Managing Committee,
Chennai Port Trust,
Old Administrative Building,
(4th Floor), No.1, Rajaji Salai,
Chennai – 600001

...Respondents



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Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of VII Additional City Civil Court, Chennai made in A.S.No.10 of 2022 dated 09.03.2023 confirming the decree and Judgement dated 19.02.2021 in O.S.No.1307 of 2015 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr. R.Dhamodharan.

JUDGMENT

The plaintiff whose suit for injunction has been dismissed by both the Courts below is the appellant before this Court. The facts briefly are set out herein below with the parties being referred to in the same litigative status as before the Trial Court.

2. The plaintiff would submit that he was a successful tenderer in respect of Ice Crushing Shet at Chennai Fishing Harbour for providing



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and operating Chill Room / any other fish related activities. The allotment order was issued on 14.02.2014 and thereafter the agreement for licence dated 20.02.2014 was entered into between the plaintiff and the 2nd defendant. The lease was for a period of 11 months commencing from 20.02.2014 till 19.01.2015. Under this agreement, the premises that was given to the plaintiff has been described in the schedule to the agreement as follows:

“North By - Open Space

East by - Trawler Wharf

South by - Road leading to Trawler Wharf

And West by- Open space”.

3. It is the further case of the plaintiff that since the premises is situate near the fishing harbour, it is prone to misuse and abuse by anti social elements. Therefore, the plaintiff has put up fencing on the North and Eastern side of the suit schedule property as temporary measure, to safeguard its valuable installation. The officials of the 2nd defendant had inspected the suit premises and by their letter dated



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27.08.2014 had directed the plaintiff to remove the fencing within 15 days. In his reply dated 27.10.2014 addressed to the 2nd defendant, the plaintiff had informed them that he has as per the advice of the officials lodged complaint about the miscreants and he has also expressed his readiness to pay affordable rent for the fenced area.

4. However, the 2nd defendant by their letter dated 10.12.2014 did not accept the reasons for the fencing and directed the plaintiff to remit the normal licence fees and three times penal licence fees for encroached area at a sum of Rs.3,65,536/-. By letter dated 13.01.2015, the 2nd defendant further informed the plaintiff that the renewal of allotment would be considered beyond period of 19.01.2015 only on clearing outstanding dues. Thereafter, the plaintiff has removed the fencing and therefore he sought for the waiver of the licence fee and penal licence fee amounting to a sum of Rs.3,81,680/- by the 2nd defendant. The plaintiff had issued a legal notice on 25.01.2015. Since there was no response, the suit has come to be filed.



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5. The 1st defendant had filed a written statement, which was adopted by the 2nd defendant. In the said written statement, the defendants had denied the allegations contained in the plaint except those admitted by them. The tender and execution of the agreement was admitted by the defendants. It is stated that during inspection conducted by the CFHMC (Chennai Fishing Harbour Management Committee) officials on 09.08.2014, they found that the plaintiff had encroached the Northern side abutting the allotted area. Thereafter, the plaintiff vacated this area, but however the area encroached on the eastern side was not vacated.

6. Therefore, a letter dated 27.08.2014 was issued directing the plaintiff to remove the structures within 15 days from the date of the letter. However, by letters dated 04.09.2014 and 27.10.2014, the plaintiff had alleged that he had fenced the area only to safeguard it from antisocial elements. The defendants would submit that this reasoning was unacceptable as there was other users inside the fishing



harbour. Therefore, in keeping with the terms of class 3 (c) of schedule C of the tender documents, the defendant had levied penal interest along with licence fees.

7. The defendants would further submit that it was not only a fencing that had been put up, however, RCC column with brick work has been put up on the east side, which is the cooling room and which has not been removed. Therefore, the letter dated 10.12.2014 was issued directing the plaintiff to remit a sum of Rs.3,81,680/- towards normal licence fee, 3 times penal licence fee together together with service tax for the encroached area.

8. By letter dated 05.01.2015, the plaintiff had requested CFHMC to consider the penal fee for 240 sq.mts., and normal licence fee for 42.40 sq.mt., and the plaintiff has also requested for renewal of the agreement. This request could not be considered since the plaintiff has encroached the area and therefore the defendant vide their letter dated 13.01.2015 had informed the plaintiff that his request would be



considered only when he clears the outstanding dues. This amount has not been remitted, but the plaintiff has sought for an extension for a further period of 10 years. The defendants by letter dated 19.01.2015 had directed the plaintiff to vacate the premises within 15 days, however, the plaintiff has not complied with the demand but has proceeded to approach the Court. They therefore prayed for the dismissal of the suit.

9. The Trial Court has framed the following issues:

“1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

2. To what other reliefs”.

10. The plaintiff examined himself as P.W.1 and marked Ex.A.1 to Ex.A.11. On the side of the defendants, one Elango was examined as D.W.1 and Ex.B.1 to Ex.B.9 were marked.

11. On considering both the oral as well as documentary



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evidence, the Trial Court had proceeded to dismiss the suit.

Challenging the same, the plaintiff has filed A.S.No.10 of 2022 on the file of the VII Additional City Civil Court, Chennai. The Appellate Court had also concurred with the findings of the Trial Court and dismissed the appeal. It is aggrieved by this Judgement that the plaintiff is before this Court.

12. The matter is listed under the caption for admission.

13. Heard the learned counsel for the appellant.

14. The appellant has entered into a possession of the property on the basis of the tender and the subsequent allotment letter and agreement. The agreement would clearly stipulate that tender documents which includes general conditions and general rules would form part of the agreement. As per schedule A – Clause IX (c) of the tender document no construction shall be put up without the written permission and the said clause would state that if the construction is put



up without written consent, then the construction would become the property of the defendant.

15. As per Schedule C - Clause 3 (c), the defendant is entitled to levy penal licence fees three times the licence fees for the encroached area. The argument of the counsel for the appellant is that the clause (9) (c) of schedule A is a former clause and clause 3 (c) of Schedule C is the later clause and therefore the defendant was only entitled to levy licence fee + penal licence fee.

16. The agreement which has been entered into clearly provides that the conditions provided in schedule A, B and C and the others would form part of the agreement. Schedule A deals with the general description, where the liability of the licensee are licensor has been set out. Clause IX (f) would read as follows:

“If the licensor does not require the construction put up with the permission of the licensor or if the licensor and licensee fail to settle the quantum of



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compensation to be paid the licensor is entitled to call upon the licensee to remove the construction so put up at his cost and restore the property in as good a condition as it was at the time the licensee was put in possession, within a reasonable time, failing which the licensor shall have the right to remove the construction at the cost and expense of the licensee”

17. Clause IX (b) prohibits the licensee from putting up any construction except with the written permission of the licensor and in case construction has been put up without written permission, it is made clear that the licensee, namely, the plaintiff would have no right to the same and it would become the property of the licensor. Schedule C provides for the general conditions of the contract which has to be strictly followed by the licensee, namely, by the plaintiff.

18. Clause 3 (c) of Schedule – C reads as follows:

“In the case of encroachment on the FHMC's



property by the licensee, the licensor is entitled to charge a penal licence fee three times the licence fee for the encroached area from the date of encroachment”.

19. Clause 3 (c) of Schedule – C deals with the penal charges. Penal charges are in addition to the regular charges. Therefore, the argument of the learned counsel for the plaintiff that once the penal charges are levied regular licence fee should not be levied cannot be countenanced. Admittedly, there is an encroachment by the plaintiff and that apart, the licence has expired as early as in the year 2015 itself.

20. Therefore, I see no reason to interfere with the concurrent Judgement of the Courts below. The Second Appeal stands dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

19.12.2023

Index : Yes/No
Internet : Yes/No
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To

1.The VII Additional Judge,
City Civil Court,
Chennai.

2.The XVIII Assistant Judge,
City Civil Court,
Chennai.



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P.T. ASHA, J,

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