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W.P. No. 31144 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 31144 of 2023

and

W.M.P. Nos. 30774 and 30775 of 2023

B.Raghuram

... Petitioner

-VS-

1. The Commissioner,
Coimbatore Corporation,
Coimbatore.

2. The Assistant Commissioner,
West – Zone,
Coimbatore Corporation,
Coimbatore.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records in the impugned order dated 08.12.2021 in Letter No. 5560/2021/A1(W) on the file of the Second Respondent and quash the same and directing the Respondents to regularize the tenancy of the Petitioner with respect to the Shop No. 14 in the Corporation Commercial Complex situated at T.B. Road, Ward No. 23, West Zone, Coimbatore in the light of G.O. Ms. No. 92 dated 03.07.2007 (Municipal Administration and Water Supply Department).



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For Petitioner : Mr. R.Rajarajan

For Respondents : Mr. K.M.D.Muhilan,
Standing Counsel

ORDER

Heard Mr. R.Rajarajan, Learned Counsel for the Petitioner and Mr. K.M.D.Muhilan, Learned Standing Counsel, who takes notice for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. It is borne out from the materials placed on record that Shop. No. 14 in Corporation Commercial Complex, T.B. Road, Ward No. 23, West Zone, Coimbatore, belonging to the Respondents had been allotted on 01.04.2001 to one Arumugam, who had illegally sub-let it to one Muhamadhu Ismail by agreement dated 14.12.2001, and he had later died on 07.07.2009. It was informed by one Rajkumar, who claims to be the legal heir of the said deceased Arumugam, by letter dated 13.09.2021 that one B.Raguram, who was employed in that shop is in its illegal occupation, and a police complaint dated 04.09.2021 has been lodged by the said Muhamadhu Ismail against him in that regard. The



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Council of the Respondents has then by Resolution No. 486 dated 26.10.2021

cancelled the allotment of the shop made in favour of the said Arumugam and Notice in Na. Ka. No. 5560/2021/A1(May) dated 19.11.2021 sent to the said B.Raguram that the shop has been locked and sealed. At that stage, the said Rajkumar has filed the Writ Petition in W.P. No. 27261 of 2021 before this Court seeking a direction to remove the seal of the shop and to allow him to carry on business there, in addition to a civil suit in O.S. No. 1169 of 2021 before the III Additional Sub-court, Coimbatore seeking a direction not to cancel the original allotment made in favour of the said Arumugam and not to re-auction the said shop, which are pending as on date.

3. While the matter stands as narrated supra, the said B.Raguram has filed this Writ Petition challenging the said Notice dated 08.12.2021 sent to him and for regularizing for tenancy of the shop in his favour relying on G.O. Ms. No. 92, Municipal Administration and Water Supply (Na.Ni4) Department dated 03.07.2007 issued by the Government of Tamil Nadu.

4. It is evident that the nature of relief claimed by the Petitioner falls within the realm of disputed questions of fact, which cannot be effectively determined by this Court in proceedings under Article 226 of the Constitution following



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summary procedure. It must be recapitulated here that the Hon'ble Supreme

Court of India in the decision in ***Roshina T. -vs- Abdul Azeez K.T.*** [(2019) 2 SCC 329] has cautioned that such claims relating to property rights would have to be answered one way or the other only in a properly framed suit impleading necessary parties before the civil court. In such circumstances, the Petitioner has not been impeded from canvassing what is sought to be agitated in this Writ Petition in the said remedy and there is no acceptable explanation from the Petitioner for not having availed it. In that view of the matter, this Court is not inclined to entertain this Writ Petition or delve into the merits of the controversy involved.

5. At the same time, the Second Respondent has filed a memo dated 06.11.2023 stating that in order to protect the interest of all parties, the following measures would be followed:-

7. In view of the above position, the Corporation may be permitted to remove all the articles in the subject shop and keep the same in safe custody under lock and seal in an alternate place to be identified as suitable by the Corporation and the said exercise will also be video-graphed by the Corporation.



8. Further, the Corporation will initiate appropriate steps in terms with Rule 319 of the Tamil Nadu Urban Local Bodies Act, 1998 (extracted below), R/w the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, against the said Mr.Muhamadhu Ismail, Mr.Rajkumar and Mr.Raguram (Petitioner herein) and thereafter conduct public auction with respect to the subject shop.

319. Occupation of a municipal land or building or of a land or building vested in the Municipality without a licence or lease.- If the occupation of a municipal land or building or of a land or building vested in the municipality is without a licence or lease or continues beyond the period of the said licence or lease, the occupant shall be liable to be evicted under provisions of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 (Tamil Nadu Act 1 of 1976).

9. With respect to the said articles in the subject shop, the rival claimants may approach the appropriate Court in order to establish



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their rights and upon production of an order, the same will be handed over to the concerned person.

The said undertaking filed by the Respondents is placed on record.

In the result, the Writ Petition is disposed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed.

No costs.

07.11.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

vjt

To

1. The Commissioner,
Coimbatore Corporation,
Coimbatore.
2. The Assistant Commissioner,
West – Zone,
Coimbatore Corporation,
Coimbatore.



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P.D. AUDIKESAVALU, J.

vjt

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