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W.P.No.33751 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.33731 of 2022
and WMP.Nos.33269 & 33271 of 2022

1. Saravana Pandi

2. A.Vellaisamy

... Petitioners

Versus

The District Revenue Officer,
Zonal Officer-10,
Greater Chennai Corporation,
117, Jawaharlal Nehru Road,
NGO Colony, Kodambakkam,
Chennai,Tamil Nadu-600 026.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records passed by the respondent in Notice under Section 379 (A) (1) of the Chennai City Municipal Corporation Act, Act IV of 1919, dated 08.12.2022 served on the petitioner's on 13.12.2022 in proceedings D.N.133 and to quash the same.

For Petitioners : Mr.V.Lakshmi Narayanan

For Respondent : Mr.E.C.Ramesh, Standing Counsel



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ORDER

The writ petition has been filed challenging the notice issued under Section 379 (A) (1) of the Chennai City Municipal Corporation Act, Act IV of 1919, dated 08.12.2022, served on the petitioners on 13.12.2022.

2. It is the contention of the writ petitioners that the properties in S.No.25/2, Old S.No.11/2 Mahalakshmi Street, T.Nagar, Chennai owned by one Ahamed Abdul Kadir had entered into a lease agreement with the petitioners on 01.02.2021. It is the case of the petitioners that the persons, who take the premises for rent, came to Chennai for taking necessary medical treatments. Due to the prolonged nature of treatment that is required, instead of staying in hotels, the patients and their kin have taken a flat on monthly tenancy. The agreement permits the petitioners to sub-lease the said premises for commercial purposes. The petitioners have been regularly paying the property tax and water tax. At this juncture, the impugned notice under Section 379(A)(I) of Chennai City Municipal Corporation Act, 1919, (hereinafter referred to as the Act) dated 08.12.2022 has been issued to the petitioners. Challenging the same, the present writ petition has been filed.



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3. The learned counsel for the petitioners submitted that due to previous enmity with the original flat owner, the neighbour viz., Sreedharan, made a representation before the respondent. The learned counsel further submitted that Section 379 of the Chennai City Municipal Corporation Act will apply only if the nature of business requires a license. Whereas building let out on rent on a monthly basis and it does not require any license. There is no provision under the Chennai City Municipal Corporation Act for the purpose of getting a license to put the tenant under occupation. Hence, the impugned notice has been issued without jurisdiction.

4. The respondent filed a counter stating that the petitioners were running the business in the name and style as "New Royal Residency" without taking a license from the respondent Corporation. Hence, the notice dated 10.11.2022 was issued to the petitioners lodge requesting them to apply for license within seven days, failing which, prosecution will be launched against them. But the petitioners have not responded for the notice issued by the respondent Corporation. Hence, the impugned notice under Section 379 A of the Chennai City Municipal Corporation Act has been served on the petitioners. According to



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the respondent Corporation, the property was assessed for commercial guest house since 2020.

4.a. As per Section 279 of the Chennai City Municipal Corporation Act, Act IV of 1919, *No person shall without or otherwise than in conformity with the terms of a license granted by the commissioner in this behalf, keep any lodging house, eating-house, tea-shop, coffee-house, café, restaurant, refreshment room, or any place, where the public are admitted for repose or for consumption of any food or drink or any place where food is sold or prepared for sale.*

5. It is the further contention of the respondent that one G.Sreedharan, a neighbour of the property, has made a representation to the respondent on 19.08.2022, wherein it is stated that the building under issue is being used for lodging purpose. But the planning permission was obtained only for residential purpose. That apart, the Police Department also filed an FIR on 10.08.2022 on the basis of the raid conducted by them. Hence, the action taken by the respondent cannot be questioned.



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6. The learned counsel for the petitioners submitted that the entire action has been taken by the respondent only at the behest of an Ex-MLA and his son, who is the present Councilor. Previously, there was a civil dispute between the lessor and the Ex-MLA's wife. This Court granted an order of interim injunction against them on previous occasion. In order to overcome that order, the dubious methods have been adopted to disturb the tenants, building were rented out only for the purpose of cancer patients. The alleged representation given by one Sreedharan itself clearly shows that the entire action is motivated. According to the counsel, the said Sreedharan was the 6th defendant in the original suit filed by the lessor of the petitioners. The so called FIR relied upon by the respondent is only nothing but creation of documents. The said document is attached artificially in order to non suit the petitioners and prevent the use of the building by the lessor. Hence, without issuing any notice, the final order came to be passed to stop the petitioners' business.

7. In reply, the learned counsel for the respondent submitted that a representation has been given by the said Sreedharan and an FIR also was filed on 10.08.2022 and notice has been issued to the petitioners' on 10.11.2022 to obtain license. Since no license was obtained, the order came to be passed.



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Hence, he opposes the writ petition.

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8. Heard the learned counsel on either side and I have perused the materials available on records.

9. The impugned notice has been issued under Section 379 A of the Act wherein the respondent directed the petitioners to stop the trade within 24 hours of the receipt of the notice and restore the above said premises. The impugned order proceeded as if the petitioners are conducting trade in the lodge whereas the specific stand of the petitioners that they are the lessee under the original owner and they are renting out the premises only to the cancer patients who are coming to take treatment in the Apollo Hospital. Though the alleged notice dated 10.11.2022 relied upon by the petitioners is said to have been served on the employee of the petitioners, there is no reference whatsoever in the impugned order about the notice dated 10.11.2022. Further, there is no acknowledgment whatsoever available on the notice. Further, the alleged signatures found in the two notices is totally different. If really an acknowledgment has been obtained from the so called employee of the petitioners, there is no need for writing the phone number of particular person. There is no explanation in this regard.



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Further, there is no material whatsoever placed to show that one Sitrarasu is an employee of the petitioners. The FIR has been relied upon to show that the prostitution is taking place in the petitioners' premises.

10. On perusal of the FIR, this Court is of the view that the same has been created only for the purpose of the case, if really the Police has visited the particular place on specific information about the alleged prostitution, even after finding so called persons involving such trade, the normal conduct of the Police would be to take them to the custody immediately, then file an FIR. Whereas the FIR has been filed after ascertaining the said facts and special report said to have been given by one Kanagaraj. If really the constable was present and raided the premises and found that prostitution is happening, the immediate reaction of the police was to arrest the persons involved such offences. On the other hand, the Constable appears to have given special report, based on which, FIR came to be registered later.

11. In such view of the matter, this Court is of the view that FIR is nothing but a created one and so much of artificiality attached. The other aspect pleaded in the counter is that entire action has been taken on the basis of the



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representation given by one Sreedharan and he has allegedly informed that the building has been misused. The said representation is said to have been given on 10.08.2022. On the same day, the FIR came to be filed. The reason for suspecting the FIR is that the so called Sreedharan, who allegedly has given the representation, is one of the defendants in the earlier suit filed by the lessor of the present petitioners. Against him, the interim order is in force and the first defendant viz., Sundari, who is the wife of the Ex-MLA Mr.Anbazzhagan, in the above said suit in C.S.No.193/2011. These facts are also not disputed. That being the position, the very documents relied upon by the respondent to take action under Section 379 of the Act appear to have been cooked up.

12. Be that as it may. For taking any action under Section 379 of the Act, there must be a proper enquiry conducted by the respondent, which has not been conducted. The alleged notice dated 10.11.2022 has not been proved. To bring the premises within the ambit of lodge, the business must be in the nature of casual visit of the customers as per the Section 279 of the Chennai City Municipal Corporation Act as referred above.

13. When the building has been let out on monthly basis, particularly to



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the patients, who are coming from various parts of the country, that too, from northeast State, cannot be considered as running as lodging house. In such view of the matter, the impugned notice is liable to be set-aside and the same is set-aside.

14. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

09.02.2023

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Index : Yes/No

To

The District Revenue Officer,
Zonal Officer-10,
Greater Chennai Corporation,
117, Jawaharlal Nehru Road,
NGO Colony, Kodambakkam,
Chennai, Tamil Nadu-600 026.



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N. SATHISH KUMAR, J.

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