



S.A.No.1780 of 2001

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1780 of 2001

J.Nagoor Kani

... Plaintiff/Respondent/Appellant

-Vs-

Virudhunagar Municipality,
through its Commissioner,
Virudhunagar.

... Defendant/Appellant/Respondent

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, against the decree and judgment dated 20.06.2001 passed in A.S.No.58 of 1999 on the file of the Subordinate Court, Virudhunagar, reversing the decree and judgment dated 23.06.1999 passed in O.S.No.283 of 1996 on the file of the District Munsif, Virudhunagar.

For Appellant : Ms.M.Lavanya
for Ms.P.Jessi Jeeva Priya
For Respondent : No appearance



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JUDGMENT

The appellant has filed the suit for declaration and injunction against the respondent in O.S.No.203 of 1996 before the District Munsif Court, Virudhunagar. The trial Court, after conducting the trial, decreed the suit in favour of the appellant/plaintiff on 23.06.1999. Challenging the said judgment and decree passed by the trial Court, the respondent/Municipality filed an appeal before the Subordinate Court, Virudhunagar in A.S.No.58 of 1999. The Appellate Court after hearing the arguments and considering the materials available on record, allowed the appeal. Challenging the said judgment and decree passed by the Appellate Court, the plaintiff in the suit/respondent in the first appeal has filed the present second appeal before this Court.

2. The case of the appellant/plaintiff is that the respondent is the Municipality. The suit property is a vacant site which belongs to the Municipality and the suit property was brought on auction to grant license on 22.12.1993. The appellant has participated in the said auction and since he was the highest bidder, the suit property was allotted to him on lease and license was granted to him from



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01.01.1994 to 31.12.1994 for a sum of Rs.3,620/-. Subsequently, under G.O.(Ms)No.285, dated 20.09.1985, this license was extended for another two years from 01.01.1995 to 31.12.1996. After taking possession of the suit property, the appellant has put up a construction and is doing a Tin manufacturing business and he has spent a sum of Rs.1,00,000/- for improvement. Further, he has invested a sum of Rs.5,00,000/- in the said business. Subsequently, the respondent has passed the minutes in Resolution No.480 that they would not extend the license for further period. Hence, the appellant has made a representation to the respondent on 08.08.1996 for further extension of two years from 01.01.1997 to 31.01.1999 by enhancing 5% of license fee. The persons who were in possession of the property belonged to the Municipality by holding the licence in all over Tamil Nadu, have approached the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India has also held in Civil Appeal Nos.1491 to 1494 of 1991 and W.P.No.400 of 1986 that by raising 15% of license fee, license period can be extended for further period of three years. Based on that direction, the appellant gave a representation to the respondent stating that he is willing to pay 15% of enhanced license fee. However, the respondent did not accept the representation of the appellant. Subsequently, in the month of January 1997, the



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respondent has sent a letter to the appellant in R.O.C.No.10695/95A2 and directed the appellant to vacate the premises and hand over the possession within 10 days from the date of receipt of a copy of the letter. Therefore, the appellant has filed a suit before the District Munsif Court, Virudhunagar for declaration, declaring that the resolution passed by the Municipality dated 06.02.1996 in Resolution No.480 is not valid and as null and void. As per the directions of the Hon'ble Supreme Court of India, license period has to be extended from 01.01.1997 to 31.12.1999.

3. The case of the respondent is that originally, the suit property was used as a slaughter house and subsequently, the same was closed. Since it was kept vacant, for getting some income, the respondent Municipality has decided to grant licence through public auction. The appellant has participated in the public auction and initially, he was granted license for one year (i.e.,) from 01.01.1994 to 31.12.1994. The same was extended subsequently from 01.01.1995 to 31.12.1996. While granting the license, certain conditions were stipulated in the license that the licensee should not put a permanent structure in the licensed premises and if the Municipality requires the premises for its own use, within 15



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days from the date of receipt of the notice, they have to vacate the premises.

Without any prior permission, the appellant has put up a construction which is against the conditions of the license. Further, the said premise is required for the Municipality and the decisions referred to by the appellant/plaintiff are not applicable to this case. Since the license period is over by 31.12.1996, as per the conditions stipulated in the license, the appellant/plaintiff has to vacate the premises and hand over the same. Even as per the Tamil Nadu Municipality Act, the licensee cannot hold the license continuously more than three times. The appellant/plaintiff is not running any Tin factory, however, he has sublet the suit premises which is against the conditions stipulated in the license and also against the Rules. Therefore, the respondent has sent a letter to the appellant to vacate and hand over the vacant possession and thereafter, has passed the Resolution on 06.12.1996 in Resolution No.480. Since the appellant has acted against the interest of the Municipality and also violated the conditions stipulated in the license, though the trial Court failed to consider the oral and documentary evidence and legal provisions, decreed the suit and hence, the respondent Municipality had filed the first appeal. The First Appellate Court, after considering the arguments and materials available on record, allowed the appeal.



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Hence, there is no merit in this second appeal filed by the appellant and the same is liable to be dismissed.

4. The learned counsel appearing for the appellant would submit that the appellant took the suit properties on lease and as per the Rules of the Municipality, he has paid 5% of enhanced license fee and his license period was extended for further two years. Further, a direction was also issued to the Municipality by the Hon'ble Supreme Court of India in Civil Appeal Nos.1491 to 1494 of 1991 and W.P.No.400 of 1986 for extension of three years period on enhancement of license fee at 15%. Based on the license, the appellant is running a tin factory and has spent a sum of Rs.5,00,000/- in the said business. Some of the labourers also are depending on that factory. The appellant is ready to pay the enhanced license fee of 15%. Therefore, the trial Court has rightly appreciated the evidence and decreed the suit, however, the First Appellate Court failed to consider the nature of the very claim and allowed the appeal which warrants interference of this Court.



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5. Despite sufficient opportunity given to the respondent, there is no representation on behalf of the respondent.

6. This Court perused the materials and the documents available on record.

7. While admitting the second appeal, this Court has formulated the following substantial questions of law:

(i) Whether the lower Appellate Court was justified in reversing the judgment and decree of the trial court without coming to grips with the judgment of the trial court considering the reasoning of the trial court and setting out reasons for reversing the same?

(ii) whether the lower appellate court was right in observing that the judgment of the Supreme Court and the Government order are only guidelines and not binding on the Municipality?

(iii) whether the lower Appellate Court was right in holding that the prayer of the plaintiff has become infructuous when the defendant Municipality pursued the matter beyond the year 1999



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8. It is not in dispute that the suit property belonged to the respondent Municipality and the license was granted to the appellant vide public auction initially for the period from 01.01.1994 to 31.12.1994 and the said period was extended from 01.01.1995 to 31.12.1995 and thereafter, from 01.01.1996 to 31.12.1996 with 5% of enhanced license fee. The respondent sent a notice to the appellant to vacate the premises and hand over the same. At that time, the appellant refused to vacate and hand over it by stating a reason that the Hon'ble Supreme Court of India has given a direction that on payment of enhanced 15% license fee, license period can be extended for further period of three years. The appellant has also invested the huge amount and is running a factory in that property. Therefore, the resolution and the letter issued by the respondent Municipality to vacate the premises are null and void. Hence, he has filed the suit for restraining the respondent to evict him.

9. A reading of the license granted by the respondent in favour of the appellant, would clearly show that the license was granted subject to certain



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conditions and copies of the said license were marked as Ex.A1 and Ex.A2. As per the above said licence, among the conditions stipulated, the following conditions are also stipulated therein. If the properties are required for the Municipality, the licensee has to vacate the premises on receipt of 15 days notice and should not put any new construction on the licensed premises. If any of the conditions stipulated in the license is violated, the license would be automatically cancelled and if any loss or damage is caused to the respondent Municipality, the respondent Municipality can recover the same. Therefore, even in the plaint, the appellant has admitted that he has put up a new construction which is against one of the conditions stipulated in the license. Further, if the property is needed for own use of the Municipality, within 15 days from the date of receipt of the notice, the licensee has to vacate and hand over the possession. The pleadings and the evidence would show that the suit property was vacant for some time and therefore, the Municipality has decided to lease the property through public auction. Thereafter, to develop the suit property, the respondent issued a notice to the appellant to vacate the premises as stipulated in the conditions in the license. However, the appellant has refused to do so and approached this Court. Once it is admitted that the property belongs to the respondent Municipality and the



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appellant has occupied the said property as licensee based on the license granted by the Municipality, subject to the conditions imposed in that license, the appellant is bound to follow the same. Further, the trial Court has granted the decree for the only reason that the period sought for extension of license period would be lapsed within a period of six months. Thereafter, the respondent Municipality has filed the appeal and the first Appellate Court has considered all the facts that the property originally belongs to the respondent Municipality and the right of the appellant in the property is only a licensee and therefore, allowed the appeal by setting aside the judgment and decree granted in favour of the appellant. Further, in this case, the license was extended for three times and if the licensee has not violated any conditions in the license, the directions of the Hon'ble Supreme Court of India would be applicable to the case. However, the appellant has violated the conditions of the license that he has put up a permanent structure which is against the conditions stipulated in the license. The respondent Municipality was in need of the licensed premises for their own use to set up a slaughter house and therefore, issued a 15 days notice as stipulated in the conditions in the license. The First Appellate Court has rightly appreciated the evidence and interpreted the legal provisions and also the directions of the



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Hon'ble Supreme Court of India and allowed the appeal. The First Appellate Court has also given a finding that the suit itself has become infructuous, since the extension of period sought for by the appellant in the plaint itself was expired on 31.12.1999. Therefore, the appellant has no power to hold the property. Once the period of license is expired, the licensee has to vacate the premises and if the very same property is put up for public auction, the appellant can participate in the public auction and if he is able to succeed as the highest bidder, he can occupy the same as licensee. However, he cannot hold the license for further period on expiry of the license period. Further, after vacating the appellant, the respondent Municipality is not going to give the property to some other person. Therefore, the contention of the appellant cannot be accepted. Since the license period is already expired, the relief sought for in the plaint itself has become infructuous. Therefore, there is no perversity or infirmity in the findings of the First Appellate Court. The substantial questions of law are answered in favour of the respondent.

10. In the result, this Second Appeal is dismissed. As discussed above, since the license period is already expired, the appellant is directed to vacate the premises within a period of 30 days from the date of receipt of a copy of this



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judgment and hand over the vacant possession failing which the Municipality is directed to take possession as per the procedure. There shall be no order as to costs.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
SSB

To

- 1.Subordinate Court, Virudhunagar,
- 2.District Munsif, Virudhunagar.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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