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M. Mohamed Ibrahim Vs Udhagamandalam Municipality

Writ Petition No. 7639 of 2010 and M.P. No''s. 2 and 3 of 2010

Court: Madras High Court

Date of Decision: Aug. 30, 2010

Hon'ble Judges: K.B.K. Vasuki, J

Bench: Single Bench

Advocate: N. Aravind Kumar, for the Appellant; V. Radhakrishnan for K. Sasindran, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.B.K. Vasuki, J.
On consent, the writ petition is taken up for final hearing.

2. The writ petition is filed against the notice in Na. Ka. No. 5007/01/A7 dated 11.03.2010 published in ""Dinamalar"" Daily dated 15.03.2010 and

the proceedings No. Na. Ka. No. 5007/01/A7 dated 26.03.2010 and consequential Tender cum Auction Sale Notice published in ""Dinamalar

daily dated 31.03.2010 issued by the Respondent/Municipality and to quash the same and to consequently direct the Respondent to consider the

Petitioner''s representation dated 23.03.2010 and to recognise him as tenant thereby permitting him to carry on business in shop bearing No.

29/1197 situated within the municipal market of Udhagamandalam, Nilgiris District.

3. The brief facts leading to the filing of this writ petition are as follows:

The property in question i.e. shop No. 29/1197 belongs to Respondent/Municipality and the same was originally leased out to one K.F. Jacob and

the said Jacob has sub let the same to the Petitioner as early as on 1997. The Petitioner has been from 1997 carrying on business in the shop

number in question by regularly paying rent to the Respondent under due acknowledgment issued in the name of the original lessee. Whileso, the

Respondent/Municipality passed a resolution on 17.12.2002, thereby cancelling the lease granted in favour of the original lessee Jacob and to

direct the Petitioner herein to vacate and hand over the possession of the property. Though the order was served on the original lessee, he did not

admittedly challenge the same and the same was challenged by the Petitioner herein, in W.P. No. 46422 of 2002. The Petitioner has also

simultaneously filed O.S. No. 279 of 2002, thereby restraining the Respondent/Municipality from evicting the Petitioner except under due process

of law. The writ petition was at the M.P. stage taken up for final hearing and was dismissed however, with the right given to the Petitioner to

approach the Respondent/Municipality for recognising him as tenant afresh, with further direction issued to the Respondent/Municipality to

consider such request by taking into consideration of the fact that the Petitioner has been carrying on business in the shop in question from August

1997 for over a period of five years from the date of disposal of the writ petition dated 10.11.2003. In pursuance of the order made in the writ

petition, the Petitioner has approached the Respondent/Municipality with a request to recognise him as tenant afresh and the

Respondent/Municipality has resisted the same on the ground of pendency of the suit and the suit was subsequently dismissed on 10.11.2009.

Thereafter, the Respondent has consequently issued three proceedings which are impugned herein.

4. In the meanwhile, the possession of the shop portion is also taken over by the Respondent/Municipality from the Petitioner on 22.02.2010 and

the shop is kept under lock and seal of Respondent/ Municipality. Thereafter, the Respondent/Municipality issued the publication thereby

demanding the Petitioner to pay arrears of rent to the tune of Rs. 2,86,604/-till 21.02.2010, failing which, to bring the property inside the premises

for public auction and to adjust the sale proceeds towards the payment of arrears and to initiate further proceedings against Jacob for recovery of

the balance amount. Immediately, after publication, the Petitioner has sent a representation to the Respondent on 23.03.2010, thereby requesting

the Respondent/ Municipality to recognise him as tenant to carry on business in the same shop, in the light of the order passed by this Court in

W.P. No. 46422 of 2002. Though the same was duly received by the Respondent, no order was passed on the same, but, the repondent issued

the second proceedings dated 26.03.2010, in and under which, the Petitioner is directed to pay a sum of Rs. 7,70,000/-for the use and occupation

of the building for the period from 01.02.2002 to 22.02.2010. It is stated in the notice that the Petitioner has by approaching the civil forum

prevented the Respondent/Municipality from proceeding with the auction of the lease of the shop, thereby the Petitioner has caused loss to the

Municipality. The same is followed by the public auction notice dated 31.03.2010, thereby the lease in respect of shop number 29/1197 is brought

for public auction. The Petitioner has again made representation through his lawyer to the Respondent/Municipality along with cheques for different

amount towards rental arrears for the period from October 2007 to March 2008. Even thereafter the same was not responded by the

Respondent/Municipality. The Petitioner has hence come forward with this writ petition for the relief as stated supra.

5. The learned Counsel for the Petitioner would contend that though the Petitioner has duly approached the Respondent/Municipality for treating

him as tenant afresh in compliance with the order made in the earlier writ petition, it is the Respondent / Municipality, who failed to consider his

request and the Respondent/Municipality has also forcibly dispossessed him from the shop portion and impugned orders passed without duly

considering his request, is contrary to the direction issued by this Court in the earlier writ petition.

6. Per contra, the learned Counsel for the Respondent would seriously oppose the Petitioner''s claim mainly on the ground that the Petitioner is

only a sub tenant and no right is accrued to him to claim to be recognised as tenant. It is the Petitioner, who failed to approach the

Respondent/Municipality and to fail to vacate the premises within reasonable time, as a result, the notice demanding arrears of rent and notice

demanding compensation for use and occupation from the original lessee and the Petitioner respectively are issued by the Respondent and as all

the proceedings ended against the sub-lessee, the possession is also taken over by the Respondent/Municipality and the shop was duly and legally

brought for auction and the Petitioner has no right to question the proceedings initiated by the Respondent / Municipality, who is the owner of the

shop in question.

7. Heard the rival submissions made on both sides.

8. It is not in dispute that the original lessee in respect of shop in question is one K.F. Jacob, however, the same continued to be in possession of

the Petitioner herein from August 1997 by duly making payment of rents to the Municipality as admitted in the earlier W.P. No. 46422 of 2002.

Our High Court was in the earlier writ petition, considering the factum of the possession of the Petitioner from August 1997 inclined to permit the

Petitioner to approach the Municipality to recognise him afresh as tenant in the place of the original lessee in respect of shop portion and also

directed the Respondent/Municipality to consider the request, if any so made by the Petitioner by taking into consideration, the factum of

possession of the Petitioner of the shop from August 1997. Though the writ petition was dismissed on 10.11.2003 the suit was filed by him only on

10.11.2009, till then, neither the Petitioner approached the Respondent nor the Respondent took any legal steps to dispossess the Petitioner from

the shop portion. Admittedly the proceedings to vacate the Petitioner from the shop portion is initiated and completed only during February 2010.

Thereafter, the impugned orders are passed, which compelled the Petitioner to make a representation to the Respondent on 23.03.2010 and also

on subsequent dates, the copies of which are enclosed herein at pages 27 and 30 to 43 of the typed set of papers. But the Respondent has not

considered the representation dated 23.03.2010 in the light of the observation made by this Court on 10.11.2003 in W.P. No. 46422 of 2002.

Without doing so, the Respondent has come forward with the demand notice for the recovery of Rs. 7,70,000/-towards use and occupation and

also public auction for granting lease of the shop portion for three years.

9. In my considered view, the question of the recovery of any amount by way of use and occupation and for bringing the shop portion for public

auction for lease can be raised only after considering the Petitioner"s representation for treating him as tenant afresh. The impugned proceedings

issued without considering the representation, in my considered view, is contrary to the direction issued by this Court. Though the learned Counsel

for the Respondent would seriously argue that considering the latches on his part, the Petitioner is not entitled to any indulgence from this Court and

the Respondent is not bound to consider his representation, which is unfavourable to the Municipality, the same can be considered while taking

appropriate decision upon the Petitioner"s representation. Therefore, it is suffice for this Court to permit the Petitioner to make a representation to

the Respondent to treat him as tenant afresh. In that event, the Respondent is directed to consider such representation and subject to the outcome

of the same, further proceedings can be initiated by the Respondent Municipality as per law. As far as the demand for arrears of rent from the

original lessee and for recovery of amount for use and occupation from the Petitioner herein is concerned the same can also be considered subject

to the outcome of the representation made by the Petitioner and after giving due opportunity to the Petitioner to be heard in this regard and till such

time, the impugned proceedings shall be kept in abeyance.

10. In the result, the Petitioner is permitted to make a representation to the Respondent to consider him as tenant afresh and to reconsider demand

for payment of Rs. 7,70,000/- for use and occupation, within one week from the date of receipt of copy of this order and the

Respondent/Municipality is directed to consider the same within eight weeks thereafter. The Respondent Municipality is also directed to dispose of

the same after giving due opportunity to the Petitioner for being personally heard and the impugned recovery and auction proceedings shall be kept

in abeyance till then.

11. With this observation, the writ petition is disposed of. No costs. The connected miscellaneous petitions are closed.