

D.Ramesh Vs. 1)the Commissioner,

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SooperKanoon Citation : sooperkanoon.com/62449

Court : Chennai

Decided On : Jul-22-2015

Judge : S.Manikumar

Appellant : D.Ramesh

Respondent : 1)the Commissioner,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 22.07.2015 CORAM THE HONOURABLE MR.JUSTICE S.MANIKUMAR AND THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM W.A(MD)No.755 of 2015 Writ Appeal(MD)Nos.755 to 760 of 2015 and Connected Miscellaneous Petitions D.Ramesh ..Appellant versus 1)The Commissioner, Usilampatti Municipality, Usilampatti, Madurai District.

2)The Tamil Nadu Generation and Distribution Corporation Ltd., Rep by Assistant Engineer (city).Madurai Main Road, Usilampatti, Madurai.

3)The Deputy Superintendent of Police, Usilampatti, Madurai.

4)The Inspector of Police, Usilampatti Town Police Station, Madurai..Respondents Appeal filed under Clause 15 of Letters Patent, against the order made in W.P(MD)No.17047 of 2014 dated 24.03.2015.

!For Appellant : Mr.T.Lajapathi Roy ^For R1 : Mr.K.Mahendran For R3 & R4 : Mr.M.Alagadevan :

JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR, J.) Being aggrieved by the dismissal of the writ petitions, appeals have been filed.

As facts and submissions are common, present appeals are disposed of, by a common judgment.

2.Case of the appellants is that initially lease of shops in possession of the appellants expired on 31.03.2011.

Thereafter, having regard to G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 30.07.2007, extension was granted upto 31.03.2014, on the revised rate of rent @ Rs.500/- per month.

Appellants made representations dated 31.03.2013, to extend the period of lease for a further three years from 01.04.2013 to 31.03.2017, but the same was not considered by the respondents.

Left with no other alternative, they filed W.P(MD)Nos.5547 of 2014, vide order, dated 17.07.2014, this Court directed the respondents therein, to consider the representations, within a period of two months from the date of receipt of the order, stated supra.

3.Usilampatti Municipality has passed a resolution No.404 dated 26.06.2014, cancelling the lease granted in Resolution Nos.153 and 154, dated 28.09.2007 and decided to conduct a fresh tender.

The said action was challenged in W.P.No.13279 of 2014 and the said writ petition was allowed.

The Commissioner, Usilampatti Municipality, Usilampatti, Madurai District, vide proceedings in Roc.No.999/2013/A1 dated 15.09.2014, decided to demolish the shops.

Being aggrieved, about 84 persons filed writ petition in W.P(MD)No.5669 of 2012, praying for a direction to restrain the respondents from evicting them, without due process of law.

Interim injunction was granted on 24.04.2012.

Contending inter alia that the said writ petition was pending, fresh writ petitions in W.P(MD)Nos.17047 to 17052 of 2014 were filed, challenging the order in Roc.No.999/2013/A1, dated 15.09.2014 on the file of the Commissioner, Usilampatti Municipality, Usilampatti, Madurai District, to quash the same and consequently, the appellants/petitioners prayed for a direction, forbearing the Commissioner, Usilampatti Municipality, Usilampatti, Madurai District, from evicting them, from Shop Nos.21, 22, 20, 23, 25 and 19 respectively, situated in U.Muthuramalingathevar Memorial Bus Stand, Usilampatti, Madurai District, without resorting to due process of law.

4.Before the Writ Court, Municipality has filed a counter affidavit, stating that no lease was granted to the appellants/petitioners and what was granted to them was only a licence to occupy open area to vend(tharaikadai).Thus, the version of the Municipality is that the appellants have misconstrued the licence granted as lease.

Municipality has further contended that the erstwhile Municipal Chairman and its Councilors have also misunderstood the purport of G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 30.07.2007.

5.In the counter affidavit, Municipality has also contended that persons, who are in occupation are not the original licencees.

They have sublet the place to third parties, without obtaining prior permission from the Municipality.

Municipality has further contended that impugned proceedings was only a show cause notice, calling upon the occupants, to produce the original documents to establish their right, but without doing so, they have approached this Court.

Reliance was also placed on the proceedings in Roc.No.1303/2011/A2 dated 30.06.2011 issued to one Kamal Batcha and Latha, wherein, it has been categorically stated that right granted to the appellants is only a licence and not lease, for the open space and renewed on 01.04.2011, by misapplying G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 30.07.2007, which applies only to lease and not to licence and accordingly, the erstwhile Municipal Council has passed a erroneous resolution No.153 dated 28.09.2007.

6.Municipality has further contended that persons who were granted licence, have sold the same to third parties, for monetary consideration, without the knowledge of the respondents.

Some of them have sublet the place, after receiving huge advance amount of Rs.3 to 5 lakhs.

Before the Writ Court, Municipality has further submitted that the appellants have no right to continue in occupation of the place.

It is also contended that notices have been issued, only as per the earlier directions of this Court and despite the same, the appellants are successfully evading from producing the original documents.

By filing writ petition one after another, from 2009, they are squatting on the place.

7.After considering the rival submissions, material on record and taking note of the fact that W.P.No.5669 of 2012 filed by 84 persons against the Municipality and otheRs.has been dismissed as early as on 08.09.2014, wherein, the learned counsel for the petitioners has submitted that the said writ petition has become infructuous and after considering the decisions of the Hon'ble Supreme Court in A.P.SRTC versus G.Srinivasa Reddy, reported in 2006 (3) SCC674and a Division Bench judgment of this Court in M.Ingaci versus The Commissioner, Devakottai and otheRs.reported in 2010 (2) L.W785 the Writ Court by a common order, dismissed all the writ petitions.

8.Assailing the correctness of the common order, Mr.T.Lajapathi Roy, learned counsel for the appellants contended that the Writ Court has failed to appreciate that in resolution No.154 passed by the Usilampatti Municipality, a decision has been taken to renew the lease of the appellants, by collecting 15% rent over and above, for the period from 01.10.2013 to 30.09.2016.

He further contended that as per Section 36 of the Tamil Nadu District Municipalities Act, the State Government may, by order in writing (i)Suspend or cancel any resolution passed, order issued, or licence or permission granted or (ii) prohibit the doing of any act which is about to be done or is being done, in pursuance or under colour of this Act, if, in their opinion; (a) Such a resolution, order, licence, permission or act has been legally passed, issued, granted or authorized; or such a resolution, order, licence, permission or act is in excess of the powers conferred by this act or any other law; or (c) the execution of such resolution or order, the continuance in force of such licence or permission or doing of such act is likely to cause danger to human life, healthy or safety, or is likely tom lead to a riot or an affray; Provided that the state government shall before taking action under this section on any of the grounds referred to in clauses (a) and (b) give the authority or person concerned an opportunity for explanation the respondent has passed the said impugned order though he is not the competent authority.

He therefore submitted that unless the Government suspends or cancels the said resolution, the beneficiaries of the said resolution cannot be evicted in a summary manner.

9.Learned counsel for the appellants further submitted that as per paragraph 4(iii) of G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 30.07.2007, it is the duty of the local body, that after the initial period of 9 years of licence, they have to re-assess the rental value and after re-assessment, give preference to the existing licencees.

10.To sustain the order, Mr.K.Mahendran, learned counsel for the Usilampatti Municipality, Usilampatti, Madurai District, submitted that G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 30.07.2007, is not applicable

to the case of a licence, but applies only to the case of lease.

He further added that misconstruction of the abovesaid Government Order, by the then Municipal Council and extending the period, would not confer any right to the appellants.

11.Inviting the attention of this Court to the proceedings in Roc.No.1303/2011/A2 dated 30.06.2011 issued to one Kamal Batcha and Latha, learned counsel for the Municipality submitted that, it was only a licence and not a lease.

He also submitted that when G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 30.07.2007 is not applicable to the case of licence, observation of the Writ Court, at paragraph 6 of the common order that, G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 30.07.2007 has been stayed by this Court, ought not to have been given weightage, as the Writ Court also has observed that the said G.O.is not applicable to the facts and circumstances of this case.

Reiterating further that notices issued directing the appellants to appear and submit the documents, cannot be said to be arbitrary, warranting interference, prayed for dismissal of the appeals.

Heard the learned counsel for the parties and perused the materials available on record.

12.Main contention of the Commissioner, Usilampatti Municipality, Usilampatti, Madurai District, is that the appellants were given only a licence to occupy a portion in open space to vend (tharaikadai) and that there were no shops.

According to Municipality, G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 30.07.2007 is not applicable to the case of the appellants.

13.Proceedings in Roc.No.1303/2011/A2 dated 30.06.2011 of the Commissioner, Usilampatti Municipality, Usilampatti, Madurai District, issued to Kamal Batcha and Latha, are on the same lines and therefore, it is suffice to extract one such

proceedings.

crpyk;gl;o efuhl;rp Mizahsh; (bgh) mth;fspd; bray;Kiwfs; Kd;dpiy jpU
vd;/rutzf;Fkhh;.

gp/,/.

e/f/vz;/1303-2011-m2 ehs; 30/6/11 bghUs; /; chpkk; ?.

crpyk;gl;o efuhl;rp ?.

ngUe;J epiya tshfj;jpDs; cs;s jiu filf;F14/2011 Kjy; g[Jg;gpj;J chpkk; tH';fp
cj;jputpLjy; ?.

rk;ge;jkhf ghh;it /; 1) efuhl;rp eph;thfk; kw;Wk; FoePh; tH';F Jiw murhiz vz;/92 ehs;
30/7/07 2) efh;kd;w jPh;khd vz;/154.

ehs; 28/9/2007 3) j';fsJ tpz;zg;g ehs; 18/3/2011 4) efh;kd;w jPh;khd vz;/677.

ehs; 26/5/2011 cj;jput[ghh;it 3y; fz;l j';fsJ tpz;zg;gj;jpy; 31/3/2011 chpkk; Kotiltjhy;
1/4/2011 Kjy; chpkk; g[Jg;gpj;J tH';f nfhhp tpz;zg;gk; tug;bgw;Ws;sJ.ghh;it 1y; fz;l
murhizapd; go 3 Mz;LfSf;F Fj;jif chpkk; g[Jg;gpf;f ghh;it 2y; fz;l efh;kd;wk; Vw;bfdnt
mDkjp mspj;Js;sJ.ghh;itapy; 4y; fz;l efh;kd;w jPh;khdj;jpy; efuhl;rp tUtha; bgUf;Fk;
nehf;jj;jpy; Fiwe;jgl;r thlifahf U:/500 eph;zak; bra;Jk; 1/4/2011 Kjy; 31/3/2014
Koat[s;s fhyj;jpw;F chpkk; g[Jg;gpj;J mDkjp mspj;jjpd; nghpy; f PH;f;fz;l
epge;jidfSf;Fl;gl;L mDgtpj;Jf;bfhs;s ,jd; K:yk; cj;jutplg;gLfpwJ.jiuf;fil vz; bgah;
kw;Wk; Kfthp tUl; khj thlif giHa vz; 23 g[jpa vz; 23 jpU/ fky;ghl;c&h crpyk;gl;o
1/4/2011 Kjy; 31/3/2014 U:/500 epge;jidfs; /; 1) g[jpajhf eph;zak; bra;ag;gl;l
khjhe;jpu thlifia gpujpkhjk; 10k; nijpf;Fs; brYj;j ntz;Lk; brYj;j jtwpdhy; muR tpjpfspd;
go mguhjk; brYj;jg;gl ntz;Lk;/ 2) efuhl;rpf;F vjpuhf tHf;F bjhluf;TlhJ.3) ,lk;.

bjhHpy;.

kw;Wk; thlif kjpg;gPl;il khw;wp mikg;gjw;F Mizahsh; mth;fSf;F KG mjpfhuk; cz;L/ 4)
muR mt;tg;ngHJ gpwg;gpf;fg;gLk; cj;jutpd; gpufhuk; Mizahsh; mth;fs; tpjpf;fg;gLk;
tpjpKiwfSf;F cl;gl;L fil elj;jpf;bfhs;s ntz;Lk;/ 5) nkw;fz;l ,lk; efuhl;rpapd; mgptpUj;jp
jpl;lg;gzpfSf;F njitg;gLk; gl;rj;jpy; vt;tpj Ml;nrgida[k; ,d;wp fhyp bra;J efuhl;rp trk;

xg;gilf;f ntz;Lk;/ 6) nkw;fz;l jiuf;filapy; vspjpy; jPg;gw;wf;Toa Tiufis mikf;fnth.

vspjpy; jPg;gw;wf;Toa bghUl;fisa[k; cgnahfg;gLj;jnth TlhJ vd mwpt[Wj;jg;gLfpwJ.7) efuhl;rp Vyf; fl;Lg;ghl;od;go ele;J bfhs;s ntz;Lk;/ vf;fhuzj;ijf; bfhz;Lk; cs;Fj;jiff;F tplf;TlhJ.mt;thW fz;Lgpof;fg;gl;lhy; cldoahf vt;tpj fhuzk; fhl;lhky; chpkk; uj;J bra;ag;gLk;/ 8) mDkjpaspf;fg;gl;l msitf; fhl;oYk; vt;tpj fhuzKk; bfhz;Lk; TLjyhf ,lj;ij Mf;fpukpg;g[bra;af;TlhJ.9) vt;tpj khWjYk; bra;af;TlhJ.10) ve;jneu;j;jpYk; vt;tpj Kd;dwptpg;gpd;wp ,e;j cj;jput[uj;J bra;anth.

khw;wnth MizahsUf;F mjpfhuk; cz;L/ 11) nghf;Ftuj;Jf;F ,ila{Wkpd;wp filfs; itj;Jf; bfhs;s ntz;Lk;/ xk;-?..?..?..?

30/6/11 Mizahsh;(bgh) crpyk;gl;o efuhl;rp 14.Reading of the above shows that considering the applications dated 18.03.2011 of the abovesaid persons, for extension of the period, it has been granted from 01.04.2011 to 31.03.2014.

In the subject column of the proceedings dated 30.06.2011, it is categorically stated that licence has been renewed for Tharaikadai.

Again, in the opening sentence of the proceedings dated 30.06.2011, the Commissioner, Usilampatti Municipality has also stated that requisition has been made only for renewal of licence.

At clause No.6 of the conditions, the Municipality has further reiterated that what was intended to be conveyed in the proceedings dated 30.06.2011 was only a licence.

15.As extracted supra, at various places in the proceedings dated 30.06.2011, the Commissioner, Usilampatti Municipality has stated that only a licence was granted to the appellants to be in occupation of Tharaikadai.

16.When the Municipality chose to conduct a fresh tender by passing resolution No.404 dated 26.06.2014, cancelling the lease granted, in Resolution Nos.153 and 154, dated 28.09.2007, the same has been challenged in W.P(MD)No.13279 of 2014 by Usilampatti U.Muthuramalingathevar Bagaratchi Perunthu Nilaiya Kadai Viyabarikal Nala Sangam, represented by its President A.K.R.Kasimayan.

Considering the Resolution Nos.153 and 154, G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 30.07.2007 and by observing that the Municipality is not entitled to partly cancel the same, without issuing notice to the beneficiaries of such resolution, a learned single Judge, vide order made in W.P(MD)No.13279 of 2014, has set aside the proceedings, in resolution No.404 dated 26.06.2014, passed by Usilampatti Municipality, Usilampatti, Madurai District.

However, the Writ Court has also observed that setting aside the resolution No.404 dated 26.06.2014 would not prejudice the right of the Municipality, to approach the Government.

17.Contents of the notice impugned by the appellants, subject matter of present appeals, are one and the same and therefore, it is suffice to extract one such notice.

efuhl;rp eph;thfk; kw;Wk; FoePh; tH';F Jiw mwptpg;g[e/f/vz;/999-2013-m1 ehs; /; /
/2014 bghUs; /; Fj;jif ?.

crpyk;gl;o efuhl;rp ?.

filfspd; chpkj;ij rhpggh;j;jy; ?.

Mjhu Mtz';fSld; nehpy; tUif juf;nfhUjy; ?.

bjhlh;ghf gh;it /; 1/ brd;id.

cah;ePjpkd;wk; kJiu fpisapd; ePjpg;nguhiz kD vz;/5547 Kjy; 5556-2014 Koat[s;s
tHf;fpd; bghJ cj;jut[ehs; 17/7/2014 2/ ,t;tYtyf ,nj vz;zpl;l 23/7/2014?.k; ehspl;l
mwptpg;g[?..?..?..?..?..?

ghh;it 1?.y; Fwpg;gplg;gl;Ls;s bghJ Mizapd;go efuhl;rp filfspd; chpkk; Fwpj;J
murhiz vz;/92 (e/ep/k/ F/t/J.ehs; 30/7/2014?.d; go rl;l tpjpfis gpd;gw;wp 2 ,uz;L
khj';fSf;Fs; eltof;if vLf;FkhW crpyk;gl;o efuhl;rp MizaUf;F mwpt[Wj;jg;gl;Ls;sJ.ghh;it
2?.y; fhQqk; tpguj;jpw;F efuhl;rp fil chpkk; Fwpj;J chpa mry; rhd;whztz';fSld;
efuhl;rpf;F nehpy; tUif jUkhW j';fSf;F mwpt[Wj;jg;gl;LJ.jh';fs; nkw;fz;l mwptpg;ig
bgw;Wf;bfbhz;L.

mjw;fhd fhy mtfhrj;jpw;Fg; gpd;dUk; jh';fs; ,Jtiu efuhl;rp mYtyfj;jpw;F nehpy; tUif juhky; ,Ug;gJ Fj;jifia g[Jg;gpj;Jf;bfhs;s tpUg;gkpy;iy vd bjhpa tUfpwJ.jh';fs; chpa mry; Mtz';fSld; efuhl;rp mYtyfj;jpw;F nehpy; tUif jUtjw;F gjpyhf efuhl;rp;F m";ry; fojk; K:yk; gjpy; mDg;gp itj;J eph;thfj;jpw;F kPwpa brayhFk;/ ,t;thwhd j';fspd; jd;dpr;irahd nghf;F efuhl;rp brhj;ij Fj;jif chpkk; bgwhj K:d;whk; egh; jtw hf tHpapy; gad;gLj;Jtjhf bjhpatUfpwJ.vdnt.

jh';fs; ,e;j ,Wjp mwptpg;g[bgw;Wf;bfhz;l K:d;W jpd';fSf;Fs; chpa mry; Mtz';fSld; efuhl;rp mYtyfj;jpw;F nehpy; tUifg[hpe;J j';fspd; fil chpikj;ij g[Jg;gpj;jYf;fhf rhpgghh;j;Jf;bfhs;SkhW ,jd; K:yk; kPz;Lk; mwpt[Wj;jg;gLfpwJ.jh';fs; ,e;j tha;g;iga[k; fil chpkj;ij jf;f itj;Jf;bfhs;s gad;gLj;j jtWk; gl;rj;jpy; jh';fs; Fj;jifr; rl;l;j;ija[k; Fj;jif xg;ge;jj;ija[k; kPwpa[s;s;jhf ePjpkd;wj;jpw;F mwpf;if bra;ag;gLk;/ nkYk; j';fspd; fil chpkk; jd;dpay;ghfnt uj;jhfptpLfpwJ.nkYk;.

j';fs; iftrKs;s filia rl;l hPjpahf efuhl;rpahy; ifafg;gLj;jg;gLk; vd;gij ,jd; K:yk; ,Wjpahf bjhptpj;Jf;bfhs;sg;gLfpwJ.xk;-?..?..?..?

15/9/14 Mizahsh; crpyk;gl;o efuhl;r 18.Reading of the notice also makes it clear that it is only a consequence of the directions issued in W.P(MD)Nos.5547 to 5556 of 2014 dated 17.07.2014.

As per the reference No.1, vide common order made in W.P(MD)Nos.5547 to 5556 of 2014, dated 17.07.2014, Usilampatti Municipality has been directed to pass orders on the representations, after considering G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 30.07.2007.

Pursuant to the directions, as per the reference No.2, vide notice 23.07.2014, appellants have been directed to appear and produce the original documents.

Despite taking time, they have not appeared and therefore, vide impugned notices dated 15.09.2014, Municipality has stated that action of the appellants in sending reply to the Municipality, without appearing in person and submitting the documents, is against the directions issued by the Municipality.

19.In the impugned notices, Commissioner, Usilampatti Municipality, has further called upon the appellants to produce the documents within three days and also

cautioned that if they failed to make use of the opportunity, the licence would be deemed to have been cancelled and accordingly a report would be filed to the court.

He has also stated that possession would be taken in accordance with law.

The appellants are stated to have submitted their reply in writing and thereafter, preferred writ petition(MD)Nos.17047 to 17052 of 2014, to quash the notices extracted supra.

Upon perusal of the impugned notices and considering the abovesaid rival contentions, the Writ Court, prima facie observed that the impugned proceedings is only a show cause notice, calling upon the appellants, to produce documents in support of their claim.

Writ court has also taken note of the fact that what was given to the appellants was only a open space and not constructed shops.

Writ Court has also taken note of the fact that earlier about 84 persons have filed a batch of writ petitions in W.P(MD)No.5669 of 2012 and the same has been dismissed as infructuous.

The Court has also considered that without giving proper explanation, appellants have directly filed writ petitions, which are not maintainable.

20.Decisions considered by the Writ Court are extracted hereunder:- (i) In A.P.SRTC versus G.Srinivas Reddy, reported in (2006) 3 SCC674= 2006-3-L.W.170, it has been observed as follows:- ?19.

There are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court.

We may illustrate by an example.

A claim, which is stale, time- barred or untenable, is put forth in the form of a representation.

On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation.

When the court disposes of the petition with a direction to "consider", the authority grants the relief, taking shelter under the order of the court directing him to "consider" the grant of relief.

Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted.

Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction to "consider" the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it.

Representations of daily-wagers seeking regularisation/absorption into regular service is a species of cases, where there has been a large-scale misuse of the orders "to consider".

(ii) Following the Apex Court's judgment cited supra, a Hon'ble Division Bench of this Court, in *M. Ingaci versus The Commissioner, Devakottai & Others*, reported in 2010-2-L.W.785, has observed that what cannot be considered cannot be directed to be considered by this Court.

In the said judgment, at paragraph 8, it is observed as follows:- 8.

Why we are extracting this judgment in such detail is that we should be aware of the consequences of our order when we direct the authorities to "consider".

In the aforesaid situation, if the learned Judge, before directing the authorities to consider, had heard the petitioner herein, then the order of the Division Bench reprimanding the 5th respondent would have been brought to the notice of the learned Single Judge.

Some time, we also come across cases where our directions is to an authority who cannot really pass an effective order and the effective order can only be passed by an authority superior to the one to whom we issue directions.

Obviously, when the order is not complied with, since it cannot be complied with because of the hierarchy discipline, the officer has to face the contempt.

All these can be avoided if we only bear in mind the guidelines given in the above case by the Supreme Court before we direct the respondent to "consider and pass orders."

21.From the material on record, it could be deduced that action taken by the authorities is pursuant to the directions issued in W.P(MD)Nos.5547 to 5556 of 2014 dated 17.07.2014, wherein earlier the Writ Court has issued directions to the respondents therein, to consider the representations of the appellants, and consequently, impugned notices have been given, to produce documents in support of their claim.

Contention of the respondents is that it is not a lease, but only a licence and that the earlier Municipal Council has misapplied G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 30.07.2007 to the facts of this case, which is only a licence.

Writ Court has categorically held that the G.O.is not applicable to licence.

By referring to the judgment in M.Ingaci's case, the Writ Court has indicated that what cannot be considered, cannot be directed to be considered.

22.By the impugned notices, the appellants have been directed to produce documents and it is on the nature of a show cause notice, with a failure clause.

It is well settled law that a Writ against show cause notice is not maintainable.

Reference can be made to the following decisions:- (i) In State of U.P.v.

Brahm Datt Sharma reported in 1987 (2) SCC179 at Paragraph 9, held as follows: "When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law.

?.The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken.

Interference by the court before that stage would be premature, the High Court in our opinion ought not have interfered with the show cause notice."

(ii) The Supreme Court in Special Director v.

Mohd.

Ghulam Ghouse reported in 2004 (3) SCC440 at paragraph 5, held as follows: "This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show- cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties.

Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition.

Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court.

Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted."

(iii) In Union of India v.

Upendra Singh reported in 1994 (3) SCC357 the Central Administrative Tribunal examined the correctness of the charges against the respondent therein, on the basis of the material produced by him and quashed the same.

The Union of India preferred an appeal.

The Supreme Court, after considering the decisions in T.C.Basappa v.

T.Nagappa reported in AIR 1954 SC440 which was followed in Ujjam Bai v.

State of U.P., reported in AIR 1962 SC1621 and V.D.Trivedi v.

Union of India reported in 1993 (2) SCC55 at Paragraphs 4 and 6 of the judgment in Upendra Singh's case, held as follows: "In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law.

At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges.

The tribunal cannot take over the functions of the disciplinary authority.

The truth or otherwise of the charges is a matter for the disciplinary authority to go into.

Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.

The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution.

Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal.

If the original application of the respondent were to be filed in the High Court it would have been termed, property speaking, as a Writ of prohibition.

A writ of prohibition is issued only when patent lack of jurisdiction is made out.

It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view."

(iv) In Union of India v.

K.K.Dhawan reported in 1993 (2) SCC56 it was contended by the delinquent therein that his conduct cannot be the subject matter of disciplinary proceedings, as it was not in the couRs.of discharge of the duties as a servant of the Government.

The Supreme Court, following the ratio decidendi in S.Govinda Menon v.

Union of India reported in AIR 1967 SC1274 repelled such contention and at Paragraph 28, held that disciplinary action can be taken in the following cases, though the instances are not exhaustive, "i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to

duty; ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty; iii) if he has acted in a manner which is unbecoming of the government servant; iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers.v) if he had acted in order to unduly favour a party; vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

(v) It is useful to extract the ratio decidendi in *S.Govinda Menon v.*

Union of India reported in AIR 1967 SC1274 and it reads as follows: "In our opinion, it is not necessary that a member of the Service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject-matter of disciplinary proceedings.

In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship.

To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the Service for integrity or devotion to duty as a public servant.

We are of the opinion that even if the appellant was not subject to the administrative control of the Government when he was functioning as Commissioner under the Act and was not the servant of the Government subject to its orders at the relevant time, his act or omission as Commissioner could form the subject-matter of disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the

service."

In this context reference may be made to the following observations of Lopes, L.J.in Pearce v.

Foster (1866) 17 QBD536 p.

542.

If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal.

That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business.

It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant.

(emphasis supplied) (vi) In Union of India v.

Kunisetty Satyanarayana reported in AIR 2007 SC906 the respondent therein was issued with a charge memo for availing reservation against the post earmarked for ST, though he did not belong to the said category.

Instead of submitting a reply to the charge memo, he preferred Original Application before the Central Administrative Tribunal, which disposed of the same with a direction to the respondents to submit the explanation to the charge memo and on such reply, the disciplinary authority was directed to consider the same.

In stead of filing the reply, the respondent therein filed a Writ Petition, which was allowed.

Testing the correctness of the order of the Andra Pradesh High Court, the Supreme Court, at paragraphs 13, 14 and 16, held as follows: "13.

It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v.

Ramdesb Kumar Singh and ORS.[JT1995(8) SC33, Special Director and Anr.v.Mohd.

Ghulam Ghouse and Anr.

[AIR 2004 SC1467, Ulagappa and Ors.v.Divisional Commissioner, Mysore and ORS.[2001(10) SCC639, State of U.P.v.

Brahm Datt Sharma and Anr.

[AIR 1987 SC943 etc.14.

The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature.

A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so.

It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established.

It is well settled that a writ lies when some right of any party is infringed.

A mere show-cause notice or charge-sheet does not infringe the right of any one.

It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

However, ordinarily the High Court should not interfere in such a matter."

(emphasis supplied) 23. It is also to be noted that while issuing the impugned notices dated 15.09.2014, the Municipal Commissioner has also observed that conditions granting permission, have been violated.

Subletting/sale have been made.

Binamies are stated to be in possession.

The abovesaid aspects have to be considered only by the authorities and at this juncture, court cannot delve into the same.

When violations are noticed, the authorities are empowered to direct the appellants to produce documents, in support of their claim and take appropriate action, in accordance with law.

Decision taken by the Municipality calling upon the appellants to submit documents, cannot be said as arbitrary.

Reasons for directing the appellants to produce documents, are not on the aspect of violations also.

24. For the reasons stated supra, we do not find any valid reasons to interfere with the common orders made in W.P(MD)Nos.17047 to 17052 of 2014 dated 24.09.2014.

Accordingly, writ appeals are dismissed.

No costs.

Consequently, connected miscellaneous petitions are closed.

To 1) The Commissioner, Usilampatti Municipality, Usilampatti, Madurai District.

2)The Tamil Nadu Generation and Distribution Corporation Ltd., Rep by Assistant Engineer (city).Madurai Main Road, Usilampatti, Madurai.

3)The Deputy Superintendent of Police, Usilampatti, Madurai.

4)The Inspector of Police, Usilampatti Town Police Station, Madurai..

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