S. Dharmalingam Vs. the State of Tamil Nadu Rep. by the Secretary, Dept. of Municipal Administration and the Commissioner, Erode Municipality

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Court : Chennai

Decided On : Nov-01-2002

Reported in : (2002)3MLJ746

Judge : P.D. Dinakaran, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act; Tamil Nadu District Municipalities Act - Sections 260(2); Constitution of India - Articles 19(1) and 21

Appeal No. : W.P. Nos. 37606 to 37659 of 2002 and WPMP Nos. 56432 to 56539 of 2002

Appellant : S. Dharmalingam

Respondent : The State of Tamil Nadu Rep. by the Secretary, Dept. of Municipal Administration and the Commissione

Advocate for Def. : D.Krishnakumar, Spl. G.P. for First Respondent and ;K. Sridhar, Adv. for Second Respondent

Advocate for Pet/Ap. : Hema Sampath, Adv.

Disposition : Petitions dismissed

Judgement :
ORDER

P.D. Dinakaran, J.

1. The writ petitioners are licensees with respect to the shops located at Ghani Market, which are owned by the second respondent-Municipality.

2. The second respondent-Municipality by resolution bearing No.608, dated 14.2.2002 increased the licence fee as follows:

(a)Rs.12/- per sq.ft. (per month) for each of the 8 shops in old building facing Brough Road.

(b)Rs.5/- per sq.ft. (per month) for each of the 74 shops facing inside the old building

(c)Rs.12/- per sq.ft. (per month) for each of the 114 shops located in open space.

(d)Rs.12/- per sq.ft. (per month) for each of 13 shops located in the corridors.

3. The resolution of the second respondent-Municipality dated 14.2.2002 also provides to evict the petitioners from the respective shops if they refuse or fail to pay the enhanced licence fee/lease amount.

4. The petitioners contending that the enhancement of licence fee as per resolution dated 14.2.2002 of the second respondent-Municipality is exorbitant, unreasonable, arbitrary and therefore illegal, have preferred the above writ petitions for a writ of Certiorarified Mandamus to call for the records of the second respondent-Municipality relating to the resolution bearing No.608, dated 14.2.2002, in so far as it relates to enhancement of rent for the petitioners' shops, quash the same and to direct the second respondent-Municipality to collect lease amount from the petitioner at the old rate.

5. In this regard, it is relevant to mention that the petitioners, placing reliance on G.O.Ms.No.615, Rural Development and Local Administration Department, dated

21.4.1984, laid a suit O.S.No.340 of 1986 before the learned Subordinate Judge, Erode for a decree to direct the second respondent-Municipality by way of a mandatory injunction to allot the shops in the Ghani Market as per G.O.Ms.No.615, Rural Development and Local Administration Department, dated 21.4.1984, and to restrain the committee members of the second respondent-Municipality by permanent injunction from acting in pursuance of the resolution bearing No.472 dated 23.7.1986 with respect to the allotment of shops and the proposal to bring shops for public auction.

6. The second respondent-Municipality resisted the said suit, viz., O.S.No.340 of 1986, contending that G.O.Ms.No.615, Rural Development and Local Administration Department, dated 21.4.1984, is applicable only in the case of those who have vacated the old market for the purpose of constructing the new market building, but not in the case of the petitioners who admittedly continue to be in possession of the old market.

7. The learned Subordinate Judge, Erode finding that there is no such qualification prescribed in G.O.Ms.No.615, Rural Development and Local Administration Department, dated 21.4.1984, that only those who had vacated the shops are entitled for the benefit of the said G.O.Ms.No.615, Rural Development and Local Administration Department, dated 21.4.1984 as contended by the second respondent-Municipality, rejected the plea of the second respondent-Municipality and held that the petitioners herein are entitled for allotment of shops as per G.O.Ms.No.615, Rural Development and Local Administration Department, dated 21.4.1984, and the same was confirmed by the learned District Judge, Periyar, by judgment and decree dated 23.9.1988 in A.S.No.138 of 1987, against which the second respondent-Municipality preferred Second Appeal No.1171 of 1989 before this Court.

8. This Court admitted Second Appeal No.1171 of 1989 on the following substantial question of law:

' Whether the courts below have correctly understood G.O.Ms.No.615 Rural development and Local Administration dated 21.4.1984 marked as Ex.A1?'

and ultimately, allowed the second appeal by judgment dated 18.7.2002 following the decision of this Court in TAMIL NADU MUNICIPAL SHOP MERCHANTS ASSOCIATION AND ETC. VS . STATE OF TAMIL NADU AND OTHERS reported in , and held as follows:

'(Para 8) .... While exercising such powers, the Municipal Authorities have to take the largest interest of the society into consideration. If certain persons, merely because they bid at the auction and became successful bidders and thereby became entitled to enjoy the right for certain period, are allowed to contend that they must be granted renewal, then there will be no control by the public bodies. If persons let into possession would like to continue as long as possible, then their heirs will be let into possession and it will likewise become a heritable right. Therefore, they cannot be permitted to continue in possession of the shops owned by the Municipality under the guise of right of renewal, and the properties of local bodies cannot be allowed to be fettered by perpetuity.

9. The case of the plaintiffs/respondents herein is also based on a public lease granted, pursuant to a public auction. Therefore, the same cannot be equated to that of a right of tenancy under the Tamil Nadu Buildings (Lease and Rent Control) Act.'

9.1. In spite of the above final decision of this Court dated 18.7.2002 in S.A.No.1171 of 1989, the petitioners, through their association, laid another suit O.S.No.375 of 2002 before the learned Principal District Munsif, Erode for declaration, declaring the enhancement of monthly rent is too high and unlawful and for consequential injunction to restrain the second respondent-Municipality from evicting the petitioners without due process of law.

9.2. Pending the above suit, viz., O.S.No.375 of 2002, the said association, on behalf of the petitioners also filed I.A.No.815 of 2002 for an interim injunction to restrain the second respondent-Municipality from evicting the members of the association, namely the petitioners herein from the Ghani Market without due process of law, and also filed I.A.No.834 of 2002 to maintain status-quo with respect to the possession of the respective shops by the petitioners pending disposal of I.A.No.815 of 2002.

9.3. The second respondent-Municipality contested both the interim applications contending that they are empowered to allot shops, by granting licence, by exercising the powers conferred under Section 260(2) of the Tamil Nadu District Municipalities Act (hereinafter referred to as the 'Act'), and while exercising such powers, the second respondent-Municipality has to take the largest interest of the society into consideration to augment the public revenue.

10. Accepting the case of the second respondent-Municipality and finding that the enhancement of licence fee as per the resolution bearing No.608, dated 14.2.2002 is justified, the learned Principal District Munsif, by a common order dated 19.9.2002 dismissed both the interim applications. The said association, to which all the petitioners herein are admittedly members, had not preferred any appeal against the said common order dated 19.9.2002 in I.A.Nos.815 and 834 of 2002, and therefore, the said order dated 19.9.2002 had become final. However, after withdrawing the said suit O.S.No.375 of 2002 laid by the association, formed by the petitioners, the petitioners have chosen to file the above writ petitions.

11. Mrs.Hema Sampath, learned counsel for the petitioners, contends that:

(i) the petitioners have not been served with any notice before passing of the impugned resolution dated 14.2.2002;

(ii) the enhancement of the licence fee by the second respondent-Municipality is exorbitant and unreasonable, and therefore, the impugned resolution dated 14.2.2002 is arbitrary, illegal and violative of Articles 19(1)(g) and 21 of the Constitution of India.

12. I am unable to appreciate either of the above contentions of the learned counsel for the petitioners.

13. The power of the second respondent-Municipality to pass appropriate resolution in the matter of fixing licence fee under Section 260(2) of the Act is not disputed by Mrs.Hema Sampath, learned counsel for the petitioners. It is well settled in law that the lease/licence expires by efflux of time and immediately after the expiry, the right of the petitioners either to continue in possession of the shops

or to seek any notice from the second respondent-Municipality comes to an end, and in which case, they are not entitled for any further notice either for eviction or for passing appropriate resolution for enhancing lease amount/licence fee, as the case may be. In any event, since the power conferred on the second respondent-Municipality to levy fees for granting licence in respect of the public/private market provided under Sections 260 and 262 of the Act respectively is not disputed, the question of giving notice before passing such resolution enhancing the licensing fee does not arise, as such power is conferred on the second respondent-Municipality by statute itself. If that be so, the contention of the learned counsel for the petitioners that the petitioners have not been given notice before passing of the impugned resolution dated 14.2.2002 and therefore, the same vitiates the principles of natural justice is not tenable in law.

14. Once the power of the second respondent-Municipality to pass appropriate resolution is not disputed, it may not be proper for this Court to interfere with such powers and decision thereon as the same had been taken to augment revenue to the second respondent-Municipality, to meet the expenses to discharge its public duty.

15. That apart, the decision of this Court dated 18.7.2002 made in S.A.No.1171 of 1989 is binding on the petitioners, who are resisting the enhancement of licence fee for decades together by protracting litigations one after another. The conduct of the petitioners in this regard cannot be appreciated. If the petitioners could not pay the enhanced lease amount/licence fee, certainly, the second respondent-Municipality is entitled to evict them without any further notice.

16. In any event, it may not be out of context to take into consideration the following relevant factors which are the basis for the enhancement of licence fee/lease amount:

(i) The licence fee/lease amount fixed for the respective shops of the petitioners has not been revised or increased for decades together.

(ii) On the other hand, necessity of the second respondent-Municipality to augment public revenue has become inevitable to meet the expenses required to provide and maintain civic facilities to the general public, viz., roads, street lights, water, etc.

(iii) the second respondent-Municipality is empowered to take appropriate decision in the light of the above factors by exercising the powers conferred under Section 260(2) of the Act.

17. In my considered opinion, the impugned resolution dated 14.2.2002, therefore is well within the jurisdiction of the second respondent-Municipality to enhance licence fee/lease amount, taking into consideration the above factors that weighed the second respondent-Municipality and consequently, the petitioners cannot complain that the increase of licence fee/lease amount is arbitrary and exorbitant, without testing the same by bringing the shops for public auction, which may fetch even more lease amount/licence fee.

18. At this juncture, the learned counsel for the petitioners seeks two weeks time for the petitioners to pay the entire arrears and to seek permission to continue in their respective shops by paying enhanced licence fee. If so, while dismissing the above writ petitions, I am obliged to direct the second respondent-Municipality to give two weeks time to the petitioners, from the date of receipt of copy of this order, to pay the entire arrears of rent and to permit them to continue in their respective shops on payment of the enhanced licence fee, failing which the respondents are permitted to evict the petitioners without any further notice.

These writ petitions are dismissed with above direction. No costs. Consequently, connected W.P.M.P.s are also dismissed.