
(2014) 12 MAD CK 0307

In the Madras High Court

Case No : Writ Petition (MD). No. 19610 of 2014 and M.P. (MD). No. 1 of 2014

R. Arumugam

APPELLANT

Vs

The Commissioner, Tirumangalam Panchayat Union

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Citation : (2014) 12 MAD CK 0307

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Judgement

M. Venugopal, J.—Heard both sides.

2. According to the petitioner, the respondent had called for tender cum auction for seven shops in the respondent Panchayat Union Complex in the year 2004 for a period of one year i.e. 01.02.2004 to 31.01.2005 and he had participated in the auction. He is the highest bidder for shop Nos. 6 and 7 and accordingly, deposited the amount as directed by the respondent. He is running a Tea Stall in the said shops from the date of his lease by paying the rental amount without any default.

3. The stand of the petitioner is that his lease period got expired on 31.01.2005 and subsequently, the respondent has extended the lease for a further period of 3 years and later, it was extended from 01.02.2010 to 31.01.2013 by increasing 15% of the rent from the existing rent. He had paid a sum of Rs.1065/- per month. He had also paid the rent to the respondent.

4. The Learned counsel for the petitioner contends that the Tamil Nadu Government issued G.O. Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 with a view to resolve the administrative delays, avoid expenses, the pending litigations and with a view to bring about uniformity in lease conditions. The said Government Order is applicable to the Local Bodies in the State. The said Government Order was passed at the instigation of the Merchants' Association, with a view to regularize the lease period in favour of

the existing lessees for next 9 years after enhancing 15% of the existing lease amount and after the period of 9 years, subject to certain conditions.

5. The grievance of the petitioner is that the respondent by an order dated 08.08.2014 had granted renewal of Lease for a further period of 3 years from 01.02.2013 to 31.01.2016 by enhancing the rent from 15% from his existing rent and fixed the rent as Rs.1,225/-. As per renewal, he is entitled to run the tea stall in the aforesaid place upto 31.01.2016. Also, he has taken a demand draft in favour of the respondent and sent the same through registered post on 18.10.2014 and the same was received by the respondent.

6. When that be the factual situation, to his shock and surprise, the petitioner received a registered post on 19.11.2014 sent by the respondent, wherein, it was mentioned that his lease extension order dated 08.08.2014 was cancelled for the reason that Panchayat Union Council had passed a resolution dated 31.10.2014 in Resolution NO.443, whereby, cancelling the lease extension order dated 08.08.2014, because of the reason that the same was not in accordance with the G.O. (MS).No.227, Rural Development Department, dated 22.11.2011 and further that no approval from the Panchayat Union Council was obtained.

7. The core contention projected on behalf of the petitioner is that without providing an opportunity to the petitioner, the respondent had cancelled his extension of lease, when already 22 months lease period had expired and only 14 months remaining to be completed in the lease period, which is to come to a close on 31.01.2016. As such, it is submitted on behalf of the petitioner that the impugned order dated 17.11.2014 passed by the respondent is invalid in law. Further, he has also sought for passing of an order of this Court in restoring the order passed by the respondent dated 08.08.2014 in respect of his shop Nos. 6 and 7 in the Panchayat Union Office Complex, Thirumangalam, Madurai District.

8. Per contra, it is the submission of the Learned Additional Government Pleader that even though the respondent had passed the impugned order dated 17.11.2014, the petitioner is continuing to run the tea stall in the aforesaid shops and that he has not been evicted or removed from the shops in question. At this juncture, he brings it to the notice of this Court that on 25.11.2014, in Na.Ka.No. 1861/2014/A2, the Commissioner of the respondent had issued a memo to the petitioner requiring him to hand over the shops in question within 7 days from the date of receipt of the said memo etc.,

9. Apart from the above, the Learned Additional Government Pleader also seeks in aid of the G.O.(Ms).No.227, Rural Development (C-4) Department, dated 22.11.2001 in and by which, it is mentioned that in respect of own buildings used as shops, rooms, carriages, canteen, hotels, lodging houses, rest -sheds, maximum lease rent at a time initially can be for a period of three years and on renewal, it should be for a further period of three years and since in the present case, 6 years period had already expired, the petitioner is not entitled to get the extension of lease, and as such, there is no infirmity or illegality in the order

dated 17.11.2014, passed by the respondent.

10. It is to be borne in mind, undoubtedly, G.O.(Ms).No.227, Rural Development Department (C-4) Department, dated 22.11.2001, speaks of maximum period of three years lease originally/initially and renewal for a further period of three years only in respect of own buildings used as shops, rooms, carriages, canteen, hotels, lodging houses, rest -sheds as stated supra, and as such, the petitioner cannot be granted/given the extension of lease period in the present case in issue. However, he was given the extension of lease period from 01.02.2013 to 31.01.2016, for which, he cannot be found fault with.

11. That apart, it is to be noted that the said impugned order/notice of the respondent dated 17.11.2014, in regard to the cancellation of lease, for a period from 01.02.2013 till 31.01.2016 was issued by the respondent to the petitioner without adhering to the principles of natural justice. It cannot be forgotten that the principles of natural justice are not the edicts of a statute. Also that fairness of procedure requires that an opportunity of calling for an explanation from the concerned person ought to be provided by the concerned authority. In the instant case on hand, prior to the issuance of impugned notice, dated 17.11.2014 by the respondent, admittedly, no show cause notice was issued to the petitioner, requiring him to offer his explanation as to why his lease for the period beginning from 01.02.2013 till 31.03.2016 should not be cancelled. As such, this Court holds that the impugned notice dated 17.11.2014 is vitiated on account of the fact that the Respondent had not adhered to the principles of Natural Justice. In fact, the present case is a one of negation of principles of Natural Justice. On this account alone, this Court sets aside the impugned order dated 17.11.2014, passed by the respondent. Resultantly, the writ petition succeeds.

12. At this stage, the Learned Additional Government Pleader brings it to the notice of this Court that the petitioner was issued with the memo dated 25.11.2014, by the respondent whereby and whereunder he was required to vacate the shops and to hand over the same within 7 days from the date of receipt of the said memo. For this memo, the petitioner has to offer his explanation and in this regard, the learned counsel for the petitioner fairly submits that the petitioner has received the memo, dated 25.11.2014 issued by the respondent. Therefore, what remains now is only explanation to be offered/to be submitted by the petitioner to the respondent. In this regard, this Court directs the respondent, on receipt of the explanation, to consider the same and to pass orders on merits in the subject matter in issue within a period of four weeks from the date of receipt of a copy of this order. (Of-course after providing necessary opportunities to the petitioner by adhering to the principles of natural justice). Till such time, it is abundantly made clear that the petitioner shall not be evicted/removed from the tea shops in question.

13. In the result, the writ petition is allowed, allowing the parties to bear their own costs. Consequently, the impugned order dated 17.11.2014, passed by the respondent is hereby set aside by this Court for the reasons assigned in the

present writ petition. Consequently, connected miscellaneous petition is closed.