

(2014) 12 MAD CK 0320

In the Madras High Court

Case No : Writ Petition Nos. 30665 and 32656 of 2014 and M.P. No. 5 of 2014 in W.P. No. 20627 of 2014 and M.P. Nos. 1 to 3 of 2014 in W.P. No. 32656 of 2014, M.P. Nos. 1 and 2 of 2014 in W.P. No. 30665 of 2014

S. Chitra

APPELLANT

Vs

The Chairman, Sathyamangalam Municipality

RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Citation : (2014) 12 MAD CK 0320

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Judgement

V. Ramasubramanian, J.—The petitioner took a shop bearing No. 42 at the New Bus-stand of Sathyamangalam Municipality on licence for a period of three years from 24.02.2010. According to the petitioner, the licence was renewed for a further period of three years with effect from 01.07.2013 up to 30.06.2016, on a higher monthly rent.

2. However, on 25.06.2014, the Municipality threatened to evict the petitioner. Subsequently, the Municipal Council appears to have passed a resolution bearing No. 92, dated 30.06.2014, cancelling the licences of all the shops and to go in for a fresh tender.

3. Challenging the said resolution, most of the shopkeepers came up with independent writ petitions. The petitioner also filed W.P. No.20627 of 2014 challenging the resolution of the Municipality and the consequential auction notice issued on 23.07.2014. There were totally about 91 writ petitions and all the writ petitioners were represented by the same counsel Mr.I.C. Vasudevan.

4. The first batch of writ petitions in W.P. Nos.20816 to 20864 of 2014 and a few others came up for hearing on 06.08.2014 for the first time. At that time, Mr.A.S. Thambusamy, learned counsel took notice for the Municipality. Therefore, I permitted the auction to go on, but directed the respondents not to confirm the

auction. 5. Thereafter, when the matter came up for further hearing, the learned Additional Advocate General appearing for the respondents brought to my notice several shocking facts. The facts revealed at the time of hearing, included the sub-letting of shops by many of the licensees and the fact that those sub lessees also participated in the auction and quoted higher rates. Some of the original licensees had also participated and either became the successful bidders or lost out to their sub tenants.

6. It is under the above circumstances and due to the above turn of events, that several licensees opted to withdraw the writ petitions. The petitioner herein was one among those persons who withdrew the writ petitions. Therefore, on the basis of the endorsements made by the learned counsel for the petitioners, about 81 writ petitions were dismissed as withdrawn on 27.08.2014.

7. But it appears that a few licensees who did not withdraw the writ petitions, chose to suffer an order of dismissal on merits and went on appeal before the Division Bench. It appears that the Division Bench, without realising that the Pandora's box was waiting to be opened, granted an order of status quo in a few matters.

8. Therefore, all the licensees who withdrew their writ petitions, appear to have suddenly realised that they could have adopted the same bravery and took a chance by suffering an order on merits. But they also realised that the dismissal of a writ petition upon withdrawal, cannot be challenged on appeal.

9. Therefore, it appears that as a test case, a few persons have engaged a different counsel and filed miscellaneous petitions for recalling the order of dismissal. M.P. No.5 of 2014 in W.P. No.20627 of 2014 is one such petition filed by the petitioner herein. For reasons not entirely attributable to the petitioner, this miscellaneous petition was filed on 23.09.2014, but numbered only on 30.10.2014 and did not come up for hearing.

10. In the meantime, the respondent Municipality issued a tender notification dated 07.11.2014, for putting up the shop that was in the petitioner's occupation to auction. Immediately, instead of moving M.P. No.5 of 2014 in W.P. No.20627 of 2014, the petitioner came up with a fresh writ petition in W.P. No.30665 of 2014 challenging the auction notice and seeking a consequential mandamus to permit her to continue until the year 2016.

11. The said writ petition W.P. No.30665 of 2014 came up for admission on 24.11.2014. At that time it was brought to my notice that the Division Bench had granted an interim order of status quo in favour of a few licensees. Therefore, I ordered notice in W.P. No.30665 of 2014 and also granted an interim stay of dispossession. But the petitioner had already been dispossessed.

12. Apart from being dispossessed, the auction in respect of the petitioner's shop itself was already over on 07.08.2014 and a person by name S.Vyapuri had become the highest tenderer. Therefore, the relief sought for in W.P. No.30665 of

2014 was incapable of being granted. 13. But yet another development took place. The highest tenderer Vyapuri appears to have surrendered the shop on 20.10.2014 due to ill-health and requested the Municipality to put up the shop for fresh auction. Therefore, the Municipality issued another auction notice dated 21.11.2014 fixing the date of the auction as 12.12.2014.

14. Immediately, the petitioner came up with the next writ petition W.P. No.32656 of 2014, challenging the auction notice dated 21.11.2014. When this writ petition came up for admission, I directed not only the two writ petitions but also the miscellaneous petition M.P. No.5 of 2014 in W.P. No. 20627 of 2014 to be posted together for hearing. Accordingly, W.P. Nos. 30665 and 32656 of 2014 along with M.P. No.5 of 2014 in W.P. No.20627 of 2014 were posted together for hearing.

15. Heard Mr.R.Subramanian, learned counsel appearing for the petitioners and Mr.P.H. Arvinth Pandian, learned Additional Advocate General appearing for the respondents.

16. The first writ petition W.P. No.30665 of 2014 does not survive for adjudication, for the simple reason that what was challenged therein was an auction notice dated 07.11.2014, which was superseded by the subsequent auction notice dated 21.11.2014. The second auction notice is challenged in W.P. No.32656 of 2014 and hence nothing survives in the first writ petition. Accordingly, W.P. No.30665 of 2014 is dismissed.

17. Before taking up the second writ petition, I shall first take up M.P. No. 5 of 2014 in W.P. No.20627 of 2014. This is a petition for setting aside the order of dismissal dated 27.08.2014. The order of dismissal was passed on the basis of an endorsement made by the learned counsel for the petitioner, one Mr. I.C. Vasudevan.

18. In order to get over the endorsement made by the previous counsel, the petitioner has engaged a new counsel and come up with a plea that her previous counsel withdrew that writ petition due to confusion and mistaken impression.

19. Such a plea cannot be entertained. On the contrary, it should be condemned. As I have pointed out earlier, the licenses of about 90 shops stood cancelled by a resolution of the municipality and all the shop keepers engaged the same counsel and came up together. When the weather went tough, about 80 persons withdrew the writ petitions. But a few persons took a chance, suffered an order of dismissal on merits and went on appeal through a different counsel and got an interim order. This has now tempted those who withdrew their writ petitions, to come with applications for recalling the order of dismissal, by engaging a different counsel. Hence the same deserves to be deprecated. I can understand if at least the very same counsel filed the present miscellaneous petition, claiming that there was some confusion on his part. Engaging a different counsel to file these types of applications including Review Applications, is not a healthy practice. The reasons as to why the previous counsel chose to withdraw the

entire batch of 80 writ petitions, were manifold.

20. The reason as to why the petitioner and a few others have now chosen to come up with applications for setting aside the orders of dismissal of their previous writ petitions is actually the interim order of status quo granted by the Division Bench. Therefore, I have no hesitation in coming to the conclusion that M.P. No.5 of 2014 is an abuse of the process of the Court. Hence, it is dismissed.

21. Once it is seen that the petitioner challenged the resolution of the municipality for eviction and the first tender notice and that she chose to withdraw the challenge unconditionally, it follows as a corollary that she cannot come up with a fresh writ petition. Therefore, W.P. No.32526 is also dismissed, paving the way for the petitioner to reach the destination to which her co-licensees have gone.

22. In fine, both the writ petitions and M.P. No.5 of 2014 in W.P. No.20627 of 2014 are dismissed. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.