

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2005

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE K.MOHAN RAM

A.S.No.233 of 1990

....

The Commissioner,
Bhavani Municipality,
Bhavani.

.... Appellant/Plaintiff.

vs.

P.S.Nagarajan

.... Respondent/Defendant.

Appeal filed against the judgment and decree in O.S.No.58 of 1986 dated 27.2.1989 on the file of I Additional Subordinate Judge, Erode at Periyar District.

For appellant : Mr.P.Jagadeesan

For respondent : Mr.S.Manokaran

JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

The plaintiff is the appellant. The plaintiff/Bhavani Municipality filed the suit, O.S.No.58 of 1986 claiming a sum of Rs.47,151/- with interest and costs.

2. The case of the plaintiff, in brief, is as under:-

2.1. The plaintiff Municipality owns two daily markets, besides one weekly market. The right to collect fees from the vendors and the stall-holders in the markets is being put to auction every year. For the year 1981-82, viz., for the period from 1.4.1981 to 31.3.1982, the defendant took the right to collect fees in the markets in public auction for a bid of Rs.33,050/-.

2.2. When the public auction was to take place for the year 1982-83, the defendant filed a suit in O.S.No.82 of 1982 on the file of District Munsif's Court, Bhavani for injunction restraining the plaintiff herein

from holding the lease auction and for declaration of his right to continue in possession for the year 1982-83. However, the petition filed for temporary injunction was dismissed by the District Munsif by order dated 22.2.1982 in I.A.No.215 of 1982 which was challenged in C.M.A.No.10 of 1982 on the file of District Court, Erode. The District Court also dismissed the petition for temporary injunction, I.A.No.275 of 1982, against which C.R.P.No.2149 of 1982 was filed before this Court. Ultimately, the defendant allowed the suit to be dismissed for default.

2.3. Even though temporary injunction was not granted by the Courts below, the defendant was holding the right to collect fees for the year 1982-83 and only paid a sum of Rs.33,050/- for the year 1982-83. Since the defendant was squatting upon the right to collect fees, the plaintiff Municipality could not auction the same for the year 1982-83 and hence, the defendant caused loss to the plaintiff. Had the plaintiff auctioned the right to collect fees for the year 1982-83, it would have received Rs.80,201/-, because for the year 1983-84 the plaintiff auctioned the same right for a sum of Rs.80,201/-. The defendant is therefore bound to make good the loss. The plaintiff issued a notice to which the defendant sent a reply with false allegations. Hence, the suit for Rs.47,151/-.

3. The defendant, in his written statement, admitted that he was the successful bidder for the year 1981-82. According to the defendant, the plaintiff did not provide certain amenities as promised resulting in heavy loss to the defendant. Hence, the defendant filed the above suit to maintain his position for the subsequent year also. The defendant paid the sum as paid during the previous year, as requested by the Commissioner of the plaintiff Municipality and therefore, the plaintiff is estopped from claiming anything more. The case of the defendant is that nothing prevented the plaintiff from putting the successful bidder in possession by taking appropriate action by itself. There was no loss to the plaintiff as claimed and there is no basis for the claim made by the plaintiff.

4. On the basis of pleadings, the trial Court framed issues and after considering the evidence adduced by the both the parties, the trial Court dismissed the suit. Aggrieved by the judgment and decree, the plaintiff has preferred the present appeal.

5. The point for consideration in the appeal is whether the plaintiff is entitled to claim a sum of Rs.47,151/- as claimed?

6. Mr.Jagadeesan, learned counsel for the appellant/ plaintiff submitted that the defendant prevented the plaintiff by filing suit from conducting auction in respect of daily markets as well as weekly market for the year 1982-83 and therefore, the loss had occurred to the plaintiff Municipality which the defendant is liable to pay. In support of his submission, the learned counsel relied upon the documents filed by the plaintiff, more particularly, Exs.A-8 and A-9.

7. Learned counsel for the respondent/defendant, on the other hand, submitted that in the earlier suit, there was no interim order granted and nothing prevented the plaintiff Municipality from conducting auction for subsequent years.

8. We have given our careful consideration to the submissions made by both sides.

9. It is not in dispute that the defendant filed O.S.No.82 of 1982 before the District Munsif, Bhavani for declaration of his right to continue in possession for the year 1982-83 and for injunction from holding the auction of the right to collect the fee from the users of the markets in question for the year 1982-83, but there was no temporary injunction granted which made the defendant herein to file C.M.A.No.10 of 1982 before the District Court, Erode in which also no interim order was passed, which again forced the defendant herein to file C.R.P.No.2149 of 1982 before this Court. Therefore, as rightly pointed out by the learned counsel for the respondent, nothing prevented the plaintiff Municipality to take steps to auction the markets in question for the subsequent years.

10. Learned counsel for the appellant referred to Exs.A-8 and A-9 telegram and letter respectively wherein it was informed that this Court granted interim injunction, and submitted that since this Court granted interim injunction, the plaintiff could not proceed with the matter further. However, P.W.1 in his evidence has stated that there was no interim injunction after 22.2.1982.

11. The trial Court considered the evidence of P.W.1 and rightly recorded a finding that there was no interim order after 22.2.1982 and in spite of the same, the plaintiff did not take any steps to auction the markets in question for subsequent years. Admittedly, the plaintiff Municipality received a sum of Rs.33,050/- towards the license fee for the year 1982-83 without any protest. Further, the claim of the plaintiff is only a notional loss and it is not the case of the plaintiff that as per the contract, the defendant has to pay notional loss. Therefore, the trial Court was correct in holding that the plaintiff is not entitled to claim any damages from the defendant.

12. The learned counsel for the appellant submitted that no one can enjoy other's property to the detriment to the other and courts are zealous to checkmate such notorious aggrandisement and improper negation of the normal benefits to which the owner of a property would be entitled from his tenant and in support of his submission, relied upon the decision in ANNAVI MOOPAN v. MUNIA MOOPAN (1969) 1 MLJ 379). We are of the view that the ratio laid down in the said decision is not applicable to the facts of the case as the plaintiff has not taken any steps to auction the markets in question for subsequent years and also accepted the sum of Rs.33,050/- offered by the defendant without any protest.

13. The learned counsel for the plaintiff submits that initially there was an interim injunction in favour of the defendant preventing the plaintiff from conducting the auction and as evidenced by Exs.A8 and A9, there was an order of interim injunction against the plaintiff, during the pendency of the civil revision petition filed by the defendant herein. On that basis, the learned counsel submits that the municipality was prevented from conducting auction and therefore, the defendant is liable for damages. This submission of the plaintiff is countered by the learned counsel for the defendant by relying upon the admitted fact that the defendant was permitted to take part in the auction in the subsequent years by producing the No Objection Certificate/No Due certificate issued by the plaintiff municipality itself. The fact that the municipality had issued the No Objection Certificate/No Due Certificate enabling the defendant to participate in the auction in the subsequent years, according to the learned counsel for the defendant, will show that the municipality had waived its right to demand any amount from the defendant and as such the municipality is estopped from claiming any amount from the defendants towards any alleged loss. We are of the view that this submission of the learned counsel for the defendant cannot be brushed aside easily. When admittedly, the interim injunction granted by the trial court as well as this Court was vacated, the municipality could very well have approached the trial court seeking appropriate direction to conduct the auction. But, they failed to do so and allowed the defendant to be in possession of the market. Further, the municipality had admittedly issued the No Objection Certificate/No Due Certificate in the subsequent years which will estop the plaintiff from claiming any notional loss from the defendant. For all these reasons, we are unable to accept the contentions raised by the learned counsel for the plaintiff.

14. The submission of the learned counsel for the appellant that the plaintiff is a Municipality and in the matter of loss caused to the plaintiff, the larger public interest should be taken into consideration is not acceptable as it is a lapse on the part of the plaintiff Municipality and the plaintiff, being a local body, should have verified whether any interim order is there or not and proceeded with the matter further. The defendant cannot be taxed for the fault of plaintiff. However, it is open to the plaintiff Municipality to realise the amount of loss from the concerned officials who are at fault including the law officer.

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For all these reasons mentioned above, we are of the view, the trial Court was correct in dismissing the suit. We find no merits in the appeal and it is liable to be dismissed. Accordingly, the appeal stands dismissed. No costs.

Sd/-
Asst. Registrar.

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na. Sub Asst. Registrar.

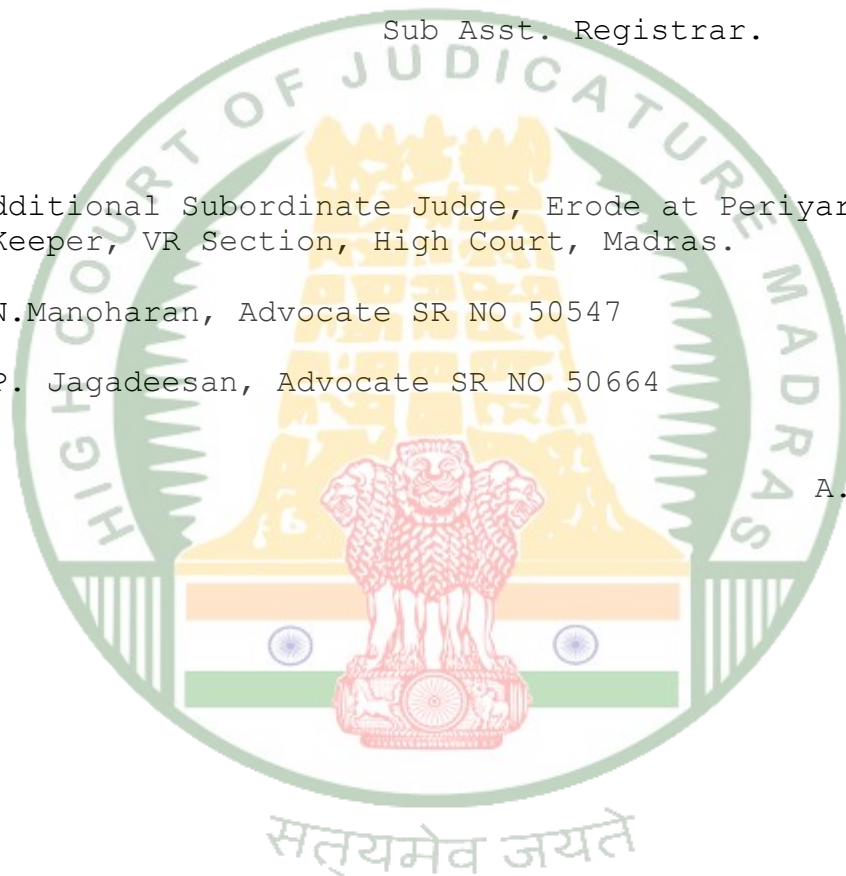
To
1. The First Additional Subordinate Judge, Erode at Periyar District.
2. The Record Keeper, VR Section, High Court, Madras.

+ 1 CC to Mr. N.Manoharan, Advocate SR NO 50547

+ 1 CC to Mr. P. Jagadeesan, Advocate SR NO 50664

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gp/3.2.

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