

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.07.2015

DATE OF DECISION: 24 .07.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. No.686 of 2015
and
M.P. Nos.1 & 2 of 2015

T.M. Duraisamy

... Appellant

Vs.

1. The State of Tamil Nadu
represented by its Secretary to Government
Municipal Administration and Water Works Department
Fort St. George
Chennai 600 009
2. The Commissioner
Municipal Administration and Water Supply Department
Ezhilagam
Chepauk, Chennai 600 005
3. The Assistant Director
Chennimalai Town Panchayat
Chennimalai, Erode
4. The Executive Officer
Chennimalai Town Panchayat
Chennimalai, Erode

... Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent
challenging the order dated 23.02.2015 passed in W.P. No.7416 of 2013.

Writ petition filed under Article 226 of the Constitution of
India praying for the issuance of Writ of Mandamus directing the
respondents to renew the lease of the site in the South Eastern
corner in the Tyagi Kumaran Chennimalai Bus Stand in Chennimalai,

Erode District in which the petitioner has set up the "Murugan Chappal Shop" for a period of 3 years from 01.04.2013 till 30.03.2016 and thereafter in terms of G.O.Ms.No.92, Municipal Administration and Water Supply (Finance 4) Department dated 03.07.2007 and consequently forbear the respondents from evicting the petitioner from the said site as long as he pays the rent in terms of the said G.O.

For appellant : Mrs. Hema Sampath, Sr. Counsel
for Mr. S. Raveekumar

For RR 1 to 3 : Mr. P.S. Sivashanmugasundaram
Special Government Pleader

For R4 : Mr. N. Ponraj

JUDGMENT

SATISH K. AGNIHOTRI, J.

Aggrieved by the order dated 23.02.2015 passed in W.P. No.7416 of 2013, the writ petitioner therein has preferred the instant intra-Court appeal.

2. For the sake of brevity, clarity and convenience, the parties are referred to as per their rank in the instant appeal.

3. The appellant filed the instant writ petition being W.P. No.7416 of 2013, seeking a writ of mandamus directing the respondents to renew the lease of the site in the South Eastern corner in the Tyagi Kumaran Chennimalai Bus Stand in Chennimalai, Erode District, in which he has set up Murugan Chappal Shop, for a period of 3 years from 01.04.2013 till 30.03.2016 and thereafter, in terms of G.O. Ms.No.92, Municipal Administration and Water Supply (Finance 4) Department dated 03.07.2007 and consequently, forbear the respondents from evicting him from the said site as long as he pays the rent in terms of the said Government Order.

4. Before proceeding with the instant case, the genesis of the case is worth to be stated. Earlier, the appellant filed W.P. No.27471 of 2012 impugning the tender-cum-public auction notice dated 01.10.2012 in respect of the auction scheduled on 18.10.2012 or any other date insofar as it relates to Shop No.13 and the vegetarian restaurant at Chennimalai Bus Stand Commercial Complex at Chennimalai, Erode and for a consequential direction to the fourth respondent to extend the lease for the said shop and the vegetarian restaurant, in his name, in terms of G.O. Ms.No.92, Municipal

Administration and Water Supply (Finance 4) Department dated 03.07.2007. The said writ petition was disposed of, along with two other writ petitions, by a common order dated 20.02.2015 in the following terms:

"Accordingly, these writ petitions are disposed of with a direction to the Town Panchayat to indicate the petitioners the lease rent which the Town Panchayat proposes to fix for the shops in question presently occupied by the petitioners and if the petitioners are willing to accept the offer, then, the respondent Town Panchayat shall consider the same and grant lease to the petitioners and if the petitioners are not willing, it is open to the respondent Town Panchayat to issue fresh tender cum public auction notification and proceed in accordance with law."

5. Not satisfied with the aforesaid order, the appellant preferred a review application in R.A. No. 43 of 2015, seeking review of the said order. Similarly, the order dated 23.02.2015 passed in W.P. No.7416 of 2013, which is under challenge in the instant appeal, was sought to be reviewed in R.A. No.44 of 2015. These two Review Applications were heard, along with two other Review Applications and dismissed by a common order dated 24.03.2015. The order dated 20.02.2015 passed in W.P.No.27471 of 2012 and the order dated 24.03.2015 passed in the Review Application thereagainst in R.A. No.43 of 2015 are not under challenge.

6. While so, the instant writ appeal is preferred challenging the order dated 23.02.2015 rendered in W.P. No.7416 of 2013, without impugning the order dated 24.03.2015 passed in R.A. No.44 of 2015.

7. The case of the appellant is that he was allotted a vacant site admeasuring 160 sq. m. for a period of three years from 01.04.2007 to 30.03.2010 on a monthly rent fixed as Rs.400/-. Thereafter, he put up a temporary structure on the said site for running a chappal shop in the name of Murugan Chappal Shop. In the meantime, the first respondent issued G.O. Ms.No.92, Municipal Administration and Water Supply (Finance 4) Department dated 03.07.2007, making a provision for renewal of lease for a further period of 9 years with an enhanced lease rental of 15% for every three years period. After 9 years, re-appraisal of the prevailing market rate was permitted. The appellant would further contend that after the expiry of the lease period on 30.03.2010, a request for renewal was made, which was granted extending the lease period till 30.03.2013 with the enhanced rent of Rs.451/- per month. The

appellant is entitled to extension for a further period of three years on enhancement of 15% rental.

8. The learned Single Judge, relying on the decision of a Division Bench of this Court in P.Muthusamy vs. State of Tamil Nadu, represented by its Secretary to Government, Municipal Administration and Water Supply Department, Chennai and another¹, disposed of the writ petition, as under:

"5. In the light of the above, this writ petition is disposed of with a direction to the respondent Town Panchayat to indicate the petitioner the lease rent which the Town Panchayat proposes to fix for the shop in question presently occupied by the petitioner and if the petitioner is willing to accept the offer, then, the respondent Town Panchayat shall consider the same and grant lease to the petitioner and if the petitioner is not willing, it is open to the respondent Town Panchayat to issue fresh tender cum public auction notification and proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed."

9. The scope of G.O. Ms.No.92, Municipal Administration and Water Supply (Finance 4) Department dated 03.07.2007 and other Government Orders came up for consideration in P. Muthusamy (supra). The Division Bench of this Court, while disposing of the matter, held as under:

"21. x x x x x x x A perusal of the Government Orders referred to above as well as the orders impugned make it clear that the rent has been fixed based upon the prevailing market value and not otherwise. What has been given by way of extension to an existing licensee was only a concession. The subsequent extension has been made during the pendency of the writ petitions. The said decision was made in view of the undertaking given by the licensees. An undertaking was given in connection with the payment as well as on the withdrawal of the writ petitions. The Government Orders also state that in the event of non-compliance of the conditions imposed including the payment of appropriate rent, a licensee is liable to be removed."

10. Thereafter, when identical issue came up for consideration in C. Vinoba and 34 Others vs. Commissioner of Palladam Municipality, Palladam, Tiruppur District and Others in W.A. No.1471 of 2014, a Division Bench of this Court, while dismissing the challenge by order

¹ (2014) 5 MLJ 129

dated 12.11.2014, held as under:

"5. There is no dispute that the rent paid by the appellants as compared with the present market rent is nominal. It is also not in dispute that under G.O. Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007, the appellants have a right to continue for a maximum period of nine years on a lease of three years subject to renewal. The appellants have been occupying the shops for a very long period on payment of the rent of meagre amount. Thus, the appellants cannot claim renewal as a matter of right. The Municipality has several functions to perform for the welfare of the people of the locality. The collection of market rent is one of the source of income of the municipality. Thus, the municipality cannot be permitted to allot shops on nominal rent without assessing the market value of the same. It is well certain that auction is the best mode of allotment of shops.

6. We do not find any irregularity, inconsistency or illegality in the impugned order passed by the Writ Court warranting interference in this appeal. Resultantly, the appeal is, accordingly, dismissed. Costs made easy. The connected miscellaneous petition is closed."

11. Thereagainst, the Special Leave Petition being S.L.P. (C) No.34543 of 2014 was taken to the Supreme Court. The Supreme Court, by order dated 18.12.2014, dismissed the same. It transpires that one more batch of Special Leave Petitions being S.L.P. (C) Nos.16181-16183 of 2014 is pending consideration before the Supreme Court, wherein, stay of dispossession was granted on 08.07.2014, much before the dismissal of the Special Leave Petition in S.L.P. (C) No.34543 of 2014 on 18.12.2014.

12. We have examined the facts of the case from all angles. There is no dispute that the appellant was granted a vacant site on a meagre payment of Rs.400/- per month, which was enhanced to Rs.451/- in 2010. It is stated at the Bar that the market value as on date is much more than what has been paid. Even otherwise, in identical matters, this Court has taken a view that renewal cannot be claimed as a matter of right. However, since the appellant was granted lease, the learned Single Judge, in the review, has directed the respondent Town Panchayat to intimate the appellant, the proposed lease rent and that, if the appellant is willing to accept the said offer, the lease be granted in favour of the appellant.

13. We are of the considered view that the said order passed by the learned Single Judge is reasonable and in larger public interest. The ultimate purpose of arranging revenue is only for the purpose of public welfare by the Town Panchayat. It is also not in dispute that the market rental value is much more than what is being offered by the appellant on the basis of rent fixed way back in 2007. Thus, we do not find any error in the order of the learned Single Judge sought to be impugned herein.

14. Resultantly, the writ appeal fails and is accordingly dismissed. Costs made easy. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

cad

Sub Assistant Registrar

To

1. The Secretary to Government
Municipal Administration and Water Works Department
State of Tamil Nadu
Fort St. George
Chennai 600 009
2. The Commissioner
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4. The Executive Officer
Chennimalai Town Panchayat
Chennimalai, Erode

+2cc's to Mr.S.Ravee Kumar, Advocate, S.R.No.33558 & 38624

+1cc to Mr.N.Ponraj, Advocate, S.R.No.38221

W.A. No.686 of 2015

GGK(CO)
CA(06/08/2015)