

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

Review Application No.43 of 2015 and M.P.No.1 of 2015 in
in W.P.No.27471 of 2012

Review Application No.44 of 2015 and M.P.Nos.1 and 2 of 2015 in
in W.P.No.7416 of 2013

Review Application No.45 of 2015 and M.P.Nos.1 and 2 of 2015 in
in W.P.No.29473 of 2012

Review Application No.46 of 2015 and M.P.No.1 of 2015 in
in W.P.No.28382 of 2012

T.M.Duraisamy	...Petitioner in Rev.App Nos.43 and 44 of 2015
N.Johara Biwi	...Petitioner in Rev.App No.45 of 2015
S.Savithri	...Petitioner in Rev.App No.46 of 2015

Vs

- 1.The Secretary to Government,
The State of Tamilnadu
Municipal Administration and Water Works
Department, Chennai – 9
2. The Commissioner,
Municipal Administration and Water Supply Department,
Ezhilagam, Chepauk,
Chennai – 600 005
3. The Assistant Director (Town Panchayat)
Chennaimalai Town Panchayat
Chennimalai, Erode District
4. The Executive Officer,

Chennimalai Town Panchayat,
Chennimalai,
Erode District

...Respondents in Rev.App Nos.43 and 44
of 2015 and 1 to 4 respondents in
Rev.Appln. No.45 of 2015

5.S.P.Shabhi

...5th respondent in Rev.Appln. No.45 of
2015

1. The Executive Officer,
Chennimalai Town Panchayat
Chennimalai, Erode District

2. The Secretary,
Municipal Administration and Water supply
Fort. St.George, Chennai - 600 009

3. The Assistant Director,
Town Panchayats, Erode ...Respondents in Rev.Appln. No.46 of
2015

Prayer :- Review Applications have been filed to review the Common
Order dated 20.02.2015 in W.P.Nos.27471, 28382 and 29473 of 2012
and order dated 23.02.2015 in W.P.No.7416 of 2013.

For Petitioners :Ms.Nalini Chidambaram
Senior Counsel for
Ms.C.Uma

For Respondents :Mr.R.Vijayakumar for R1 to R3
Additional Government Pleader
Mr.N.Ponraj for R4

ORDER

Heard Ms.Nalini Chidambaram, learned Senior Counsel for Ms.C.Uma appearing for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader appearing for first to third respondents and Mr.N.Ponraj, learned counsel for fourth respondent.

2.These Review Applications have been filed to review the order and direction issued by this Court in W.P.Nos.27471 of 2012 etc., batch. In the said Writ petitions, the petitioners herein have sought for issuance of Writ of Certiorarified Mandamus to quash the order passed by the Chennimalai Town Panchayat, by which they decided to bring the shops for public auction. The petitioners have also sought for further direction to extend the lease in their favour by applying G.O.Ms.No.92 dated 03.07.2007. This Court by a common order dated 20.02.2015 and an order dated 23.02.2015 disposed of the Writ Petitions by issuing the following order:-

“The petitioner seeks for issuance of 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 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.

2. It is stated that on 20.03.2007, the fourth respondent conducted auction for lease of vacant sites measuring 160 sq. feet situated in Tyagi Kumaran Bus Stand in Chennimalai in Erode District for setting up shops. The petitioner was the successful bidder and he obtained lease initially for a period of 3 years from 01.04.2007 to 30.03.2010. Thereafter the 1st respondent issued G.O.Ms.No.92 dated 03.07.2007 stipulating conditions to the effect that lease will be renewed after the 1st three year period for a further period of 3 years and will be renewed for a total period of 9 years with enhanced lease rental of 15% of every 3 years period. As per the G.O.Ms.No.92 dated 03.07.2007, the petitioner sent a request to the fourth respondent for renewal of lease for further period of 3 years from 01.04.2013 till 30.03.2016, agreeing to pay the enhanced lease rental 15% more than the existing lease rental, but the fourth respondent did not respond to his request and insisted the petitioner to vacate the shop. Therefore, the petitioner has filed this writ petition.

3. It is to be noted that the shop is in occupation of the existing lessee/petitioner and in the light of G.O.Ms.No.92 has been passed by the Government, the respondent Town Panchayat is bound to consider the same before bringing the shop for public auction. The learned counsel for the

respondent Town Panchayat relied on the judgment of the Division Bench of this Court in **P.Muthusamy v. State of Tamil Nadu [(2014) 5 MLJ 129]**, wherein it has been held that the object of letting out the shops is to collect more revenue for the Municipality, which is meant to be used for welfare measures and since the transactions are commercial in nature, the petitioners therein being licensees, cannot insist that the rent, which as they think, just and proper alone is liable to be paid. Further by considering G.O.Ms.No.92 and other Government Orders, the following observation was made:

“21..... 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.”

4. Similar writ petitions were filed by three other leasees in W.P.Nos.27471, 28382 and 29473 of 2012 and those writ petitions were disposed of by this Court on 20.02.2015 with

certain directions in consonance with the Division Bench Judgment cited supra and the same is extracted hereunder:

“5. In the light of the above, these writ petitions may be disposed of with a direction to the respondent Town Panchayat to intimate the petitioners the proposed lease rent which the Panchayat is willing to offer to the petitioners and if the petitioners are willing to accept such offer, then the lease shall be granted in favour of them. The above direction would be in public interest as it would fetch huge revenue and it is also in consonance with the direction given by the Hon'ble Division Bench in the above cited judgment.

6. Accordingly, these writ petitions are disposed of with a direction to the respondent 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 they 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. No. costs. Consequently, connected miscellaneous petitions are closed.”

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.

3.After hearing the learned Senior Counsel for the petitioners and the learned counsel for the respondent/Town Panchayat, it is seen that the petitioners seek to re-argue the entire matter by referring to an order passed by the 4th respondent for renewing the lease in respect of 5 shops in the same bus-stand complex bearing shop numbers 2,3,4, 5 and 6. The grievance of the petitioners is that in respect of those shops, benefit of G.O.Ms.No.92 has been extended, whereas the petitioners have not been granted the benefit of extension.

4.The learned counsel appearing for the respondents submitted that in respect of those shops, G.O.Ms.No.92 was applied, since the lease was entered with those lisees between 2007-2011. Therefore, the nine year period was yet to be over and therefore, G.O.Ms.No.92 was applied and lease was extended. He would further submit that in

respect of the review applicants, they entered into lease in the year 2000 and therefore they are not entitled to the benefit of Government Order or G.O.Ms.No.92.

5.The learned Senior Counsel appearing for the petitioners referred Government letter dated 12.03.2009 and submitted that they are entitled to the benefit, since the benefit of G.O.Ms.No.92 was accepted from the date of the Government Order.

6.In reply to the said contention, the learned counsel appearing for the 4th respondent referred to the decision of the Hon'ble Division Bench of this Court in **P.Muthusamy Vs.State of Tamilnadu rep. By its Secretary to Government, Municipal Administration and Water supply Department, Chennai and another** reported in (2014) 5 MLJ 129, wherein the identical question was raised by the petitioners therein was rejected by the Hon'ble Division Bench of this Court and the operative portion of the order reads as follows:-

“....22. The resolution has been passed after making detailed discussion and it was also passed as a consequence of the earlier order dated 14.12.2012 by which rent was fixed. Since the said rent so fixed was not paid, the respondent-Municipality was made to pass the impugned

resolution. Therefore it cannot be said that the impugned resolution has been unilaterally passed and as such, the said decision is in accordance with the Government Orders passed, which confer the power on the respondent-Municipality to take action towards the eviction from the shops in the event of non payment of rent payable. The extraction of the related paragraphs of the resolution would clearly show that relevant materials have been taken into consideration while passing the same. The respondent-Municipality has got its own duty and obligation to perform. Appointments will have to be made to the public office and salaries will have to be paid. Money will have to be spent towards the welfare measures. The assessment made also indicates that the proposed auction would bring more money. The best way to get the maximum revenue is by way of public auction. This will also create a level playing field enabling others to participate along with the petitioners/licensees. Therefore, we do not find any arbitrariness in the action of the respondent-Municipality. The reliance made by the petitioners on the communication dated 12.03.2009 cannot be accepted since it cannot overreach the Government Orders which speak about removal when conditions are not complied with. The fact that the Commissioner of Municipal Administration directed the respondent-Municipality to fix the market rent as the rent payable based upon the Government Orders which in turn was complied with would also show that there is no quarrel

with the position that the market rent shall be the basis for the fixation of the rent payable by the licensees. In any case, the petitioners, being the defaulters, cannot contend that they should be allowed to continue forever. As the orders impugned have been passed by taking into consideration of the relevant materials, we do not find any room for interference.

23. The decision relied upon by the learned counsels appearing for the petitioners Labha Ram and Sons and others Vs.State of Punjab (supra) cited above has no application to the facts involved in the present case. In the said decision the existing licensees were asked to vacate in view of the creation of a new multi complex.

24. It is settled law that an instrumentality of a State should always endeavour by following the procedure by way of public auction or inviting tender, as held in P.N. Chinnasamy and others Vs.Assistant Director of Town Panchayat, Coimbatore District and Others (2011) 1 CTC 584: LNIND 2011 MAD 102, S.Selvarani V. Commissioner, Karaikudi municipality (2005) 1CTC 81: LNIND 2004 MAD 1600: (2005) 1 MLJ 394, C.Jayanthi V. Commissioner, Mettur Municipality, Salem District (2006)5 CTC 236: LNIND 2006 MAD 1770: (2006) 4 MLJ 128, D.Kannan V. Commissioner of Municipal Administration, Chepauk CDJ 2010 MHC 1636 : LNIND 2010 MAD 759 and Ram and Shyam Company V. State of Haryana and others AIR 1985 SC 1147: (1985) 3 SCC 267: LNIND 1985 SC 188.....”

7. In the light of the above, the petitioners have not pointed out any error apparent on the face of record warranting exercise of Review Jurisdiction. Accordingly, the Review Applications fail and they are dismissed. Consequently connected miscellaneous petitions are closed. No costs.

8. Since it is seen that respondent/Town Panchayat has re-fixed the lease rental in respect of the shops in occupation of the petitioners, the petitioners would state that they have not been furnished on what basis such re-fixation has been done. The learned counsel for the respondents would submit that the re-fixation has been done by taking into consideration the 2012 rental, which was fixed in respect of shops, which brought for public auction and pro-rata lease has been re-fixed and the past experience shows that the public have bidden at the tender and accepted to pay lease rent ranging from 10,100 to 16279 for similar shops.

9. In the light of the above, there will be a direction to the Respondent/Town Panchayat to communicate the reasons as to how the lease rent has been fixed in respect of the shops in occupation of

the Review Applicants within a period of one week from today.

24.03.2015

Index:Yes/No ; Internet:Yes/No

Note: Registry is directed to
issue order copy on 25.03.2015

ssd

To

- 1.The Secretary to Government,
The State of Tamilnadu
Municipal Administration and Water Works
Department, Chennai – 9
2. The Commissioner,
Municipal Administration and Water Supply Department,
Ezhilagam, Chepauk,
Chennai – 600 005

T.S.SIVAGNANAM,J.,

ssd

3. The Assistant Director (Town Panchayat)
Chennai-malai Town Panchayat
Chennai-malai, Erode District

4. The Executive Officer,
Chennimalai Town Panchayat,
Chennimalai,
Erode District

Review Application Nos.43 to 46 of 2015

24.03.2015