

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P. Nos.29710 to 29712 of 2015
and M.P.Nos.1 and 2 of 2015

Mrs.M.Vijayakumari	...	Petitioner in WP No.29710 of 2015
N.Sivaraj	...	Petitioner in WP No.29711 of 2015
M.S.Palanisamy	...	Petitioner in WP No.29712 of 2015

Vs.

1.The Secretary to Government,
Municipal Administration and Water Supply
Department, Fort St. George,
Chennai - 600 009.

2.The Commissioner for Municipal Administration,
Chepauk, Chennai - 5.

3.The Commissioner of Udumalpet Municipality,
Udumalpet,
Tiruppur District.

4.Mr.Saravanakumar,
Commissioner of Udumalpet Municipality,
Udumalpet.

5.The Municipal Council
Rep.by its Chairman,
Udumalpet Municipality,
Udumalpet,
Tiruppur District.

... Respondents in
all WPs.

PRAYER IN W.P.NO.29710/2015 : Writ petitions filed under Article 226 of the Constitution of India for issue of writ of certiorarified mandamus calling for the records of the third respondent made in proceedings in Na.Ka.No.874/2015/A1 dated 07.05.2015 in so far as fixation of Exorbitant rent is concerned and quash the same and consequently direct the respondents 3 to 5 to determine the fair rent for the Shop Nos.23, taken on lease by the petitioner in Rajendra Road, Shopping Complex, Udumalpet by adopting the same principles as laid down under the Tamil Nadu Building (Lease and Rent Control) Act

for fixation of fair rent.

PRAYER IN W.P.NO.29711/2015 : Writ petitions filed under Article 226 of the Constitution of India for issue of writ of certiorarified mandamus calling for the records of the third respondent made in proceedings in Na.Ka.No.874/2015/A1 dated 07.05.2015 in so far as fixation of Exorbitant rent is concerned and quash the same and consequently direct the respondents 3 to 5 to determine the fair rent for the Shop No.27, taken on lease by the petitioner in Central Bus Stand inside shop Palani Road, Shopping Complex, Udumalpet by adopting the same principles as laid down under the Tamil Nadu Building (Lease and Rent Control) Act for fixation of fair rent.

PRAYER IN W.P.NO.29712/2015 : Writ petitions filed under Article 226 of the Constitution of India for issue of writ of certiorarified mandamus calling for the records of the third respondent made in proceedings in Na.Ka.No.874/2015/A1 dated 07.05.2015 in so far as fixation of Exorbitant rent is concerned and quash the same and consequently direct the respondents 3 to 5 to determine the fair rent for the Shop Nos.13, taken on lease by the petitioner in Palani Road, Mini Market, Udumalpet by adopting the same principles as laid down under the Tamil Nadu Building (Lease and Rent Control) Act for fixation of fair rent.

For Petitioners : Mr.N.Umapathi
in all WPs

For Respondents : Mr.Rm.Muthukumar
in all WPs Govt. Advocate
for RR1, RR2 and RR5

Mr.B.Anand for
Mr.A.S.Thambusamy
for R3 and R4.

COMMON ORDER

The petitioners who are enjoying the property, without paying the amount of Rs.12,000/- which they quoted in the auction conducted on 21.04.2015 for the shops under their occupation have come before this court stating that the monthly rent is on the higher side so also Rs.2,00,000/- fixed as security deposit is exorbitant challenging the order dated 07.05.2014 passed by the third respondent.

2. The petitioners are lessees in respect of shops owned by the third respondent Udumalpet Municipality. The lease came to an end on 31.03.2015 and therefore the third respondent issued paper publication on 03.04.2015 inviting sealed tenders for the auction to be conducted on 21.04.2015. The said auction was conducted on 21.04.2015 for many shops and for the petitioners shop no one

participated except the petitioners. The auction price was fixed as Rs.12,000/- unilaterally by the fourth respondent and he threatened the petitioners if the petitioners did not accept Rs.12,000/- as monthly rent, he will be thrown out. Left with no other go as they invested much amount in the business, the petitioners were compelled to agree for the same.

3. Based on the auction conducted, order has been passed by the third respondent on 07.05.2014 granting lease to the petitioners from 11.05.2015 to 31.05.2018 and the said order granted in favour of the petitioners are being challenged before this Court stating that the petitioners (a) were compelled to pay the amount unilaterally by the third respondent under threat, (b) the amount fixed does not reflect the market rate as the market rate is only Rs.40/- per sq.ft. whereas Rs.400/- has been fixed by the third respondent and that (c) this court, in M.K.M. Geeyavudeen and others v. Commissioner, Pudukottai Municipality, Pudukkottai reported in 2008 (1) MLJ 682 directed the third respondent Municipality to fix the rent based on the market value as per the principles laid down under the Tamilnadu Buildings (Lease and Rent Control) Act for fixation of fair rent and therefore as per market rate, rent is to be fixed.

4. The learned counsel for the petitioners would submit that there is no resolution before passing the impugned order. When excess amount or exorbitant amount has been fixed by the respondent, the said decision is tainted with malafides and therefore he seeks to set aside the order.

5. Mr.B.Anand representing Mr.A.S.Thambusamy, learned counsel for the third and fourth respondent would submit that the petitioner voluntarily participated in the auction and quoted the amount consequently the lease was granted in his favour. Now, the said order is being challenged before this court for unknown reasons. Therefore, he seeks for dismissal of the writ petitions.

6. Heard Mr.Rm.Muthukumar, learned counsel appearing for the first and second respondent.

7. It is very strange to note that persons choose to challenge the very order which is passed in their favour by the third respondent, Municipality giving the lease right to continue the business for a further period of three years, on the ground that the said decision to allot the shops was thrust upon them. First of all, the contentions are all liable to be rejected for the simple reason that the auction was only conducted by the third respondent inviting bidder. It was only an invitation and it is upto the persons to accept the invitation or not. In these cases, the petitioners are those who accepted the invitation, participated in the auction voluntarily and agreed to pay a sum of Rs.12,000/- as monthly rent. Having done so, they are estopped from questioning the process. Even now, it is not too late for the petitioners to continue the business

by paying Rs.12,000/- as monthly rent and equally it is open for them to vacate and handover the possession of the shop to the Municipality, if they are not ready to pay the amounts as fixed.

8. As already observed, the petitioners, voluntarily participated in the auction and quoted Rs.12,000/- as monthly rent. Since the petitioners continue to be lessees, they volunteered to take part in the auction and quoted the amount and agreed for Rs.12,000/- as monthly rent. The contention that the amount fixed in the auction does not reflect the market value has got no legs to stand before this court since it is only a contract between the petitioners and the respondent. They voluntarily concurred to take part in the auction and it is not open to them now to make a claim that Rs.12,000/- fixed as monthly rent by the respondent is exorbitant. The judgment relied upon by the learned counsel for the petitioners reported in 2008 (1) MLJ 682 cited supra, is in no way connected with this matter as the said issue in the judgment is with regard to the extension of lease whereas this issue relates to auction. When any leasee who is entitled to automatic extension for three years has to pay 15% more than what has been paid. Only in those circumstances, the judgment is of use.

9. With regard to fixation of Rs.2,00,000/- as caution deposit, it is always within the discretion of the respondent to fix the quantum of auction deposit. It is not compulsory for the petitioners to agree for any one of the condition of the auction. It is not too late for the petitioner to walk out from the lease. They can always proceed so by handing over the possession of the shops to the respondent. As long as the petitioners remain in possession of the shops agreeing to pay Rs.12,000/- as monthly rent which is obligatory on the part of the petitioners to pay Rs.12,000/-.

10. There is a contention that the impugned order has been passed without the resolution of the Municipality. However, a perusal of the impugned order would show that by virtue of Resolution No.1826 dated 06.05.2005, the Udumalpet Municipality already approved the auction in favour of the petitioners which has been incorporated in para 2 of the impugned order. Therefore, the said contention is also not sustainable. In view of the above reasons, the petitioners are not entitled to maintain the writ petitions as the impugned order has been passed based on the offer given by him and approved by the Municipality. The petitioners cannot expect anything for a song, especially when their participation is voluntary.

11. This kind of proceedings are very many only in Udumalpet Municipality area. This court has almost dealt with more than ten cases with regard to the auction of the shops of the Udumalpet Municipality. It seems that there is a syndicate active and it is evident in this case also. It is proved by the fact that the petitioner alone is the bidder for his shop but for the fourth respondent officer, the Municipality would have lost heavy amount as

revenue. Only Rs.1888/- was paid by the petitioners as monthly amount during previous lease before the auction was conducted. That itself would show that even the earlier auction was not done according to law and by forming a syndicate with other vendors or the shop owners, they are causing heavy loss to the Municipality periodically. For breaking the ring / syndicate of the vendors, the fourth respondent has to be appreciated. It is the reality almost in all local bodies, by forming syndicate, the shops are taken for lesser amount causing heavy loss to the local bodies. This issue has to be taken care of by the appropriate authorities. Though these writ petitions are liable to be dismissed with heavy cost, for having voluntarily participated and accepted for the amount and thereupon for approaching this court. However, this court is not awarding any costs due to judicial restraint.

12. It is made clear that if the petitioners want to continue the lease / license, they shall file an affidavit before this court within one week from today stating that they are ready to pay the rent as agreed upon, failing which the petitioners shall vacate and handover the possession of the premises to the respondents, on or before, 01.10.2015.

13. In the result, these writ petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

14. Post the matter for compliance on 05.10.2015.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

rgr
To

1.The Secretary to Government,
Municipal Administration and Water Supply
Department, Fort St. George,
Chennai - 600 009.

2.The Commissioner for Municipal Administration,
Chepauk, Chennai - 5.

3.The Commissioner of Udumalpet Municipality,
Udumalpet,
Tiruppur District.

4.Mr.Saravanakumar,
Commissioner of Udumalpet Municipality,
Udumalpet.

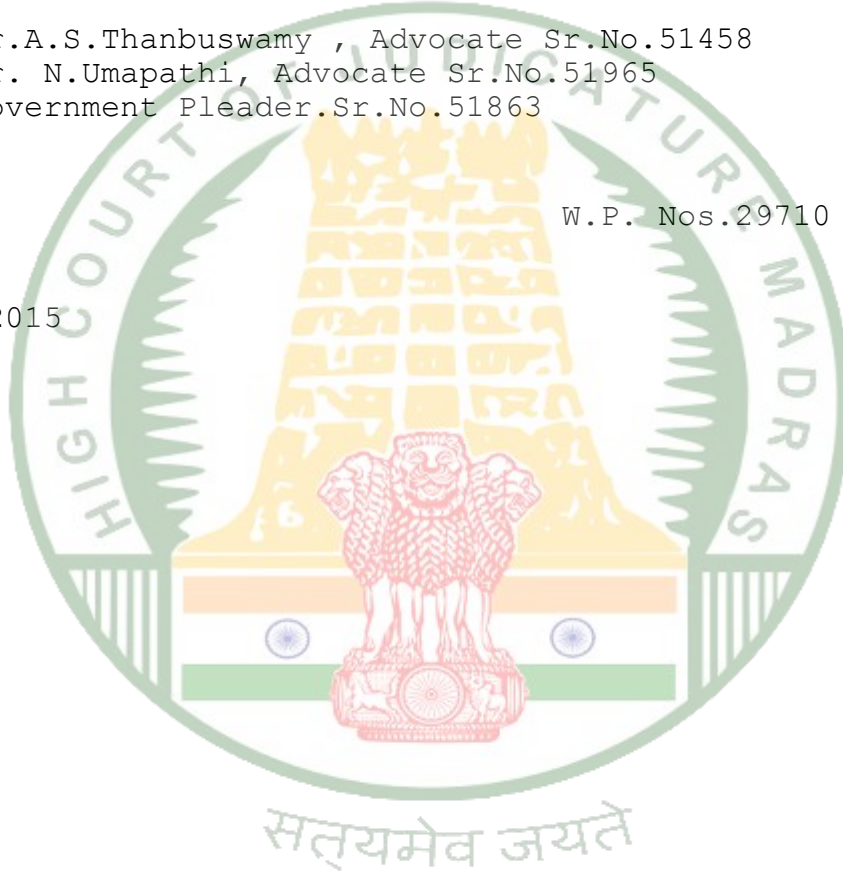
5.The Municipal Council
Rep.by its Chairman,
Udumalpet Municipality,
Udumalpet,
Tiruppur District.

6.The Section Officer, Writ Section, High court, Madras.

1 cc to Mr.A.S.Thanbuswamy , Advocate Sr.No.51458
3 cc to Mr. N.Umapathi, Advocate Sr.No.51965
1 cc to Government Pleader.Sr.No.51863

W.P. Nos.29710 to 29712 of 2015

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