

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2016

CORAM

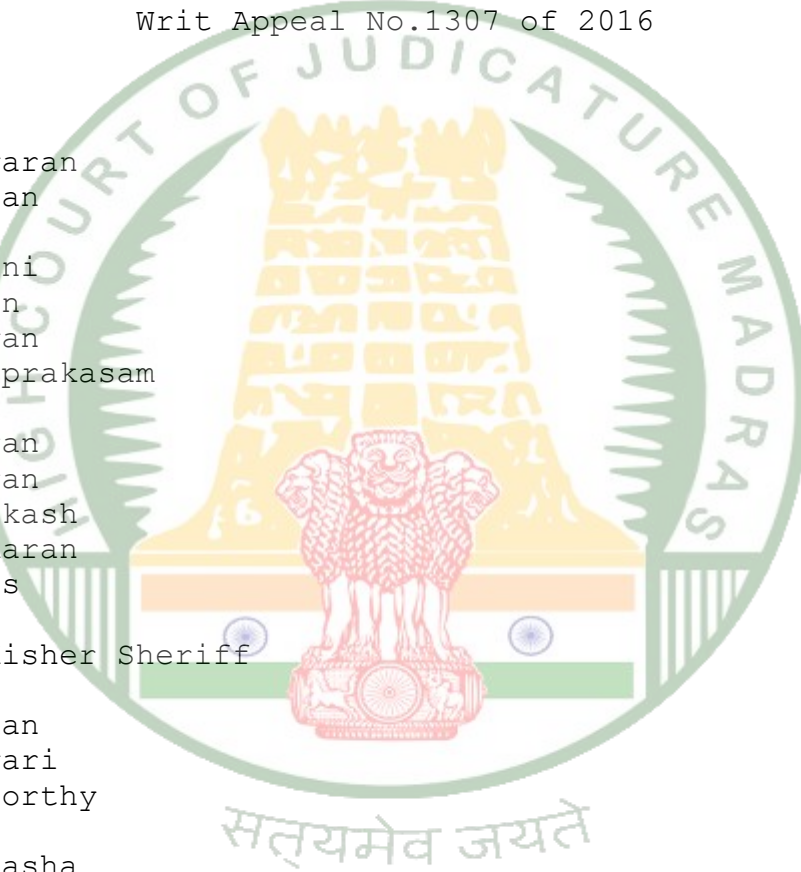
THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HON'BLE MR.JUSTICE V.PARTHIBAN

Writ Appeal No.1307 of 2016

1. K.Madheswaran
2. R.Rajendran
3. A.Shankar
4. R.Kalaivani
5. A.Shajahan
6. V.Elangovan
7. A.V.Gnanaprakasam
8. Arulmozhi
9. Manivasagan
10. Manivasagan
11. G.Jayaprakash
12. S.Gunasekaran
13. A.Ramadoss
14. Saravanan
15. Mohamed Kisher Sheriff
16. Thenmozhi
17. Renganathan
18. Bhuvaneswari
19. Sathiyamoorthy
20. A.Ahamed
21. Sakulen Basha
22. Md.Kisher Sheriff
23. K.Raghupathy
24. R.Ramesh Babu
25. B.Soramadevi
26. N.Gnanavel
27. J.Ravi
28. L.Raja Muthukumar
29. K.Madheswaran
30. T.Vijayalakshmi
31. Sujatha
32. M.Abdul Barid
33. R.Mohankumar



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34.Sagin Banu
35.E.R.Ramasamy
36.R.Mohankumar
37.Gnanavel
38.B.S.Latha
39.R.Vidhya
40.J.Jamal Mohamed Ismaiyl
41.N.Mohan
42.R.Mohankumar
43.R.Mohankumar
44.R.Mohankumar
45.N.Babu
46.Sundaram

.. Appellants

Vs.

1. The Commissioner
Salem Corporation
Salem
Salem District.
2. The Assistant Commissioner
Ammapettai Ward Office
Salem Corporation
Salem
Salem District.

.. Respondents

Appeal under Clause 15 of the Letters Patent filed against the interim order dated 27.9.2016 made in WMP No.19113 of 2016 in W.P.No.22418 of 2016.

For Appellant : Mrs.R.Hemalatha

For Respondents : Mr.V.Ayyadurai
Addl. Advocate General
Assisted by
Mr.S.Diwakar, Standing Counsel
for Salem Corporation

J U D G M E N T
(Delivered by Hluvadi G.Ramesh, J)

The appeal is directed against the interim order dated 27.9.2016 made in WMP No.19113 of 2016 in W.P.No.22418 of 2016.

WMP.No.19113/2016

to grant on interim Stay of all further proceedings of the respondents dated 05.04.2016 and 30.05.2016 in na.ka.No.L8/676/2016 pending dispense as the above writ petition.

WP.No.22418/2016

Petition filed under Article 226 of the constitution of India praying that in the circumstances stated therein and in the affidavit filed therewith, the High Court will be pleased to call for the records of the respondent dated 05.04.2016 and 30.05.2016 in Na.Ka.No.L8/676/2016 and quash the same as illegal, unlawful without jurisdiction deside ultra vires.

2. Heard the learned counsel for the appellant and the learned Additional Advocate General for the respondent Corporation.

3. According to the appellants, as per the dates and events filed by them, they are lessees under the respondent Corporation in respect of the shops in a commercial complex near Salem Town Bus Terminus. The lease was initially for a period of three years and to be renewed thereafter for a period of nine years. Thereafter, the rent to be enhanced on the basis of prevailing market value. The respondent Corporation passed a resolution unilaterally increasing the rent by nearly 300%. The said resolution was challenged by the leaseholders Association, by way of writ petitions in W.P.Nos.16231 to 16233 of 2016. The said writ petitions were disposed of directing the Association to make a representation to the respondent Corporation and thereafter, directing the respondent Corporation to consider said representation. In the meantime, the respondent Corporation issued notice to the leaseholders enhancing the caution deposit and rent of the shops and required them to give their consent for the enhanced rent, failing which the shops would be let out on lease by public auction. The said notices were challenged by the leaseholders in W.P.No.22418 of 2016. However, the respondent Corporation issued a proceedings on 14.6.2016 stating that the rental value and the security deposit have been enhanced in consultation with Government and therefore, it required the leaseholders to pay the enhanced rent, failing which, the shop would be let out in auction. An interim order was passed in the writ petition filed by the leaseholders, namely W.P.No.22418 of 2016. Challenging the said order, the appellants have come up with the above appeal.

4. The learned single Judge, by order dated 27.9.2016, passed an interim order, the relevant portion of which reads as follows:

"The Salem Corporation is directed to issue notice to the shop owners, who have not agreed to pay the amount fixed by the Salem Corporation, fixing the time to hand over the possession on or before 25.10.2016, failing which, they shall evict the shop on or before 28.10.2016, in terms

of the judgment passed in W.A.Nos.889 of 2016 and 909 to 918 of 2016 dated 21.7.2016."

5. Aggrieved by the above interim order passed by the learned single Judge, the appellants have come up with the above appeal.

6. This Court, while disposing a batch of cases in W.A.Nos.909 to 918 of 2016 filed by the other lessees in respect of other shops in Salem Bus Stand, against the interim order passed by the learned single Judge, has held as follows:

"5. We have considered the submissions. In the cases on hand, as indicated by the learned single Judge, the appellants/licensees of the shops in question have not agreed for the enhanced rental. However, taking into consideration the interest of the appellants/licensees, the respondent-Corporation shall provide one more opportunity to the appellants to negotiate in the matter and after the negotiations, still the matter is not settled between the appellants and the Corporation, the respondent-Corporation is at liberty to go for auction, in which case the appellants can very well participate in the auction process. However, it is the discretion of the Corporation to go on with the process in respect of those who have accepted the enhanced rental and paid the deposit and only in respect of those licensees who are not agreeable for the enhanced rental, it is very much open to the Corporation to go for auction in accordance with law and the highest bidders be given the shops. If the appellants also happen to be the successful bidders, they are entitled to the possession or else they can make way for the highest bidders to take possession of the premises. Subject to the outcome of either of the above options, the appellants will vacate the premises on their own or else the respondent-Corporation will issue eviction notices to the unsuccessful licensees to handover vacant possession of the respective shops to the Corporation within a period of three months therefrom. With these observations, the writ appeals are disposed of. ..."

7. A perusal of the order of the learned single Judge would make it clear that the interim order passed by the learned

single Judge is only in terms of the order passed by this Court in W.A.Nos.909 to 918 of 2016. Therefore, we do not find any reason to interfere with the interim order of the learned single Judge.

8. Be that as it may, taking note of the fact that the appellants are in possession of the shops for many years and taking into consideration the difficulty expressed by the appellants, we direct the respondent corporation to notify the shops in question for public auction, in which, the appellants are at liberty to participate. In such auction, ultimately, only the highest bidders will be allotted the shops on lease. In case the appellants are unsuccessful in the auction, they shall be given one month time from the date of auction, to vacate the shops and hand over the same, subject to the condition that they shall give an undertaking to the respondent Corporation within one week from the date of auction, undertaking to vacate the shop and hand over the same within a period of one month from the date of auction. In the event of no person participating in the public auction, the respondent Corporation may lease out the shops to the existing leaseholders, after reconsidering the rent enhanced by them and fixing a reasonable rent.

The writ appeal is disposed of accordingly. There shall be no order as to costs. Consequently, CMP No.17010 of 2016 is closed.

Sd/-
Assistant Registrar(CO)

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सत्यमेव जयते
Sub Assistant Registrar

kpl

To

1. The Commissioner
Salem Corporation
Salem
Salem District.

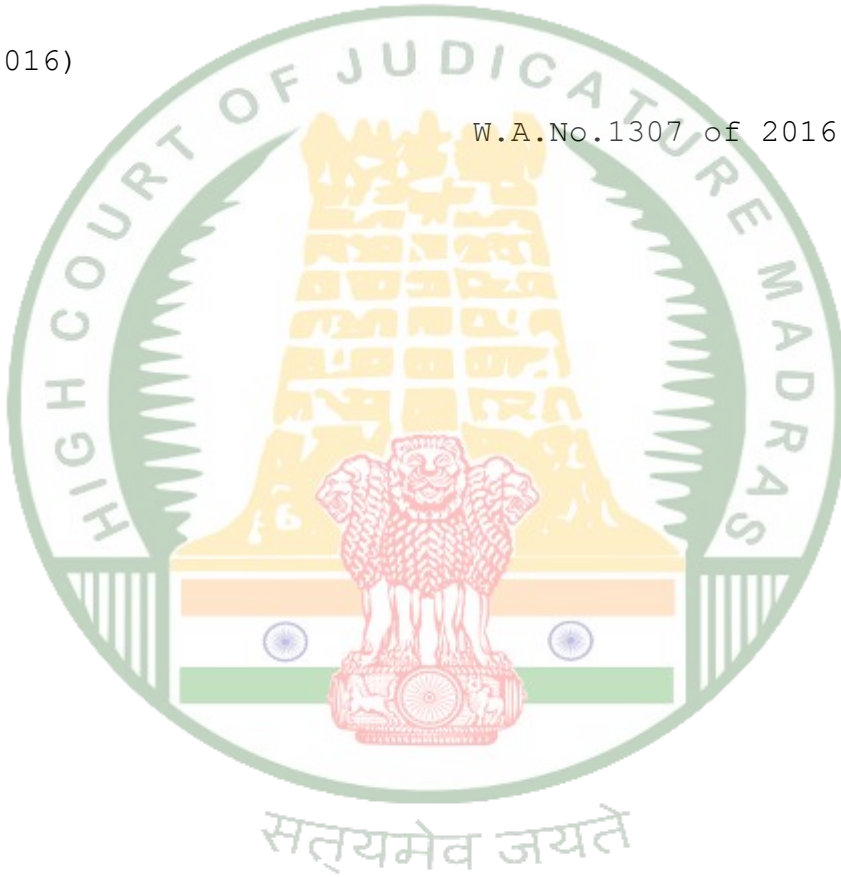
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2. The Assistant Commissioner
Ammapettai Ward Office
Salem Corporation
Salem
Salem District.

+1cc to Mr.S. Diwakar, Advocate, S.R.No.61381
+1cc to Mr.R. Hemalatha, Advocate, S.R.No.60962

vd(CO)
md(25/11/2016)

W.A.No.1307 of 2016.



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