

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.1312 of 2016

Venkateswara Raj .. Appellant

Vs.

1. State of Tamil Nadu
rep. by its Secretary to Government
Department of Municipal Administration and
Water Supplies Department
Secretariat, Fort St. George
Chennai 600 009.
 2. The Commissioner
Salem Municipality
Office to Salem Municipality (Revenue)
Salem.
 3. The Assistant Commissioner
Office of Ammapettai Ward
Salem Municipality
Salem.
- .. Respondents

Appeal under Clause 15 of the Letters Patent filed against the interim order dated 27.9.2016 made in W.P.No.22602 of 2016. Wherein it was prayed that this court may be pleased to issue a writ of certiorarified mandamus or any other appropriate writ, order or direction in the nature of writ, call for the entire records pertaining to G.O.Ms.No.92, Municipal Administration and water supply Department, dated 3.7.2007 issued by the first respondent and consequential proceeding Na.ka.No.L8/676/2016, dated 5.4.2016 issued by the third respondent, and quash para -4 (iii) of said G.O.ms.No.92, Municipal Administration and mater supply Department, dated 3.7.2007 and said consequential proceedings Na.Ka.No.L8/676/2016, dated 5.4.2016 issued by the third respondent and direct the respondents to continuously

follow the existing procedure for fixing the rent as directed by the Hon'ble supreme Court in the order, dated 23.4.1991 passed in Civil appeal No.1441-1444/91 and pass other appropriate order as per the law.

For Appellant : Mr.P.Thiagarajan
For Respondent-1 : Mr.P.Karthikeyan, Govt. Advocate
For Respondents 2 & 3 : Mr.V.Ayyadurai
Addl. Advocate General
Assisted by
Mr.S.Diwakar, Standing Counsel

J U D G M E N T

(Delivered by Huluvadi G.Ramesh,J)

The writ appeal is directed against the order dated interim order dated 27.9.2016 made in W.P.No.22602 of 2016.

2. Heard the learned counsel for the appellant, learned Government Advocate for the State and the learned Additional Advocate General for the respondent Municipality.

3. According to the appellant, he is a tenant under the respondent Municipality in respect of Shop No.19, Bose Maithanam Upground Shops, Ammapettai. On coming to know about the resolution passed by the respondent Municipality with respect to the revision of rent for the shops, a representation was made to the respondent Municipality by the Association, on behalf of the shop owners/leaseholders. But, the third respondent issued the proceedings 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 appellant submitted his objections to the said proceedings. However, the third respondent 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 shops would be let out in auction. Aggrieved by the said proceedings, the appellant filed the writ petition.

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 appellant has 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 appellant is in possession of shop for many years and taking into consideration the difficulty expressed by the appellant, we direct the respondent Municipality to notify the shops in question for public auction, in which, the appellant is also at liberty to participate. In such auction, ultimately only the highest bidders will be allotted the shops on lease. In the event of the appellant becoming an unsuccessful bidder, he shall be given one month time from the date of auction, to vacate the shop and hand over the same, subject to an undertaking given by the appellant 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 Municipality may lease out the shop to the existing leaseholder/appellant, 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.17085 of 2016 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpl
To

1. The Secretary to Government
Department of Municipal Administration and
Water Supplies Department
Secretariat, Fort St. George
Chennai 600 009.
2. The Commissioner
Salem Municipality
Office to Salem Municipality (Revenue)
Salem.
3. The Assistant Commissioner
Office of Ammapettai Ward
Salem Municipality, Salem.

+1cc to Mr.P. Thiagarajan, Advocate, S.R.No.61401
+1cc to Mr.S. Diwakar, Advocate, S.R.No.61382

mv (CO)
md(01/12/2016)

W.A.No.1312 of 2016