IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2016

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THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.A.No.908 of 2016

Y.Kaleel .. Appellant

-vs-

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

2. The Commissioner of Municipal Administration
Department of Municipal Administration and
Water Supply
Ezhilagam, Chennai

3. The Commissioner
Mettupalayam Municipality
Mettupalayam
Coimbatore District .. Respondents

Writ Appeal under Clause 15 of the Letters Patent, against the order dated 05.07.2016 made in W.P.No.23079 of 2016.

Writ Petition filed u/a 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, calling for the entire records connected with the proceedings of 3rd Respondents Notice vide Na.Ka. No. 780/ 2016/ A1 dated 16.06.2016 and quash the same consequently direct the 3rd respondent to renew the license for godown situated at Shop NO.2 in Bharathiyar Centenary Building Mettupalayam from 01.04.2015 to 31.03.2018 with enhancement rent in pursuant of 1st Respondents G.O. No.92 dated 03.07.2007.

For Appellant :: Mr.P.Saravanan

For Respondents:: Mr.P.S.Sivashanmugasundaram
Special Government Pleader for
R1 & R2
Mr.A.S.Thambusamy for R3

JUDGMENT

(Judgment of the Court was made by HULUVADI G.RAMESH, J.)

This appeal by the licensee/lessee is against the interim order of the learned single Judge dated 5.7.2016 made in W.P.No.23079 of 2016. The learned single Judge, by the impugned order with regard to the enhancement of the rental is concerned, has opined that since the appellant/writ petitioner is not agreeable for the enhanced amount, the respondents are at liberty to go ahead with the auction. However, the possession of the appellant shall not be disturbed without the permission of the Court and also made it clear that the order would cover only the persons who have approached the Court with a further direction to the third respondent-Mettupalayam Municipality to issue the notification of auction.

2. It appears that the appellant/writ petitioner has been in occupation of the Shop No.2, Bharathiyar Centenary Building situated in Mettupalayam Town Panchayat for over a period of nine years and has been paying a sum of Rs.1,905/- per month for an extent of 292 sq.ft. The grievance of the appellant before the learned single Judge as well as before this Court is that for the current block period, there is an exorbitant rise in the rental, which is sought to be fixed at Rs.22,800/- per month based on the alleged prevailing market rate, in the place of Rs.2,191/- per month based on the 15% enhancement being effected once in three years.

3. Learned counsel for the appellant, relying upon an order passed by the Apex Court in Civil Appeal Nos.1441 to 1444 of 1991 dated 23.4.91 (Erode Perundhu Nilaya Viayaparigal Salem Municipal Shops Lessees Association etc., v. State of Tamil Nadu and others) to the effect that the enhancement shall be 15% once in three years, contended that when the appellant is ready to pay the rental at 15% more than the existing amount, the amount sought to be demanded now is exorbitant and not acceptable. He also relied upon another judgment of the Apex Court in the case of Sunita Rani and others v. Sri Chand and others, (2009) 14 (Addl.) SCR 295 and contended that in a writ petition filed by the landlord against an order of rejecting his application for eviction, the High Court shall not assume the authority to enhance the existing rent, as it is not open to the High Court to summarily strip the tenant of the statutory protection and enhance the existing rent in a completely unguided and subjective manner.

4. Per contra, the learned counsel for the third respondent-Municipality has submitted that the Municipality has been collecting only meagre amounts as rental from the licensees for the last 39 years, despite the enhancement from time to time, as only Rs.2,191/- is paid by the appellant now. But in the vicinity, depending upon the area, the rental has been enhanced by the other property owners. Hence, after due deliberations, the Committee has taken a decision to enhance the rental to Rs.22,800/- per month based on the prevailing market rate in respect of the shop allotted to the appellant. As such, it is for the appellant either to accept the enhanced rental or

else to vacate from the premises. The learned single Judge, having found that the appellant is not agreeable for the enhanced rental, has directed the Municipality to go for auction so as to enable the appellant also to participate in the auction and tender his offer and till such time such process gets completed, the Municipality shall not disturb the possession of the appellant. The learned counsel further submitted that under similar circumstances, when the licensees/lessees like that of the appellant were offered to accept the rental sought to be fixed by Palladam Municipality, Tirupur District, when it was not agreed to and an auction was sought to be conducted, as against the final order passed by the Division Bench of this Court in W.A.No.1471 of 2014 dated 12.11.2014, a Special Leave Petition in No.34543 of 2014 was preferred by the licensees before the Apex Court, but the same was dismissed in limine. The learned counsel also relied upon another order of a Division Bench of this Court in the case of P.Muthusamy v. State of Tamil Nadu rep.by its Secretary to Government, Municipal Administration and Water Supply Department, Chennai and another, (2014) 5 MLJ 129 to support his contention that the appellant does not have a legal or vested right to continue in occupation for ever, when he is not agreeable for the enhanced rental fixed by the Municipality.

5. We have considered the submissions. In the case on hand, as rightly contended by the learned counsel for the third respondent-Municipality, the licensees of the shops have been paying only meagre amounts as rental to the Municipality for the last 39 years, despite the enhancement from time to time, in a sum of Rs.2,191/- in the case of the appellant for the shop in question as on date. The building in possession of the appellant/licensee is admittedly a commercial establishment and depending upon the locality or vicinity, the rental may vary from time to time. After a long possession by the appellant either as licensee or lessee, although from time to time the rental has been enhanced, according to the respondent Municipality, the rental which is fetching hitherto does not work out. Rather, depending upon the prevailing market rate, the respondent-Municipality sought to fix the present rental. Such being the case, it is for the appellant to either accept the enhanced rental or to participate in the public auction and he cannot claim as a matter of right to be in possession. In this context, the judgment of a Division Bench of this Court in the case of P.Muthusamy v. State of Tamil Nadu rep.by its Secretary to Government, Municipal Administration and Water Supply Department, Chennai and another, (2014) 5 MLJ 129 can be usefully referred to, wherein the Division Bench, in paragraphs-20 & 21, has held as follows:-

> "20. The facts narrated above would clearly indicate that the petitioners have been given only a licence to run the shops. Just because the word "lease" has been mentioned, a licence cannot ipso facto be converted into a lease. Admittedly, the licence issued has fixed terms. Therefore, the petitioners do not have a legal or vested right to continue in occupation for ever. There is no doubt that the provisions of the Tamil Nadu Buildings

> (Lease and Rent Control) Act, 1960, does not apply to the case on hand. The petitioners can very well participate in the proposed auction. In other words, they cannot claim the right of a statutory tenant.
>
> 21. The object of letting out the shops is to collect more revenue for the respondent-Municipality, which is meant to be used for welfare measures. The Government Orders, as narrated above, are very specific about the purpose of auction followed by lease/licence. Since the transactions are commercial in nature, the petitioners, being licensees, cannot insist that the rent, which as they think, just and proper alone is liable to be paid. Since the licence is to be granted by the respondent-Municipality, while making offer, the said authority can impose its own terms in accordance with law. While accepting the said offer, the petitioners cannot insist that the condition attached therein cannot be imposed. 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."

6. As rightly held by the Division Bench in paragraph-21, the object of letting out the shops by the respondent-Municipality is to fetch more revenue, which is to be used for welfare measures and for its sustenance. The judgment of the Apex Court in Sunita Rani and others case, (2009) 14 (Addl.) SCR 295 relied upon by the learned counsel for the appellant is in respect of the enhancement of the rental by the Court while deciding the issue of landlord and tenant and the same is not applicable to the facts of this case, since the appellant is not a statutory tenant. One another order of the Apex Court relied upon the learned counsel for the appellant in Civil Appeal Nos.1441 to 1444 of 1991 dated 23.4.91 (Erode Perundhu Nilaya Viayaparigal Salem Municipal Shops Lessees Association etc., v. State of Tamil Nadu and others) to the effect that the enhancement shall be 15% once in three years, is also a case where the shops were allotted in public auction during 1985-86 and the lessees therein were paying

the rent determined in such public auction to the Municipality and the licensees were prepared to pay the enhanced rate at 15% once in three years for the subsequent block period of 1988-91 and only in that context, the Apex Court held that if the Municipality is assured of reasonable rent, it is proper that the licensees be allowed to continue in the premises, instead of fresh auction, etc. What is to be noted in the case on hand is the welfare measures to be undertaken by the Municipality since, according to the learned counsel for the third respondent-Municipality, the Municipality has been receiving only very meagre amounts for the last 39 years i.e., a sum of Rs.2,191/- from the appellant as on date and on verifying the prevailing market rate in the vicinity, the Committee has sought to enhance the rental to Rs.22,800/- per month for the shop allotted to the appellant. However, we are not expressing any opinion, as submitted by the learned counsel for the appellant, whether in the given situation the enhanced rental seems to be on the higher side or not. But the fact remains that everything has been decided on material facts by the respondent-Municipality in a democratic manner after the same having been duly deliberated by the Committee.

7. Be that as it may, in the case on hand, not only the interest of the Municipality being paramount is to be taken into consideration, but also the interest of the licensees also has to be taken into consideration. Hence we observe that if any further negotiations are possible between the appellant and the third respondent-Municipality for arriving at the rental, the said process can be looked into or otherwise, the Municipality is at liberty to go for auction, so that the appellant would not have any vested interest to claim as a matter of right to fix a particular rental. But the appellant also has an option to bid in the auction in order to select the highest bidder. Till such time the finality of the bids takes place, in the event such an auction is held, the appellant may be allowed to continue in the shop in question. In the event of any failure in the negotiations between the appellant and the respondent-Municipality in respect of the rental, then, as indicated by the learned single Judge, it is for the third respondent Municipality to go for auction, wherein the appellant can also participate, and take the result for the benefit of it. With these observations, the writ appeal stands disposed of. Consequently, C.M.P.Nos.11608 to 11610 of 2016 are closed. No costs. However in the event of failure it is for the appellant to vacate & hand over possession in 3 months from the said decision to the highest bidder.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

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

2. The Commissioner of Municipal Administration
   Department of Municipal Administration and
   Water Supply
   Ezhilagam
   Chennai 600 005

3. The Commissioner
   Mettupalayam Municipality
   Mettupalayam
   Coimbatore District

+1 cc to Mr.A.S.Thambuswamy, advocate,sr.41876

+1 cc to Mr.P.Saravanan,advocate,sr.41851

+1 cc to Govt.Pleader,sr41566.

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W.A.No.908 of 2016