

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2016

CORAM

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

W.A.Nos.909 to 918 of 2016

N.Ganesan ..Appellant in W.A.No.909 of 2016

C.Keraram
K.Subramaniam
K.R.Sadhasivam
D.Ganesan
Mr.Ratanlal
Mr.Jabar Ali
K.Duraisamy
P.Ganeshbabu
A.Mohanlal
R.Bhawarlal
S.Manickam
Mr.Anandhammal Jain
Mr.Dhanapal Govindasami
Mr.Vickram Thulasidas
R.Prabhu
M.Indher Singh
Mr.Bharath Jain
Mr.Muthurajan Sengoda Gounder
R.Babulal
R.Raju
M.Poonaram
Mr.Budh Singh Raj Purohit
R.Mangilal
Mr.Alkesh K.Shah
J.Vikas Kumar
P.Vinod Kumar

N.Subramaniam & Co.,
rep.by its partner Mr.Sukumaran
S/o Siddaiah Chettiyar
Shop No.J, Bose Maithan Shops
Municipal Buildings
Old Bus Stand
Ammappettai, Salem Town & District

Mr.Sridhar Kamalasekar ..Appellants in W.A.No.910 of 2016

Mr.Alkesh K.Shah

K.Shanmugam
S.Devakumari
N.Geetha
R.Sohanlal
R.Shantilal
K.Sowkath Ali
Mr.Haresh Dhalaram @ Hariram
D.Ganesan
A.Gopal
N.Subramaniam
Mr.Sowkhar Khan
P.Sivalingam
Mrs.Vijaya Loganathan
S.T.Suppaya Pillai
S.P.Manivannan
Mr.Kalil Khan
Mr.Pemaram
M.Balamani
M.Palanisami
S.Suresh
Shanmugam
S/o Kattiyannan
Mr.Jaganathan

..Appellants in W.A.No.911 of 2016

S.Muli Devi ..Appellant in W.A.No.912 of 2016
D.Kamala Devi ..Appellant in W.A.No.913 of 2016
Mr.Parasmal Dhalaram ..Appellant in W.A.No.914 of 2016
R.Dharani Chand Rawathmal ..Appellant in W.A.No.915 of 2016
Mr.Salil Basha ..Appellant in W.A.No.916 of 2016
D.Ramesh @ Ramesh Kumar ..Appellant in W.A.No.917 of 2016

D.Prakash
C.Ramana Reddy
Mr.Mohamed Farook
Kalai Selvi
D/o M.Balan
Mr.Shajaputheen
G.Jaganathan
Mr.Janarthanan
K.P.Venkatachalam
S.P.Manickam
S.Abdul Karim
B.Arulnatham
T.Narayanasami
S.M.Pyarajohn
M.Baskar Raj
D.Ramamoorthy Naidu
S.Srinivasan
V.M.Raja
S.P.Iliyash
Mr.Samundeswaran

..Appellants in W.A.No.918 of 2016

-vs-

1. State of Tamil Nadu rep.by its
Secretary to Government
Department of Municipal Administration
and Water Supplies
Secretariat, Fort St.George
Chennai 600 009

2. The Commissioner
Salem Municipality
Office of Salem Municipality (Revenue)
Salem

3. The Assistant Commissioner
Office of Ammapettai Ward
Salem Municipality
Salem

..Respondents 1 to 3 in all the appeals

PRAYER:- Writ Appeals under Clause 15 of the Letters Patent
against the Order Dated 30/6/16 made in

WP No.22478 of 2016:-filed under Article 226 of the Constitution
of India, to issue Writ of Certiorarified Mandamus to
call for the entire records pertaining to G.O.Ms.No.92
Municipality Administration and Water Supply Department dated
3.7.2007 issued by the 1st respondent and the consequential
proceedings Na.Ka.No.L8/676/16 dated 5.4.2016 issued by the 3rd
respondent, and quash para 4 (iii) of the said G.O.Ms.No.92
Municipality Administration and Water Supply Department dated
3.7.2007 and said consequential proceedings Na.Ka.No.L8/676/16
dated 5.4.2016 issued by the 3rd respondent and direct the
respondents to continuously follow the existing procedure for
fixing the rent as directed by the Honourable Supreme court in
the order dated 23.4.1991 passed in Civil Appeal NO.1441-1444/91
and pass other appropriate orders as per..
and against the Order Dated 5/7/16 made in

WMP No.19947 of 2016

To stay all further proceedings in pursuance of impugned
proceedings Na.Ka. NO.L8/ 676/ 16 dated 5.4.2016 issued by the
third respondent, till the disposal of the main writ petition

WP No.23250 of 2016

Call for the entire records pertaining to G.O.Ms. NO.92
Municipality Administration and Water Supply Department dated
3.7.2007 issued by the first respondent and the consequential
proceedings Na.Ka. NO.L8/ 676/ 16 dated 5.4.2016 issued by the
third respondent, and quash para-4 (iii) of the said G.O. Ms.
No.92 Municipality Administration and Water Supply Department
dated 3.7.2007 and said consequential proceedings Na.Ka. No. L8/
676/ 16 dated 5.4.2016 issued by the third respondent and direct
the Respondnets to continuously follow the existing procedure

for fixing the rent as directed by the Honourable Supreme Court in the order dated 23.4.1991 passed in Civil Appeal No.1441-1444/91....

and against the Order Dated 5/7/16 made in

WMP No.19949 of 2016

To stay all further proceedings in pursuance of impugned proceedings Na.Ka. NO.L8/ 676/ 16 dated 5.4.2016 issued by the third respondent, till the disposal of the main writ petition

WP No.23251 of 2016

Call for the entire records pertaining to G.O.Ms. NO.92 Municipality Administration and Water Supply Department dated 3.7.2007 issued by the first respondent and the consequential proceedings Na.Ka. NO.L8/ 676/ 16 dated 5.4.2016 issued by the third respondent, and quash para-4 (iii) of the said G.O. Ms. No.92 Municipality Administration and Water Supply Department dated 3.7.2007 and said consequential proceedings Na.Ka. No. L8/ 676/ 16 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 Honourable Supreme Court in the order dated 23.4.1991 passed in Civil Appeal No.1441-1444/91....

and against the Order Dated 5/7/16 made in

WMP No.20019 of 2016

To stay all further proceedings in pursuance of impugned proceedings Na.Ka.No.L8/ 676/16 dated 5.4.2016 issued by the third respondent, till the disposal of the main writ petition

WP No.23316 of 2016

Call for the entire records pertaining to G.O.Ms. No.92 Municipality Administration and Water Supply Department dated 3.7.2007 issued by the first respondent and the consequential proceedings Na.Ka.No.L8/ 676/16 dated 5.4.2016 issued by the third respondent, and quash Para-4(iii) of the said G.O. Ms.No.92 Municipality Administration and Water Supply Department dated 3.7.2007 and said consequential proceedings Na.Ka.No.L8/ 676/16 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 Honourable Supreme Court in the order dated 23.4.1991 passed in Civil Appeal No.1441-1444/91

and against the Order Dated 5/7/16 made in

WMP No.20021 of 2016

To stay all further proceedings in pursuance of impugned proceedings Na.Ka.No.L8/ 676/16 dated 5.4.2016 issued by the third respondent, till the disposal of the main writ petition

WP No.23317 of 2016

Call for the entire records pertaining to G.O.Ms. No.92 Municipality Administration and Water Supply Department dated

3.7.2007 issued by the first respondent and the consequential proceedings Na.Ka.No.L8/ 676/16 dated 5.4.2016 issued by the third respondent, and quash Para-4(iii) of the said G.O. Ms.No.92 Municipality Administration and Water Supply Department dated 3.7.2007 and said consequential proceedings Na.Ka.No.L8/ 676/16 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 Honourable Supreme Court in the order dated 23.4.1991 passed in Civil Appeal No.1441-1444/91

and against the Order Dated 5/7/16 made in

WMP No.20023 of 2016

To stay all further proceedings in pursuance of impugned proceedings Na.Ka.No.L8/ 676/16 dated 5.4.2016 issued by the third respondent, till the disposal of the main writ petition

WP No.23318 of 2016

Call for the entire records pertaining to G.O.Ms. No.92 Municipality Administration and Water Supply Department dated 3.7.2007 issued by the first respondent and the consequential proceedings Na.Ka.No.L8/ 676/16 dated 5.4.2016 issued by the third respondent, and quash Para-4(iii) of the said G.O. Ms.No.92 Municipality Administration and Water Supply Department dated 3.7.2007 and said consequential proceedings Na.Ka.No.L8/ 676/16 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 Honourable Supreme Court in the order dated 23.4.1991 passed in Civil Appeal No.1441-1444/91

and against the Order Dated 5/7/16 made in

WMP No.20025 of 2016

To stay all further proceedings in pursuance of impugned proceedings Na.Ka.No.L8/ 676/16 dated 5.4.2016 issued by the third respondent, till the disposal of the main writ petition

WP No.23319 of 2016

Call for the entire records pertaining to G.O.Ms. No.92 Municipality Administration and Water Supply Department dated 3.7.2007 issued by the first respondent and the consequential proceedings Na.Ka.No.L8/ 676/16 dated 5.4.2016 issued by the third respondent, and quash Para-4(iii) of the said G.O. Ms.No.92 Municipality Administration and Water Supply Department dated 3.7.2007 and said consequential proceedings Na.Ka.No.L8/ 676/16 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 Honourable Supreme Court in the order dated 23.4.1991 passed in Civil Appeal No.1441-1444/91

and against the Order Dated 5/7/16 made in

WMP No.20027 of 2016

To stay all further proceedings in pursuance of impugned proceedings Na.Ka.No.L8/ 676/16 dated 5.4.2016 issued by the third respondent, till the disposal of the main writ petition

WP No.23320 of 2016

Call for the entire records pertaining to G.O.Ms. No.92 Municipality Administration and Water Supply Department dated 3.7.2007 issued by the first respondent and the consequential proceedings Na.Ka.No.L8/ 676/16 dated 5.4.2016 issued by the third respondent, and quash Para-4(iii) of the said G.O. Ms.No.92 Municipality Administration and Water Supply Department dated 3.7.2007 and said consequential proceedings Na.Ka.No.L8/ 676/16 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 Honourable Supreme Court in the order dated 23.4.1991 passed in Civil Appeal No.1441-1444/91

and against the Order Dated 5/7/16 made in

WMP No.20029 of 2016

To stay all further proceedings in pursuance of impugned proceedings Na.Ka.No.L8/ 676/16 dated 5.4.2016 issued by the third respondent, till the disposal of the main writ petition

WP No.23321 of 2016

Call for the entire records pertaining to G.O.Ms. No.92 Municipality Administration and Water Supply Department dated 3.7.2007 issued by the first respondent and the consequential proceedings Na.Ka.No.L8/ 676/16 dated 5.4.2016 issued by the third respondent, and quash Para-4(iii) of the said G.O. Ms.No.92 Municipality Administration and Water Supply Department dated 3.7.2007 and said consequential proceedings Na.Ka.No.L8/ 676/16 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 Honourable Supreme Court in the order dated 23.4.1991 passed in Civil Appeal No.1441-1444/91

and against the Order Dated 5/7/16 made in

WMP No.20105 of 2016

To stay all further proceedings in pursuance of impugned proceedings Na.Ka. No.L8/676/16 dated 05.04.2016 issued by the third respondent till the disposal of the main writ petition

WP No.23428 of 2016

Call for the entire records pertaining to G.O.Ms.No.92 Municipality Administration and Water Supply Department dated 03.07.2007 issued by the first respondent and the consequential proceedings Na.Ka.No.L8/676/16 dated 05.04.2016 issued by the third respondent, and quash para-4(iii) of the said G.O.Ms.No.92 Municipality Administration and Water Supply Department dated

03.07.2007 and said consequential proceedings Na.Ka.No.L8/676/16 dated 05.04.2016 issued by the third respondent and direct the respondents to continuously follow the existing procedure for fixing the rent as directed by the Honourable Supreme Court in the order dated 23.04.1991 passed in Civil Appeal No.1441/1444/91 and pass other appropriate... respectively

For Appellants :: Mr.P.Thiagarajan

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

JUDGMENT

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

These appeals by the licensees/lessees are against the interim orders of the learned single Judge made in the respective writ petitions as stated thereunder. The learned single Judge, by the impugned orders with regard to the enhancement of the rental is concerned, has opined that since the appellants/writ petitioners are not agreeable for the enhanced amount, the respondents are at liberty to go ahead with the auction. However, the possession of the appellants 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.

2. It appears that the appellants/writ petitioners have been in occupation of the shops situated in Salem old bus stand under the jurisdiction and control of Salem Corporation for over a period of nine years and above and have been paying between a sum of Rs.1,000/- and Rs.5,000/- per month respectively. The grievance of the appellants 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 on the prevailing market rate without the 15% enhancement being effected once in three years.

3. Learned counsel for the appellants, 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 appellants are ready to pay the rental at 15% more than the existing amount, the amount sought to be demanded now is exorbitant and not acceptable.

4. Per contra, the learned counsel for the respondent-Salem Corporation has submitted that most of the occupants/licensees have accepted the enhanced rental and only the appellants are not agreeable for the said enhancement. In fact further

negotiations have also been held with the appellants and the proposal has not been accepted. The learned single Judge, having found that the appellants are not agreeable for the enhanced rental, has directed the Corporation to go for auction and till such time such process gets completed, the Corporation shall not disturb the possession of the appellants. The learned counsel further submitted that the appellants do not have a legal or vested right to continue in occupation for ever, when they are not agreeable for the enhanced rental fixed by the Corporation.

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. Consequently, C.M.P.Nos.11612 to 11621 of 2016 are closed. No costs.

ss

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

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

2. The Commissioner
Salem Municipality
Office of Salem Municipality (Revenue)
Salem

3. The Assistant Commissioner
Office of Ammapettai Ward
Salem Municipality
Salem

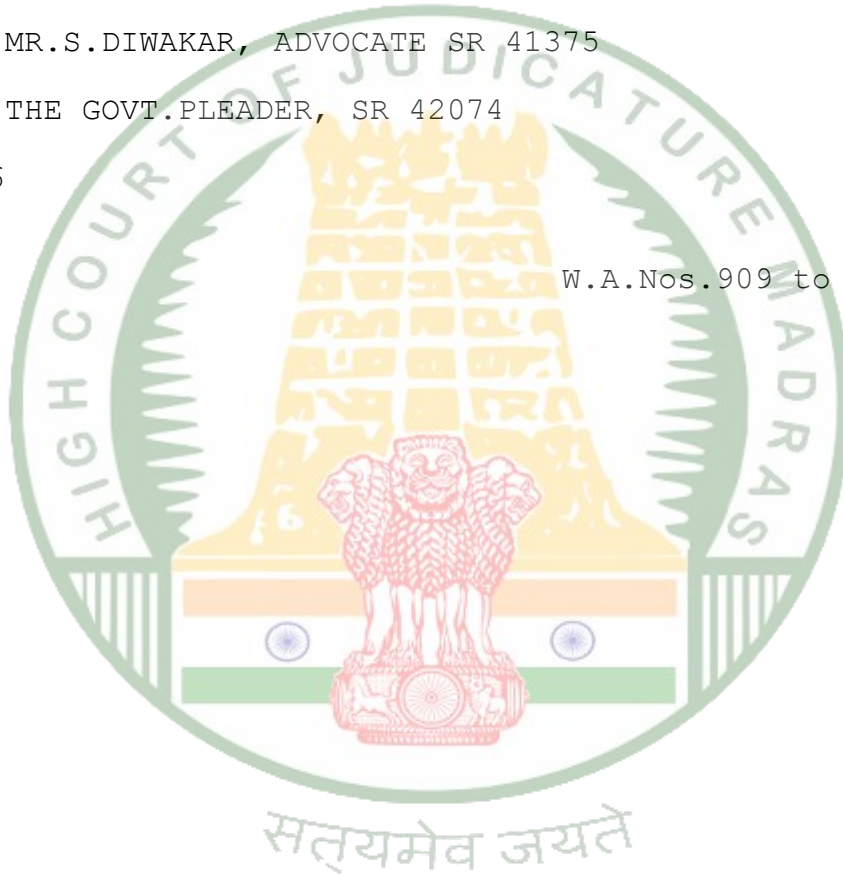
+ 10 CCS TO MR.P.THIAGARAJAN, ADVOCATE SR 41398

+ 1 CC TO MR.S.DIWAKAR, ADVOCATE SR 41375

+ 1 CC TO THE GOVT.PLEADER, SR 42074

KR/16/8/16

W.A.Nos.909 to 918 of 2016



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