



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2016

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

WEB COPY

Writ Petition (MD) No. 4349 of 2011

and

M.P. (MD) No. 2 of 2011

1. P.Subbaiah
2. P.Valli
3. A.Arumugam

.. Petitioners

Vs.

The Commissioner
Madurai Corporation
Aringar Anna Maligai
Madurai.

.. Respondent

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Mandamus, to forbear the respondents from collecting rent above Rs.2,000/- from the petitioners in respect of Shop Nos.433, 444 and 381 at Mattuthavani Central Market and consequently, direct the respondents to adjust the amount collected over and above Rs.2,000/- from the petitioners with the future rents.

For Petitioners : Mr.A.Srinivasan
for Mr.M.Suresh Kumar

For Respondent : Mr.R.Pabhu Ramachandran

O R D E R

The petitioners have filed this writ petition to enjoin the respondent from collecting rents over and above Rs.2,000/- from the petitioners in respect of Shop Nos.433, 444 and 381 respectively at Mattuthavani Central Market and consequently, direct the respondents to adjust the amount collected over and above Rs.2,000/- from the petitioners with the future rents.

2.The petitioners have been allotted shops bearing Nos.433, 444 and 381 respectively in New Central Market, Mattuthavani, vide proceedings dated Nil of August, 2010, pursuant to the resolution of the Council of the respondent Corporation. The Council of the Respondent/Corporation passed a resolution on 22.4.2010 fixing the deposit amount and monthly rent for various shops and in this case, we are concerned with the shops of size 13.6 x 13.6, as all the petitioners were allotted shops measuring the said size, for which the deposit amount (*which is refundable*) is fixed at Rs.60,000/- and monthly rent is fixed at Rs.2,000/-.



3.It is the case of the petitioners that the officials of the respondent/Corporation, *de hors* the above said fixation of rent, are demanding higher rents, without assigning any reason whatsoever. It is further stated that, on enquiry, it was informed that the Commissioner had orally instructed the officials of the respondent/Corporation to collect higher rents from the petitioners.

4.It is the plea of the petitioners that no order or Council resolution has been passed revising the monthly rent, and that even as per Section 23 of the Madurai City Municipal Corporation Act, 1971, the Commissioner is duty bound to give effect to the resolution of the Council and when the Council has not revised the monthly rent, the Commissioner has no authority to order collection of higher rent from the petitioners.

5.In such backdrop, the present writ petition is filed for the relief stated supra.

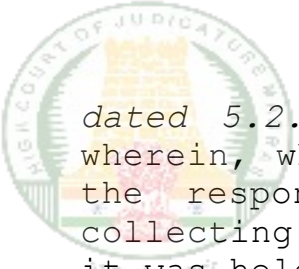
6.I heard Mr.A.Srinivasan, the learned counsel appearing for the petitioners and Mr.R.Prabhu Ramachandran, learned Standing Counsel appearing on behalf of the respondent and perused the documents on record.

7.It is beyond any cavil that the petitioners herein have been allotted shops bearing Nos.433, 444 and 381 respectively as per the allotment order dated Nil of August, 2010 and as per the Council Resolution the deposit amount payable by the petitioners is Rs.60,000/- and the monthly rent payable is Rs.2,000/-.

8.When the General Council, by resolution dated 22.04.2010, had fixed the deposit amount and monthly rental, as stated supra, the Commissioner is duty bound to collect only that amount. As per Section 23 of the Madurai City Municipal Corporation Act, 1971, the Standing Committees and the Commissioner shall be bound to give effect to every resolution or order of the Council, unless such resolution or order is cancelled in whole or in part by the Government.

9.In the case on hand, the learned Standing Counsel appearing for the respondent Corporation had not produced any material to show that the resolution passed by the General Council has been cancelled in whole or in part by the Government. Therefore, as a corollary, the respondent is bound to give effect to the resolution passed by the General Council and collect only the rent as stipulated in the said resolution dated 22.4.2010.

10.The above said view of this Court is fortified by a decision of a Division Bench of this Hon'ble Court in *K.Chandran and others v. The Commissioner, Madurai Corporation* [Judgment



dated 5.2.2014 passed in W.A. (MD) Nos.1063 to 1067 of 2012], wherein, while recording the statement of the learned counsel for the respondent Corporation to the effect that they are not collecting more than the amount specified in the allotment order, it was held that:

"4. It is made clear that the rental prescribed, as per the allotment order, which is the subject matter of writ appeals will be subject to any modification, as may be decided by the respondent Corporation, in their next general council meeting."

11. Therefore, it is explicitly clear that any modification or enhancement of the rent can be made only pursuant to the resolution of the General Council to that effect. In the case on hand, such resolution enhancing the monthly rental is absent. Hence, the respondent Corporation is not entitled to collect enhanced monthly rent.

12. In such view of the matter, this writ petition is allowed as prayed for. No costs. Consequently, M.P.(MD)No.2 of 2011 is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Commissioner,
Madurai Corporation
Aringar Anna Maligai, Madurai.

+1cc to Mr.M.Suresh Kumar, Advocate Sr.No.67598
+1cc to Mr.R.Pabhu Ramachandran, Advocate Sr.No.66941

VS/SKN

VB/SKN/RSK/SAR2/23/11/2017/3P/4C

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and
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