

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9667 of 2017

M/s.National Oil Company,
rep. by its Proprietor,
N.Santhakumar
No.10/1, Gandhi Market,
Market Road,
Pollachi - 642 001,
Coimbatore District.

...Petitioner

Vs.

The Commissioner,
Pollachi Municipality,
Pollachi, Coimbatore District.
Respondent

...

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorari, calling for the records on the file of the respondent Municipality in its impugned proceedings of the respondent made in Na.Ka.No.A6/371/2015, dated 09.09.2016 for the enhancement of rent and deposit amount, quash the same.

(Cause Title suo-motu amended as per the order of this Court, dated 23.11.2017 in W.P.No.9667 of 2017)

For Petitioner : Ms.R.Hemalatha

For Respondent : Mr.A.S.Thambuswamy

O R D E R

Though the impugned proceedings pertain to Pollachi Municipality, the petitioner has inadvertently typed the respondent as 'Corporation of Pollachi' in the Cause Title. When the Court pointed out the same to the learned counsel for the petitioner, she sought time to file a petition for amendment of the cause title. However, this Court, suo motu amended the Cause Title today, by substituting 'Pollachi Municipality' instead of 'Corporation of Pollachi', as Pollachi has not been declared as a 'Corporation' till date.

2. The petitioner has come up with this Writ Petition seeking to quash the impugned proceedings, dated 09.09.2016 passed by the respondent Municipality, ordering enhancement of

rent and Security deposit.

3. According to the petitioner, he was allotted a land by the respondent Municipality, where he had put up a Petrol Bunk in the name and style of "National Oil Company" in the year 1970 and had been paying rent regularly to the Municipality. Though the petitioner had been paying the revised rent for every three years, from 01.04.2003 till 31.03.2015, based on the Resolution passed by the respondent Municipality vide No.564 and 565, dated 29.08.2016, the rent for the petitioner's Shop had been increased to Rs.24,000/- per month from a sum of Rs.6,390/- per month and the Security Deposit had been increased to Rs.1,00,000/- by the proceedings of the respondent vide Na.Ka.No.A6/371/2016, dated 09.09.2016.

4. The grievance of the petitioner is that before the expiry of the lease period, respondents have exorbitantly increased the monthly rent of the shop and mentioned that the lease would be renewed only if the fair rent value is accepted and issued the impugned notice, which is arbitrary and unreasonable. The petitioner submitted that the respondent does not have the authority under the Rules to fix the fair rent and there is no legal sanction for the same. He further submitted that the impugned order has been issued without giving an opportunity to him to put forth his objections to the exorbitant increase in rent.

5. Learned counsel for the petitioner contended that the respondent ought to have adopted a humane and practical approach while fixing the revised rent, and re-fixing it at such exorbitant rate is not reasonable. It is his further contention that the guideline value of the properties had been reduced to 33% by the State and fixing it on the higher side, more particularly, asking the petitioner to pay the rent at such unreasonable rate, needs to be interfered with.

6. In reply, learned counsel appearing for the respondent Municipality submitted that the petitioner has been periodically paying the revised rent once in every three years as per G.O.M.S.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007. According to him, if the petitioner is not willing to pay the revised rent as demanded, it is open to him to go for a public auction. Referring to clauses 4(ii) and 4(iii) of the said Government Order, he further submitted that an opportunity has to be given to the petitioner, once the revised rent is fixed and that if the petitioner does not accept the same, it is open to him to go ahead with the public auction.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. The sum and substance of the issue in question is as to whether the respondent Municipality is entitled to fix the rent on a higher side, be it lease/rent and demand the amount from the petitioner, as calculated by them.

9. It is not in dispute that the petitioner is in occupation of the premises in question as a lessee and paying the rent regularly and that it was revised periodically once in every three years as per the said Government Order.

10. In a similar circumstance, a Division Bench of this Court in the case of P.V.Subramanian v. Secretary to Government, 2014 (5) MLJ 129, has held that licence can be converted into one of lease and that the object of letting out the shop is to collect more revenue for the Municipality/Municipality and that the extension granted to the existing licensees is only by way of concession and that the revision is made based on the prevailing market value and not otherwise. For better understanding, relevant portion of the said decision reads as under:

"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 a fixed terms. Therefore, the petitioners do not have a legal or a 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, 1961, 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.

22. The resolution has been passed after making detailed discussion and it was also passed as a consequence of the earlier order dated 14.12.2012 by which rent was fixed. Since the said rent so fixed was not paid, the respondent-Municipality was made to pass the impugned resolution. Therefore, it cannot be said that the impugned resolution has been unilaterally passed and as such, the said decision is in accordance with the Government Orders passed, which confer the power on the respondent-Municipality to take action towards the eviction from the shops in the event of non payment of rent payable. The extraction of the related paragraphs of the resolution would clearly show that relevant materials have been taken into consideration while passing the same. The respondent-Municipality has got its own duty and obligation to perform. Appointments will have to be made to the public office and salaries will have to be paid. Money will have to be spent towards the welfare measures. The assessment made also indicates that the

proposed auction would bring more money. The best way to get the maximum revenue is by way of public auction. This will also create a level playing field enabling others to participate along with the petitioners/licensees. Therefore, we do not find any arbitrariness in the action of the respondent-Municipality. The reliance made by the petitioners on the communication dated 12.03.2009 cannot be accepted since it cannot overreach the Government Orders which speak about removal when conditions are not complied with. The fact that the Commissioner of Municipal Administration directed the respondent-Municipality to fix the market rent as the rent payable based upon the Government Orders which in turn was complied with would also show that there is no quarrel with the position that the market rent shall be the basis for the fixation of the rent payable by the licensees. In any case, the petitioners, being the defaulters, cannot contend that they should be allowed to continue forever. As the orders impugned have been passed by taking into consideration of the relevant materials, we do not find any room for interference."

11. From the above discussion and in the light of the decision cited supra, it is seen that the respondent Municipality has fixed the rent with all due considerations. Reduction of 33% in the guideline value would not be a valid reason for the petitioner to interfere with the decision of the respondent Municipality. The Government might have revised the guideline value to 1/3 (33%) only to safeguard their own interest to avoid paying compensation to the landowners for the lands acquired by them, as they need to pay hefty compensation to the landowners in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and not otherwise.

12. Thus, this Court finds no merit in this Writ Petition, which is therefore, dismissed accordingly. It is upto the petitioner to accept the offer given by the respondent Municipality by paying the arrears of rent, since he has been in occupation of the premises for several years, failing which, the respondent Municipality shall go ahead with the auction. In case, the petitioner does not give consent for the payment of the enhanced amount within one month, it is open to the

respondent Municipality to go ahead with the auction, and till such time the auction is announced, the petitioner may continue to function in the same place. As there is a possibility that the petitioner may challenge the auction notice and continue to function in the same place on account of any litigation or interim order, in order to avoid such circumstances, this Court holds that once the auction notification is published, the petitioner is deemed to have vacated the tenement and the respondents can enter the place with the help of police force, if required.

No costs. Consequently, connected W.M.P.Nos.10640 and 10641 of 2017 are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Commissioner,
Pollachi Municipality,
Pollachi, Coimbatore District.

+1cc to Mr.A.S.Thambuswamy, Advocate, S.R.No.83751

+1cc to Mr.R.Hemalatha, Advocate, S.R.No.83424

W.P.No.9667 of 2017

AD(CO)

RRK(15/12/2017)

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