

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Writ Petition No.5844 of 2017
and WM.P.No.6261 of 2017

Tmt. Savurama Banu,

... Petitioner

Vs.

1. The Commissioner,
Pollachi Municipality, Pollachi.

2. The Assistant Executive Engineer/
Commissioner(Full Additional Charge),
Pollachi Municipality,
Pollachi.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for to issue any writ, Order specially Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 1st respondent in Na.Ka. No. A6/371/2015 dated 09/09/2016 followed by final notice issued by 2nd respondent No. 371/2015/Aa6 dated 23.02.2017 served on 25.02.2017 and to quash the same and consequently direct the respondents to pass appropriate orders for revision of lease for the shop allotted to the petitioner in Shop No.6 Nandhanar Colony, Palladam Road, Pollachi by following the procedure established by law in strict implementation to G.O.Ms.No.92 Municipal Administration & Water Supply (MA 4) Department dated 03.07.2007 after affording reasonable opportunity to the petitioner.

For Petitioner : Mr.G.Sankaran.

For Respondents : Mr.A.S.Thambusamy (For R1)
M/s.M.E.Ramiselvam,
Additional Government Pleader (For R2)

O R D E R

The petitioner was the successful bidder in pursuant to the auction conducted on 12.12.2004 for Shop No.6 at the rate of Rs.1,200 per month. Accordingly he was a licensee for a period of three years, upto 31.03.2017. It was extended for further

two block period of three years with an enhanced rent paid. The last of the renewal was made from 01.04.2014 to 31.03.2017.

2.A Government Order was passed in G.O.Ms.No.92 dated 03.07.2007. As per the said order, after 9 years, the Local Body has a discretion either to fix the prevailing market rate for the shops and thereafter call upon the licensee to pay the said amount with corresponding security deposit and advance rent of 12 months as per the conditions of the lease. If the licensee accepts the market rate so fixed by the respective Municipality, it was given for a further period of 3 years. On the contrary, if the licensee fails to accept the market rate so fixed by the municipality, it is open to it to bring it for public auction.

3.Accordingly, the respondent Municipality fixed the market rent by taking into consideration the prevailing one by fixing it at Rs.5,000 per month. Incidental conditions have been imposed with respect to the payment of EMD and advance rent of 12 months. According to the respondent Municipality, the amount has been fixed at Rs.5,000 per month though in other place it was fixed at Rs.6,000 and Rs. 15,000/- per month by taking into consideration of the locality.

4.The learned counsel appearing for the petitioner would submit that the rent fixed was arbitrary and therefore it requires re-consideration. Reliance has been made on the judgment of this Court in the case of M.K.M.Geeyavudeen and others vs. Commissioner, Pudukottai Municipality reported in (2008) 1 MLJ 682.

5.The learned counsel appearing for the respondent Municipality would submit that it is only an option exercised. It is for the petitioner to take or leave it. In the auction proposed, if the petitioner fails to take the option given to him, the respondent is confident to get more than Rs.5,000/-per month. The Government order passed in G.O.Ms.No.92 dated 03.07.2007 does not have an application to a case where there was two times extension already. Therefore no interference required.

6.What is given is only a licence and not a lease. The period fixed therein has got a sanctity. The Government Order in the considered opinion of this Court has to be applied prospectively and not retrospectively, especially, to those

cases in which 9 years period has already been lapsed. Therefore, at best, it can be a discretion exercised by the respondent by way of an offer. If the offer is not accepted, then, it is open to the respondent Municipality to go for a fresh auction. In that sense, the petitioner does not have any right. The rent has been fixed by considering the market value prevailing. If the petitioner is not accepting the offer, then it is open to the respondent to go for a public auction in which the petitioner can also participate. Perhaps, the respondent can think of the offer made by the petitioner provided the said amount is higher than the offer in the public auction which obviously be lesser than the upset price fixed-Rs.5,000/- per month. Such a situation is bordering upon speculation and therefore, we are not concerned with it.

7.The decision relied upon by the learned counsel appearing for the petitioner does not have an application to the case on hand. In the said decision, the rent was fixed from 01.04.2007. The Government Order passed in G.O.Ms.No.92 dated 03.07.2007 has come into force with effect from 01.07.2007. When once it is clear that we are concerned with the license, there is no application of Tamil Nadu Buildings (Lease and Rent Control) Act.

8.The decision has been taken note of by the Division Bench of this Court in P.Muthusamy vs. State of Tamil Nadu, rep. by its Secretary to Government, Municipal Administration and Water Supply Department, Chennai and another reported in (2014) 5 MLJ 129, wherein it has been 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 a fixed terms. Therefore, the petitioners do not have a legal or a vested right to continue in occupation forever. 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."

9. The ratio laid down therein will have an application to the case on hand. Apart from that, the ratio laid down in the judgment (referred supra) of the learned Single Judge is not in consonance with the decision of the Division Bench of this Court.

10. In such view of the matter, this Court does not find any merit in the writ petition. However, in as much as the petitioner has been in possession till now though the condition imposed by the respondent Municipality has not been complied with not only with respect to the rent but also with respect to the deposit and advance rent of 12 months and EMD, the petitioner is given further time to pay the arrears of rent within a period of three months from the date of receipt of a copy of this order. The compliance of EMD and other deposits within the aforesaid period subject to the further condition that the petitioner shall pay the enhanced rent payable on or before 15th of every English Calendar month starting from the month of July 2017 onwards.

11.With the above observation, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cse/bsm

To

1. The Commissioner,
Pollachi Municipality, Pollachi.
2. The Assistant Executive Engineer/
Commissioner(Full Additional Charge),
Pollachi Municipality, Pollachi.

+1cc to Mr.G.Sankaran, Advocate Sr. 44830

+1cc to Mr.A.S.Thambusamy, Advocate Sr. 44557

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GJII(CO)
VR(07/07/2017)

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