IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.31308 and 31309 of 2017
and
W.M.P.Nos.34390 to 34393 of 2017

Mr.Jayaraman .. Petitioner in W.P.No.31308 of 2017

Tmt.J.Sivagami .. Petitioner in W.P.No.31309 of 2017

Vs.

1. The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai-3.

2. The Zonal Officer-X,
Chennai City Corporation,
No.117, N.S.K.Road,
Kodambakkam, Chennai-24. .. Respondent in both W.Ps

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of Writs of Certiorarified Mandamus to call for the records in Ma.A.10.Va.thu.Na.Ka.No.R4/169/2017, dated nil-03-2017 relating to the second respondent and quash the same and consequently direct the respondents to re-fix the rent reasonably by considering the representation dated 08.11.2017.

For petitioners in both Wps : Mr.K.Sathish Kumar
For respondents in both Wps : Mr.T.C.Gopalakrishnan

ORDER

The petitioners have filed these petitions to call for the records in Ma.A.10.Va.thu.Na.Ka.No.R4/169/2017, dated nil-03-2017 relating to the second respondent and quash the same and consequently direct the respondents to re-fix the rent reasonably by considering the representation, dated 08.11.2017.

2. It is the case of the petitioners that they have been running the shops in question for several years on rent/lease.

On coming to know of the revision of rent/lease through issuance of the impugned proceedings based on G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, they have preferred these Writ Petitions for the relief stated supra.

3. It is the contention of the learned counsel for the petitioners that the respondents have taken a decision to renew the lease by revising the rent in an exorbitant rate in an arbitrary and capricious manner. The respondents ought to have adopted a humane and practical approach while fixing the revised rent, and re-fixing the same in such excessive amount, is unreasonable. It is further stated that the guideline value of the properties had been reduced to 33% by the State now and fixing it on the higher side, more particularly, asking the petitioners to pay the rent at exorbitant rate, needs to be interfered with by this Court.

4. Learned counsel appearing for the respondents submitted that the petitioners have been periodically paying the revised rent once in every three years as per G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007. According to him, if the petitioners are not willing to pay the revised rent as demanded, it is open for the petitioners to go for public auction. Referring to Clauses 4(ii) and 4(iii) of the said G.O., he contended that an opportunity has to be given to the petitioners, once the revised rent is fixed and that if the petitioners do not accept the same, it is open for the petitioners to go ahead with the public auction.

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

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

7. It is not in dispute that the petitioners are in occupation of the premises in question as lessees and paying the rent regularly and that it was revised periodically once in every three years as per the said Government Order.

8. In similar circumstances, a Division Bench of this Court in the case of P.V.Subramanian Vs. Secretary to Government, reported in 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/Corporation 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 of this Court 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."

9. From the above discussion and in the light of the decision cited supra, the respondents herein have fixed the rent with all due considerations. Merely because there is a reduction of 33% in the guideline value, it would not be a reason enough for the petitioners seeking to interfere with the order or decision of the respondents. The Government might have revised the guideline value to 1/3 (33%) only to safeguard their own interest to avoid paying compensation to the land owners for the lands acquired by them, as they need to pay hefty compensation to the land owners in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and not otherwise.

10. Thus, this Court finds no merit in these writ petitions, which are accordingly dismissed. It is up to the petitioners to accept the offer given by the respondents, since they have been in occupation of the premises for several years, failing which, the respondents shall go ahead with the auction. If there are any arrears and the petitioners want to continue with the enhanced rent amount, the arrears shall be paid within two months from the date of acceptance of the offer. In case the petitioners do not give consent for the payment of the enhanced amount within one month, it is open to the respondents to go ahead with the auction, and till such time the auction is announced, the petitioners may continue to function in the same place. As there is a possibility that the petitioners 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 petitioners are 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 miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

cs

TO

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   Corporation of Chennai,
   Ripon Building, Chennai-3.

2. The Zonal Officer-X,
   Chennai City Corporation,
   No.117, N.S.K.Road,
   Kodambakkam, Chennai-24.

+1cc to Mr.T.C.Gopal krishnan, Advocate SR.No.85555
+2cc to Mr.K.Sathish Kumar, Advocate SR.No.85467, 85468

W.P.Nos.31308 and 31309 of 2017

AD(CO)
GN(09/01/2018)