IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2017

CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.21910 of 2017
and WMP.Nos.22941 & 22942 of 2017

S.Venkatakrishnan ... Petitioner

Vs.

1.The Commissioner,
Municipal Administration and
Water Supply Department,
Chepauk, Chennai – 600 005.

2.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai – 600 003.

3.The Assistant Revenue Officer,
Chennai Corporation, Rippon Buildings,
Chennai – 600 003.

4.The Zonal Officer,
Zone-9, Chennai Corporation,
No.1, Lake Area, 4th Cross Street,
Nungambakkam,
Chennai – 600 034. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned demand notice of the fourth respondent dated 28.04.2017 under Ma.A.9VA.Thu.Na.Ka.No.R3/0203/2017 pertaining to the shop No.1276, No.77, C.P.Ramasamy Road, Alwarpet, Chennai – 600 018 and quash the same and consequently direct the respondents to revise and fix the fair rent for the said shop in accordance with the rules and recommended guidelines.

For Petitioner : Mr.S.Sridhar

For Respondents : Mr.T.C.Gopalakrishnan
(For Chennai Corporation)

* * * * *

ORDER

The petitioner has come up with this Writ Petition seeking to quash the proceedings dated 28.04.2017 passed by the Fourth respondent herein.

2.According to the petitioner, the respondents owning the Commercial Complex at C.P.Ramasamy Road, Alwarpet, Chennai – 600 018 rented out the various portions to the tenants including the petitioner and in the year 2000 fixed the rent at Rs.6/- per Sq.Feet. Eversince from the inception of tenancy the respondents issued notice to the petitioner and enhanced the rent. The petitioner is a small trader and the respondents have increased the rent periodically without taking into consideration of the market value of the land and now the petitioner is paying rent for a sum of Rs.5,026/- per month. The respondents failed to take into consideration of the depreciation, occupation, profit, situation of building, nature of building and usage of building and ceiling economical position of the public at large has enhanced the rent.

3.The petitioner received notice from the fourth respondent thus informing the petitioner that the petitioner has to pay the rent at Rs.80/- per sq.feet and the said increase is in violation of Article 21 of Constitution of India. The respondents have increased the rent without any enquiry and without forming the Expert Committee and without obtaining the report from the Expert Committee. On 28.04.2017 the fourth respondent issued a notice to the petitioner for the increase of rent exhorbitantly at Rs.80/- per Sq.feet for the extent of 252 Sq.feet under the occupation of the petitioner resulted in filing the above writ petition.

4. Learned counsel appearing for the fourth respondent 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 G.O., he contended 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 for him to go ahead with a 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 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.

7. 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.

8. 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/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 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 decisions cited supra, the fourth respondent herein has 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 petitioner to interfere with the order of the decision of the fourth respondent. 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.

10. 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 fourth respondent, since he has been in occupation of the premises for several years, failing which, the fourth respondent 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 fourth respondent 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, the connected Miscellaneous Petitions are closed.

24.11.2017

ah

Speaking order/Non-speaking order

Index : Yes / No
Internet : Yes/ No

To:

1.The Commissioner,
Municipal Administration and
Water Supply Department,
Chepauk, Chennai – 600 005.

2.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai – 600 003.

3.The Assistant Revenue Officer,
Chennai Corporation, Rippon Buildings,
Chennai – 600 003.

4.The Zonal Officer,
Zone-9, Chennai Corporation,
No.1, Lake Area, 4th Cross Street, Nungambakkam,
Chennai – 600 034.

S.VAIDYANATHAN, J

ah

Order in
W.P.No.21910 of 2017

24.11.2017