

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2017

CORAM:

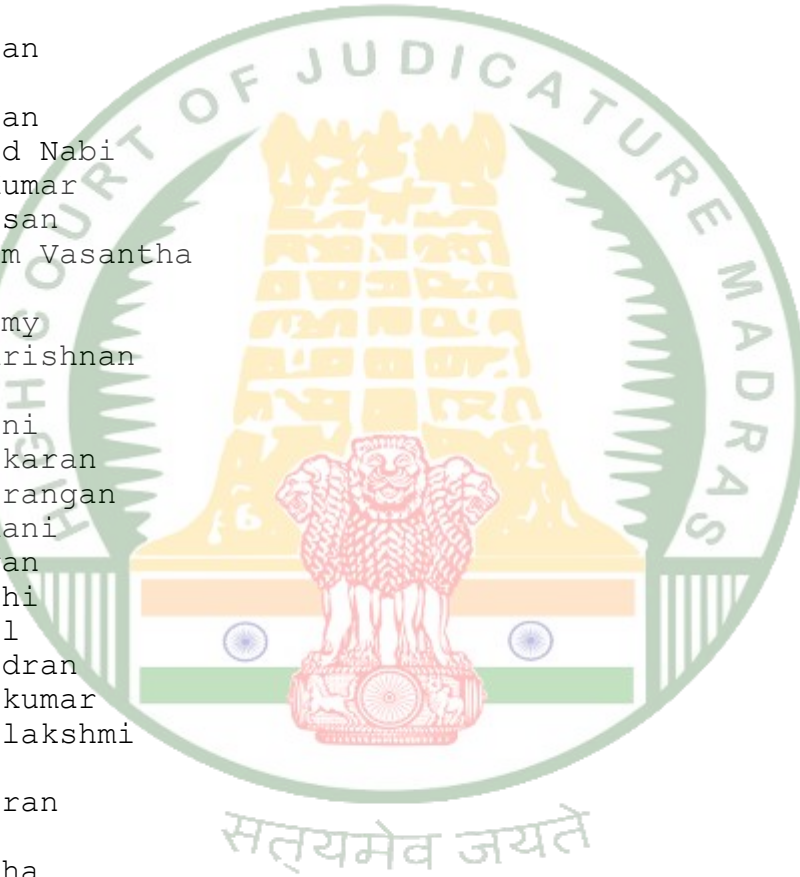
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.16095, 9948 and 25377 of 2017
& W.M.P.Nos.17382, 10942 and 26810 of 2017

N.Srivinivasan

.. Petitioner in W.P.No.16095 of 2017

1. N.Manoharan
2. A.Ganesan
3. A.Manoharan
4. A.Mohammed Nabi
5. M.Ashok Kumar
6. B.Venkatesan
7. Sivalingam Vasantha
8. K.Babu
9. M.Muthusamy
10. M.Radhakrishnan
11. A.Ravi
12. J.Nandhini
13. D.Gunasekaran
14. P.Vijayarangan
15. B.Maarikani
16. V.Pandiyan
17. Visalakshi
18. Muniammal
19. Ravichandran
20. Rajendrakumar
21. M.N.Jayalakshmi
22. P.Raja
23. Prabhakaran
24. Geetha
25. Noorunisha
26. J.Janaki Rani
27. Yasodha Ammal
28. J.Ambrose
29. A.Kannan
30. G.kuppusamy
31. G.Jenagan
32. S.Srinivasan
33. P.Ravichandran
34. M.Venkatesh Babu
35. Rukmani Ammal
36. R.Rajendran
37. D.Thiyagarajan



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38. R.Vijaya
39. Chinna Kuzhandai
40. P.Ramajayam
41. A.S.Sekar
42. K.Dhanabal
43. K.Dhabarak
44. R.Muthukrishnan
45. P.Lakshmanan
46. R.Anwar
47. S.Prabhu
48. G.Ashok Raj
49. S.Rani
50. P.Elango
51. S.Jogaram
52. J.Asthimal
53. Geetha Rani
54. M.Radha

... Petitioners in W.P.No.9948 of 2017

- 1.D.Chinnakulandhai
- 2.P.Manickam
- 3.K.V.Rajendren
- 4.K.Arumugam
- 5.S.Tamilselvan
- 6.P.Azhagammal
- 7.P.Hema
- 8.V.Kamatchi
- 9.M.N.Jayalakshmi
- 10.B.Anandhan
- 11.A.Pyaryjohan
- 12.P.Kumar
- 13.G.Vasu
- 14.R.K.Loganathan
- 15.R.Paramasivam

... Petitioners in W.P.No.25377 of 2017

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Municipal Administration,
Municipal Administration Department,
Ezhilagam Annexe - 6th Floor,
Chepauk, Chennai - 600 005.
3. The Regional Director of Municipal Administration,
Vellore.

4. The Commissioner,
Tiruvannamalai Municipality,
Tiruvannamalai.

.. Respondents in all the petitions

Prayer in W.P.No.16095 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring that the demand made by the 4th respondent for payment of revised rent for Shop No.10, New Bus Stand, Polur Raod, Tiruvannamalai Municipality by more than 490% of the existing rent by communication dated 11.03.2017 in Na.Ka.No.A1/4839/2016 as being illegal and unreasonable.

Prayer in W.P.No.9948 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration to declare that the demand made by the 4th respondent for payment of revised rent from the petitioners for the shops allotted to them within the Tiruvannamalai Municipality by more than 450% of the existing rent by communication dated 11.03.2017 in Na.Ka.No.A1/4839/2016 as being illegal and unreasonable.

Prayer in W.P.No.25377 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration to declare that the demand made by the 4th respondent for payment of revised rent from the petitioners for the shops allotted to them within the Tiruvannamalai Municipality by more than 250% to 450% of the existing rent by communication dated 11.03.2017 in Na.Ka.No.A1/4839/2016 as being illegal and unreasonable.

For Petitioner : Mr.R.Saravanan
for M/s.Sai Bharath and Ilan
For RR1 to 3 : Mr.R.Venkatesh, G.A.
For RR4 : A.S.Thambusamy

ORDER

Writ Petition in W.P.No.16095 of 2017 is filed for the issuance of a Writ of Declaration, declaring that the demand made by the 4th respondent for payment of revised rent for Shop No.10, New Bus Stand, Polur Raod, Tiruvannamalai Municipality by more than 490% of the existing rent by communication dated 11.03.2017 in Na.Ka.No.A1/4839/2016 as being illegal and unreasonable.

2. Writ Petition in W.P.No.9948 of 2017 is filed to issue a Writ of Declaration to declare that the demand made by the 4th respondent for payment of revised rent from the petitioners for

the shops allotted to them within the Tiruvannamalai Municipality by more than 450% of the existing rent by communication dated 11.03.2017 in Na.Ka.No.A1/4839/2016 as being illegal and unreasonable.

3. Writ Petition in W.P.No.25377 of 2017 is filed to issue a Writ of Declaration to declare that the demand made by the 4th respondent for payment of revised rent from the petitioners for the shops allotted to them within the Tiruvannamalai Municipality by more than 250% to 450% of the existing rent by communication dated 11.03.2017 in Na.Ka.No.A1/4839/2016 as being illegal and unreasonable.

4. The case of the petitioners is that the petitioners are having shop and there are lease agreement between the petitioners and the Municipality, based on which, the lease amount was fixed and it was revised once in 3 years. The petitioners are in occupation of their respective shops for more than 3 decades. According to the petitioners, the 4th respondent has revised the monthly rent by nearly 500%, which is arbitrary and unreasonable. It is also stated that the 4th respondent has taken decision to renew the lease, and fixed the rent in an arbitrary and capricious manner, and the same is excessive and exorbitant. The fourth respondent ought to have adopted humane and practical approach while fixing the revised rent, and refixing it to nearly 500% is not reasonable. The petitioners have agreed to pay 25% of the existing rent. It is further stated that the guideline value of the properties had been reduced to 33% by the State and that fixing it on higher amount, more particularly, asking the petitioners to pay the rent at nearly 500%, needs to be interfered with. Hence the petitioners have come forward with these petitions for the reliefs stated supra.

5. The learned counsel for the 4th respondent would submit that the petitioners are in occupation of the shops in question for nearly 3 decades. It is true that the petitioners have been periodically paying the revised rent once in 3 years as per G.O.M.S.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007. According to them, if the petitioners are not willing to pay the revised rent as demanded, it is open to them to go for public auction. Hence referred to Clauses 4(ii) and 4(iii) of the said G.O. and contended that as per the aforesaid Clauses, an opportunity has got to be given to the petitioners/ tenements, once the revised rent that is fixed, if the tenements not accept the same, it is open to them to go ahead with public auction. The lease period expired on 02.07.2016 and that in paragraph 7 of the Counter, the 4th respondent has stated as to how they arrived at the value of the rent payable by the tenements. The 3rd respondent by proceedings dated 02.12.2016 formed Monitoring Committee consisting of

Chairman and its members, which are given below:

Chairman: Regional Director of Municipal Administration,
Vellore

Vice Chairman: Regional Executive Engineer, Vellore

Members: 1. Municipal Commissioner of the Municipality
2. Manager of the Municipality
3. Municipal Engineer of the Municipality
4. Town Planning Officer of the Municipality
5. Revenue Inspector of the Municipality

After inspection, considering all the aspects and taking note of the area and the rent paid / payable, the said Committee fixed the market rent, which was approved by the 4th respondent in the Municipal Council meeting, by a resolution dated 31.03.2017. The rent has been fixed as per the PWD Schedule of rate, which cannot held to be unfair.

6. Heard the learned counsel for the petitioners and respondents and perused the materials available on record.

7. It is not in dispute that the petitioners are in occupation of the premises as lessees and paying the rent periodically and it is not in dispute that it was revised periodically once in 3 years as per the said G.O. The petitioners have also been in occupation of the places in question for nearly 3 decades.

8. The sum and substance of the issue is as to whether the Municipality is entitled to fix the rent on higher value, be it higher lease / rent and demand the amount as arrived at by them.

9. This Court has considered the issue in question in the case of P.Muthusamy v. State of Tamil Nadu reported in 2015 (4) MLJ 164 (paragraph 7) and also the Division Bench of this Court in the case of P.V.Subramanian v. Secretary to Government reported in 2014 (5) MLJ 129 (paragraphs 9, 21 and 22), which are extracted as follows:
2015 (4) MLJ 164:-

"7. It is a settled legal principle that whenever the Government grants allotment of public property by way of lease or grants, it cannot act arbitrarily, but must act in accordance with law and the decision should satisfy the test of fairness and reasonableness. The local bodies are enjoined with the duty to take care of the interest of the public, effect developmental activities in the locality maintained public facilities etc., for

which funds are required. By way of grant of lease/licenses, the local bodies collect revenue and in order to augment revenue, the best highest price that could be obtained, while leasing out properties has to be insured, so that the interest of the local body is sufficiently protected."

2014 (5) MLJ 129

"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."

10. From the above discussion and in the light of the decisions extracted supra and also considering paragraph 7 of the counter, the decision taken by the fourth respondent would make it clear that the rent has been fixed correctly. Merely because there is a reduction of 33% in the guideline value, would not be a reason to interfere with the order of the decision of the 4th respondent. The Government might have reduced the guideline value by 1/3 (33%) only to safeguard their 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.

11. I find no merit in the writ petitions, which are dismissed accordingly. No costs. Consequently, connected miscellaneous petitions are closed. If it is for the petitioners to accept the offer given by the 4th respondent, they being in the occupation for several years, failing which, the 4th respondent shall go ahead with the auction. In case the petitioners do not give consent for payment of the enhanced amount within one month, it is open to the 4th respondent to go ahead with the auction, and till such time, the auction is announced, the petitioners may continue in the same place. As there is possibility of challenging the auction notice and the petitioners continue in that place on account of a case or on account of interim order, this Court directs 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.

12. Mr.R.Saravanan, learned counsel appearing for the petitioner has argued well and assisted the Court.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

pvs

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Municipal Administration,
Municipal Administration Department,
Ezhilagam Annexe - 6th Floor,
Chepauk, Chennai - 600 005.
3. The Regional Director of Municipal Administration,
Vellore.

4. The Commissioner,
Tiruvannamalai Municipality,
Tiruvannamalai.

+1cc to Mr.A.S.THAMBUSWAMY Advocate, S.R.No. 76691
+2cc to M/S.SAI BHARATH & ILLAN Advocate, S.R.No.
+2cc to the Government Pleader, S.R.No. 77179, 77183

W.P.No.16095, 9948
and 25377 of 2017

TR(27/11/2017)



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