IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2017

CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.18025 to 18027 of 2017
and
WMP.Nos.19591 to 19593 of 2017
& WMP.Nos.22190, 22191 & 22568 of 2017

1.S.Vijayaraghavan ... Petitioner in W.P.No.18025 of 2017
2.V.Arvind Sree Vatchalan ... Petitioner in W.P.No.18026 of 2017
3.S.Vijayaraghavan ... Petitioner in W.P.No.18027 of 2017

Vs.

1.The Greater Chennai Corporation,
Rep. by the Zonal Officer,
Zone No.IX,
No.1, Lake Area 4th Cross Street,
Nungambakkam,
Chennai – 600 034.

2.The Greater Chennai Corporation,
Rep. by the Assistant Revenue Officer,
Zone No.IX,
No.1, Lake Area 4th Cross Street,
Nungambakkam,
Chennai – 600 034. ... Respondents in all W.Ps.

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorari calling for the records relating to the order of the first respondent dated 28.04.2017 in Ma.A.9.Va.Thu.Na.Ka.No.R3/0203/2017 and quash the same.

For Petitioners : Mr.K.Selvaraj

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

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COMMON ORDER

The petitioner has come up with these Writ Petitions seeking to quash the proceedings dated 28.04.2017 passed by the first respondent herein.

2.According to the petitioners, they are running shops in the premises in question, after entering into a lease agreement with the respondent/Corporation, based on which, from the year 2000, the respondents have increased the monthly rent of the shops by 10% with effect from 01.04.2000 based on the Resolution of the Corporation of Chennai, dated 22.06.2000. Thereafter, the respondents Corporation by a Resolution dated 28.08.2009 have resolved to enhance the monthly rent of the shops by 10% for every three years. Based on the above said Resolution, the Corporation of Chennai, has enhanced the monthly rent of the shops of the petitioners by 10% once in three years. Thereafter, they have also increased the monthly rent by 15%. The petitioners have been regularly making payment of the enhanced monthly rents to the respondents till February, 2017. As on date, the petitioners are paying the monthly rent of Rs.1,275/- for their shops and Service Tax of Rs.179/- per month.

3.The first respondent by order dated 28.04.2017, has ordered that based on the Resolution of the Corporation of Chennai dated 21.02.2017, the monthly rent for the petitioners shops have been enhanced to Rs.16,500/-, Rs.10,000/- and Rs.25,000/- respectively and directed the petitioners to submit their consent letters to accept the enhanced rent within fifteen days, failing which, coercive action would be taken. In fact, no notice has been given to the petitioners before enhancing the monthly rent by 15 and 10 times respectively higher than the existing monthly rent. There is no basis for fixing the monthly rent at Rs.50/- per Sq.Foot for the petitioners shops and no ground realities have been taken into consideration before fixing the enhanced rent. Therefore, the petitioners have submitted their Explanations dated 19.05.2017 to the respondents, requesting the respondents to withdraw the Demand Notice dated 24.04.2017 and to call the petitioners for a mutual discussion for arriving at a reasonable monthly rent. Even after the receipt of the explanations of the petitioners dated 19.05.2017, the respondents did not call the petitioners for an enquiry and did not inspect the petitioners shops premises.

4.The first respondent by letter dated 21.06.2017 has unilaterally rejected the reasonable request of the petitioners and the grievances of the petitioners for revising the monthly rent for the shops of the petitioners. Even in the said letter, the respondents have not taken into consideration of the detailed representations dated 19.05.2017 given by the petitioners and the ground realities.

5.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.M.S.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 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 petitioners, once the revised rent is fixed and that if the petitioners does not accept the same, it is open for him to go ahead with a public auction.

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

7.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.

8.It is not in dispute that the petitioners are 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.

9.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 shops are 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."

10.From the above discussion and in the light of the decisions cited supra, the first 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 petitioners to interfere with the order of the decision of the first 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.

11.Thus, **this Court finds no merit in this writ petition, which is therefore, dismissed accordingly.** It is upto the petitioners to accept the offer given by the first respondent, since they have been in occupation of the premises for several years, failing which, the first respondent shall go ahead with the auction. In case the petitioners does not give consent for the payment of the enhanced amount within one month, it is open to the first respondent 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, the connected Miscellaneous Petitions are closed.

24.11.2017

Speaking order/Non-speaking order
Index : Yes / No
Internet : Yes/ No

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S.VAIDYANATHAN, J

(ah)

Order in
W.P.Nos.18025 to 18027 of 2017

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