

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2017

CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHANW.P.Nos.18399 & 18400 of 2017W.P.No.18399 of 2017:

1. K.Rajalakshmi
2. M.Mashar Basha
3. M.Mashar Basha
4. T.Loganathan
5. V.Loganathan
6. M.Annadurai
7. V.Saravanakumar
8. N.Krishnan
9. P.Karthikeyan
10. S.Dharmalingam
11. R.Govindaraj
12. P.G.Ganapathy Natarajan
13. A.K.Shanmugam Chakaravarthi
14. B.Gajendran
15. P.Paneer Selvam ... Petitioners in W.P.No.18399 of 2017

1. B.Vasu
2. K.Mohamed Faizal
3. S.Gopinath
4. D.Mohanarangan
5. S.Palani
6. R.Pichandi
7. K.Rajalakshmi
8. V.K.Sadiq Basha
9. K.Mohan Paneerselvam
10. J.V.Manoharan & N.Padmanabhan
11. S.Ramesh Babu
12. N.Arjunan
13. N.Periyasamy

14. G.Anand & G.Sanjay Kumar
 15. D.Selvarajan
 16. D.Thulasi Kumar
 17. M.Ganasekaran
 18. M.Ganasekaran
 19. M.Fasulullah
 20. V.T.Selvaraj
 21. S.Nandakumar
 22. S.Mohammed Faheem
 23. K.Senthil Kumar
 24. P.Muthukumar
 25. S.M.Javeed
- ... Petitioners in W.P.No.18400 of 2017

Vs.

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St. George,
Chennai 600 009.
 2. The Director of Municipal Administration,
Municipal Administration Department,
Ezhilagam, Chepauk,
Chennai 600 005.
 3. The Commissioner,
Corporation of Vellore,
Vellore District.
- ... Respondents in both Writ Petitions

W.P.No.18399 of 2017: 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 impugned Notice, bearing Na.Ka.No.19267/16/A1, dated 04.04.2017 in respect of the petitioners' Shop No.1 in B-Block, Shop No.27/2 in A-Block at Nethaji Market, Shop No.27 in M.P.S. North Backside, Shop No.13 in I Floor Old Bus Stand Shops, Shop No.48 in B-Block, Nethaji Market, Shop Nos.24, 31 and 37 & 36 in I Floor Old Bus Stand Shops, Shop Nos.71 and 54 in E-Block, Shop No.61 in C-Block, Shop No.106 and 96 in D-Block, Shop No.49 in F-Block and Shop No.34 in H-Block at Nethaji Market, i.e. totally 16 shops, situated at Vellore on the file of the 3rd respondent and quash the same.

W.P.No.18400 of 2017: 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 impugned Notice, bearing Na.Ka.No.19267/16/A1, dated 04.04.2017 in respect of the petitioners' Shop Nos.25/1 and 12/1 in A-Block, Shop No.51 in F-Block, Shop Nos.46, 47 and 42 in B-Block, Shop Nos.99 & 98, 87 & 91 and 74 in E-Block, Shop No.53/1 in F-Block, Shop No.31 in H-Block, Shop No.20 in D-Block, Shop No.6 in H-Block at Nethaji Market, Shop No.34 in 1st Floor, M.P.S. Centre, Shop Nos.4 & 5 and 32 in M.P.S.Centre, Shop No.57 in I Floor, M.P.S. North Block side, Shop No.27 in 1st Floor, M.P.S.Centre, Shop No.68 in 2nd Floor, M.P.S. South Backside, Shop No.51 in 2nd Floor, M.P.S. South, Shop No.47 in 1st Floor, M.P.S. North Back side, Shop Nos.15 and 20 in M.P.S.Centre, Shop No.28 in I Floor M.P.S. South, Shop No.44 in 1st Floor, M.P.S. North and Shop No.39 in M.P.S. Centre, i.e. totally 28 shops, situated at Vellore, on the file of the 3rd respondent and quash the same.

For Petitioners in both W.Ps.	:	Mr.U.Karunakaran for Ms.D.Kamachi
For Respondents 1 & 2 in both W.Ps.	:	Mr.P.V.Selvakumar, Addl. Government Pleader
For 3rd Respondent in both W.Ps.	:	Mrs.P.Santhi

COMMON ORDER

Petitioners have come up with these Writ Petitions challenging the impugned notices vide Na.Ka.No.19267/16/A1, dated 04.04.2017 in respect of their Shops in question on the file of the 3rd respondent.

2. According to the petitioners, they are lessees of the shops owned by the respondent Corporation, after entering into a lease agreement with them, based on which, the lease amount was fixed and it was revised once in

every three years. It is submitted that they have been promptly paying the rent to the respondent Corporation without fail and there are no arrears of rent. It is their grievance that the respondent Corporation has exorbitantly increased the monthly rent of the shops without comparing the same with the market value.

3. Learned counsel for the petitioners contended that the respondent Corporation ought to have adopted a humane and practical approach while fixing the revised rent, and re-fixing it at such exorbitant rate is not reasonable. It is his further contention that the guideline value of the properties had been reduced to 33% by the State and fixing it on the higher side, more particularly, asking the petitioners to pay the rent at such unreasonable rates, needs to be interfered with.

4. In reply, learned counsel appearing for the respondent Corporation 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 them to go for a public auction. Referring to clauses 4(ii) and 4(iii) of the said Government Order, he further submitted 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 to them 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 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 Corporation/Municipality 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 decision cited supra, it is seen that the respondent Corporation has fixed the rent with all due considerations. Reduction of 33% in the guideline value would not be a valid reason for the petitioners to interfere with the decision of the respondent Corporation. 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 these Writ Petitions, which are therefore, dismissed accordingly. It is upto the petitioners to accept the offer given by the respondent Corporation, since they have been in occupation of the premises for several years, failing which, the respondent Corporation shall go ahead with the auction. In case, the petitioners do not give consent for the

payment of the enhanced amount within one month, it is open to the respondent Corporation 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 tenements and the respondents can enter the place with the help of police force, if required.

No costs. Consequently, connected W.M.P.Nos.19971 and 19973 of 2017 are closed.

20.11.2017

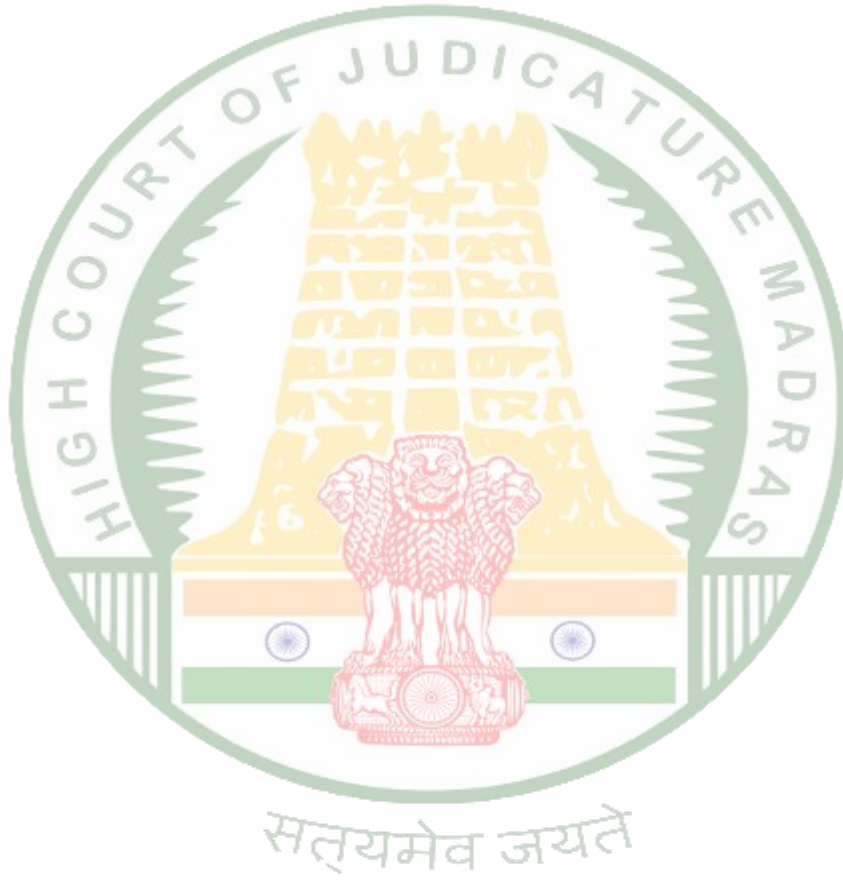
Index : Yes/No
Internet : Yes/No

(aeb)

To:

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St. George,
Chennai 600 009.
2. The Director of Municipal Administration,
Municipal Administration Department,
Ezhilagam, Chepauk,
Chennai 600 005.

3. The Commissioner,
Corporation of Vellore,
Vellore District.



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S.VAIDYANATHAN, J

(aeb)



Common Order in
W.P.Nos.18399 & 18400 of 2017

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