IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2017

CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.18614 to 18623 of 2017
and
WMP.Nos.20156 to 20165 of 2017

W.P.No.18614 of 2017

M.Shahul Hameed ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Municipal Administration &
Water Supply Department,
Fort, St.George,
Chennai.

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

3.The Assistant Revenue Officer,
Zonal Office – 1,
Greater Chennai Corporation,
No.945, Thiruvottiyur High Road,
Tiruvottiyur, Chennai – 600 019. ... Respondents

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 pertaining to the impugned notice issued by the third respondent in Ma.Aa.1/Va.Thu.Na.Ka.No.R1/00205/2017 dated 15.03.2017 in respect of Shop No.5, Bharathiyar Nutrandu Vizha Commercial Complex, Ennore, Chennai-600 057, No.12, Kathivakkam Commercial Complex, Ennore, Chennai-600 057, No.5, Kathivakkam

Commercial Complex, Ennore, Chennai-600 057, No.2, Kathivakkam Commercial Complex, Ennore, Chennai-600 057, No.3, Kathivakkam Commercial Complex, Ennore, Chennai-600 057, No.7, Kathivakkam Commercial Complex, Ennore, Chennai-600 057, No.4, Bharathiyar Nutrandu Vizha, Commercial Complex, Ennore, Chennai–600 057, No.1, Bharathiyar Nutrandu Vizha, Commercial Complex, Ennore, Chennai–600 057, No.9, Kathivakkam Commercial Complex, Ennore, Chennai-600 057, No.8, Kathivakkam Commercial Complex, Ennore, Chennai-600 057 respectively and to quash the same.

For Petitioner (in all W.Ps) : Mr.M.Murali

For R1 (in all W.Ps) : Mr.R.Venkat

For R2 & R3 (in all W.Ps) : 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 15.03.2017 passed by the third respondent herein.

2.According to the petitioners, they are running a shop in the premises in question, after entering into a lease agreement with the respondent/Corporation. Thereafter, the Thiruvottiyur Municipality has been upgraded and merged with Corporation of Chennai on 21.10.2011. Since there was no official machinery to contact about the renewal of lease, there was a huge communication gap with the third respondent. However, the petitioners have managed to pay the rent and obtained appropriate receipts. Whenever, the petitioners approached the third respondent for renewal of lease, they orally delayed citing some other administrative reasons due to the merger of Municipality with Greater Chennai Corporation. Since, the third respondent was accepting the petitioners rent regularly, the petitioners under the impression that his tenancy is in force as on today.

3.The petitioners further submit that on 26.04.2017 the third respondent had issued the impugned notice dated 15.03.2017 thereby re-assessing a sum of Rs.30 per square feet amounting to Rs.3,000/- per month to their shops based on the market value of the property as on 01.03.2017 and to deposit 15% service tax within a period of 5 days from the date of service of the above said impugned notice, failing which their aforesaid shops would be auctioned. The above act of the third respondent is against the principles of natural justice and violative of the various G.O.s' including G.O.M.S.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 passed by the first respondent.

4.The petitioners does not have the copy of the Resolution No.071/2017 dated 18.02.2017 passed by the Special Officer, Standing Committee (Finance and Taxes) to which reference is made in the impugned order.

5.The petitioners submit that since the respondents did not heed anything, they had sent a representation dated 27.04.2017 to the third respondent but the same has not been in any manner considered. However they appreciate that based on the impugned notice, the third respondent may bring the petitioners' shops to auction any time and the petitioners constrained to approach this Hon'ble Court.

6.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 rents are fixed and that if the petitioners does not accept the same, it is open for him to go ahead with a public auction.

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

8.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.

9.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.

10.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."

11.From the above discussion and in the light of the decisions cited supra, the third 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 third 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.

12.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 third respondent, since they have been in occupation of the premises for several years, failing which, the third 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 third 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

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Speaking order/Non-speaking order
Index : Yes
Internet : Yes

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S.VAIDYANATHAN, J

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