



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2017

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THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

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W.P.(MD)Nos.11905 to 11910 of 2017

&

WMP(MD)Nos.9168 to 9173 of 2017**WP(MD) No.11905/2017:-**

M.Balagurusamy

: Petitioner

-vs-

The Commissioner,
Tenkasi Municipality,
Tenkasi,
Tirunelveli District.

: Respondent

Prayer in WP(MD)No.11905 of 2017: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order in Na.Ka.No.5152/2015/F1, dated 05.06.2017 passed by the respondent and quash the same as illegal and consequently directing the respondent to re-fix the monthly rent in accordance with law.

WP(MD) No.11906/2017:-

M.KALYANASUNDARAM

... Petitioner in WP(MD)No.11906/2017

- Vs. -

THE COMMISSIONER, TENKASI MUNICIPALITY,
TENKASI,

TIRUNELVELI DISTRICT

... Respondents in WP(MD). 11906/ 2017

Prayer in WP(MD). 11906/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order in Na.Ka.No. 5152/2015/F1 dated 05.06.2017 passed by the respondent and quash the same as illegal and consequently directing the respondent to re-fix the monthly rent in accordance with law.

WP(MD) No.11907/2017:-

M.KALYANASUNDARAM

... Petitioner in WP(MD). 11907/ 2017

- vs -

-



THE COMMISSIONER, TENKASI MUNICIPALITY, TENKASI,
TIRUNELVELI DISTRICT. ... Respondent in WP(MD). 11907/ 2017

Prayer in WP(MD). 11907/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records of the impugned order in Na.Ka.No.5152/2015/F1 dated 05.06.2017 passed by the Respondent and quash the same as illegal and consequently directing the Respondent to re-fix the monthly rent in accordance with law and pass such further or other orders as this Honble Court.

WP (MD) No.11908/2017:-

N.ANAND ... Petitioner in WP(MD). 11908/ 2017

- vs -

THE COMMISSIONER ,
TENKASI MUNICIPALITY, TENKASI,
TIRUNELVELI DISTRICT. ... Respondent in WP(MD). 11908/ 2017

Prayer in WP(MD). 11908/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order in Na.Ka.No. 5152/2015/F1 dated 05.06.2017 passed by the Respondent and quash the same as illegal and consequently directing the Respondent to re-fix the monthly rent in accordance with law.

WP (MD) No.11909/2017:-

N.ANAND ... Petitioner in WP(MD). 11909/ 2017

- vs

THE COMMISSIONER,
TENKASI MUNICIPALITY, TENKASI,
TIRUNELVELI DISTRICT. ... Respondent in WP(MD). 11909/ 2017

Prayer in WP(MD). 11909/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records of the impugned order in Na.Ka.No.5152/2015/F1 dated 05.06.2017 passed by the Respondent and quash the same as illegal and consequently



directing the respondent to re-fix the monthly rent in accordance with law.

WP (MD) No. 11910/2017:-

N.ANAND ... Petitioner in WP(MD). 11910/ 2017

- vs -

THE COMMISSIONER, TENKASI MUNICIPALITY, TENKASI,
TIRUNELVELI DISTRICT. ... Respondent in WP(MD). 11910/ 2017

prayer in WP(MD). 11910/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order in Na.Ka.No. 5152/2015/F1 dated 05.06.2017 passed by the respondent and quash the same as illegal and consequently directing the respondent to re-fix the monthly rent in accordance with law.

For Petitioner : Mr.M.Kannan

For Respondents : Mr.P.Athimoola Pandian

COMMON ORDER

These writ petitions are filed to call for the records relating to the impugned orders of the respondent, dated 05.06.2017, quash the same and consequently direct the 2nd respondent to re-fix the monthly rent in accordance with law.

2.The petitioners would state that the respondent municipality had constructed 59 shops in different categories in the new bus stand in Tenkasi and declared opened on 01.01.2000. The petitioners are in occupation of the shop Nos.50, 54, 56, 57, 58 and 59 measuring to an extent of 80 sq. feet.

3.The petitioners would further state that even after opening the new bus stand, the respondent municipality permitted the buses to be parked in the old bus stand, therefore, the shops in new bus stand have lost the substantial business. Further, in the year 2003-2014, the new bus stand was completely closed for repairing works. Likewise in the year between 2008 to 2012, in view of the construction of over bridge, the buses were not allowed to park in the new bus stand. Despite the loss suffered by the lessees, they paid rents regularly to the respondent. While so, by the impugned order, the respondent has increased the rent without hearing the petitioners and in case of default, they have decided to bring the



4.The petitioners would further state that the respondent has to follow the principles laid down under the Tamil Nadu Buildings (Lease and Rent Control) Act, for fixation of fair rent and to renew the lease as per G.O.Ms.No.92, dated 03.07.2007.

5.The main grievance expressed by the petitioners is that the proposed rent is exorbitant, which was fixed without any basis and also without providing opportunity to them.

6.It is the case of the respondent municipality that the petitioners/licensees of the shops of the respondent municipality were paying meagre amount towards license fee and they have been in possession for more than several years. Hence, in terms of G.O.Ms.No.92, license fee has been refixed and the benefits of the Government Order is subject to compliance of the conditions by the licensees and if the license-holders are not willing to accept the shops on the proposed market rate, they have liberty to take part in the action.

7.The learned counsel for the petitioners would contend that the proposed rent is on the higher side and the respondent is obliged to fix a reasonable and fair rent, based on the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act.

8.Per contra, Mr.P.Athimoolapandian, learned counsel for the respondent would contend that the petitioners have been in possession of the shops of the respondent municipality for many years on payment of meagre amount. The licensees do not have any vested right to continue in a particular shop for eternity. 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.

9.It is further contended that the municipality has refixed the license fee in the light of G.O.Ms.No.92, dated 03.07.2007 and if the petitioners are not willing to accept the amount fixed by the respondent, they have no other option, except to take part in the public auction. The petitioners are not entitled for any personal hearing and the provisions of the Rent Control Act would not apply for fixing the license fee.

10.I have heard Mr.M.Kannan, learned counsel for the petitioners and Mr.P.Athimoolapandian, learned counsel for the respondent and perused the materials available on record.

11.The issue involved in this case is no longer *res intera*. This court in the judgments referred infra have consistently taken the view that the licensees of the municipal shops have no vested right to seek renewal of licence in perpetuity and the shops/buildings of the Local Bodies to be put in public auction



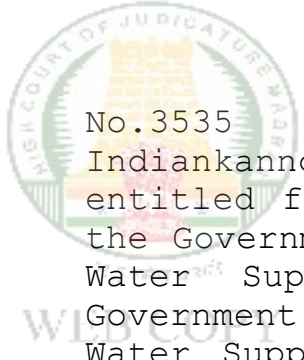
with an object to augment more revenue and also to provide opportunity to general public to participate in the auction.

12. The Division Bench of this court in *A.Sathar Vs. The District Collector, Coimbatore and Another* (AIR 1998 MAD 217), has held as follows:-

"...We are of the view that the appellant has no vested right to continue in occupation of the premises in question belong to the second respondent/panchayat which is entitled to lease out the properties owned by it by public auction. As rightly pointed by the learned single judge, properties owned by the Municipality are also a source of revenue to the Municipality and the interest of the Municipality has to be balanced as against the interest of the shop owner lessee. It cannot be disputed that the lessees may also be entitled to a fair terms and the Government, had, therefore, allowed the lessees to continue their occupation for a second term. As already seen the appellant was given extension of lease period from time to time from the year 1988 to 31.02.1997 on terms. Even the last lease was extended for three years by enhancing the rent by 30 per cent. Under these circumstances, it is not fair on the part of the appellant to ask for the extension of the lease for further term of three years from 01.04.1997 to 31.03.2000 on an enhancement of 15 per cent of the previous rent. The extension granted earlier by the Panchayat, to the appellant would not meant that the appellant is entitled to continue in possession of the premises in question for ever by paying ridiculously low rent. We are of the view that the extension of the lease to the appellant is against the interest of the Panchayat. As already noticed the rental income from the properties owned by the Panchayat is one of the sources of income of the Panchayat. Therefore, the interest of the Panchayat cannot be jeopardized by permitting the appellant to continue in possession of the premises in question at the enhanced rate of 15 per cent as prayed for. There are absolutely no merits in this writ appeal and the same is dismissed."

<https://hcservices.ecourts.gov.in/hcservices/>

13. In the case of *O.A.Nowshad Farooq vs. The Commissioner, Tiruvelveli Municipal Corporation, Tirunelveli and another* (W.P(MD)



No.3535 of 2009, dated 30.04.2009), reported in Indiankannon.org/doc/1721899 has held that the petitioner is not entitled for an automatic renewal of his licence on the basis of the Government Order in G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 as well as the Government Order in G.O.Ms.No.181, Municipal Administration and Water Supply Department, dated 19.09.2008. It is also observed that the Government Order is not applicable to the existing licensees and thereby, licence would be renewed for a further period and there is no such condition incorporated in the Government Order, which gives a right to the existing licensees for an automatic renewal.

14.In WA(MD)No.546 of 2010, dated 19.08.2010 (P.Ravi vs. 1.Madurai City Municipal Corporation Council, represented by its Hon'ble Mayor, Madurai City Municipal Corporation, Tallakulam, Madurai and another, the Division Bench of this court has observed in para 6 as follows:-

"6.In the award of public largesse, particularly involving the revenue, the municipal Corporation should have the paramount interest of augmenting the revenue. We may also point out that even in case of the Government Orders granting such benefit, those Government Orders should be considered and interpreted to be of advantage of the Corporation and not to the licensee. This again is on the principle of augmenting the revenue to the Corporation..."

15.In P.N.Chinnasamy and 13 another vs. The Assistant Director of Town Panchayat, Coimbatore District, Coimbatore and 10 others, (2010(1) CTC 584), this court has held in paragraphs 17 and 18 as follows:-

"17.The ratio laid down by the Supreme court in the case of Ram and Shyam Company vs. State of Haryana and others (as stated supra) is that the disposal of public property partakes the character of a Trust in that in its disposal, there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose. This is subject to one limitation that socialist property may be disposed of at a price lower than the market price or even for a token price to achieve some defined constitutionality, recognized public purpose, to achieve the goals set out in Part IV of the Constitution. But



where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy.

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18. In the instant case, the respondent Town Panchayat being a local authority under the State has acted in a manner known to law as per the Government Order, which was for a laudable object and it does not stipulate automatic extension of lease. Therefore, the petitioners cannot be allowed to squat over the property for years together without opportunity to others. The Government Order in G.O.Ms.No.92, dated 03.07.2007 clearly states that after the expiry of 9 years, the lease may be extended by revising the rent on the basis of the present market value. In the case on hand, the petitioners have claimed to renew their lease by accepting the rent at the rate of 15% enhancement only and not on the basis of the present market value, which otherwise prevents the augmentation of revenue to the Town Panchayat. In such a situation, the public auction on the notifications, dated 07.06.2010 and 16.08.2010, which has been transparently conducted to provide fair and equitably treatment of all tenderers and to eliminate irregularities, interference and corrupt practices by the authorities concerned, which is the aim and requirement of Article 14 of the Constitution, cannot be assailed. While that being so, this court cannot find any reasons to interfere with the notifications impugned in these writ petitions as per the ratio laid down by this court in the case of C.Jayanthi vs. The Commissioner, Mettur Municipality, Mettur Dam, Salem District and another (stated supra)."

16. In (2014)5 MLJ 129 (P.Muthusamy Vs. State of Tamil Nadu), the Division Bench of this court has held as follows:-

"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.

<https://hcservices.ecourts.gov.in/hcservices/> 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 generate the maximum revenue is by way of public auction. This will also create a level playing field enabling others to participate along with



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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 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."

17. Similar issue came up in the case of *M.Periya Samy vs. The Assistant Director of Town Panchayats, Madurai, Madurai District and The Executive Officer, T.Kallupatti Town Panchayat, T.Kallupatti, Madurai*, reported in Indiankannon.org/doc/21280938. In that case, the shops situated in T.Kallupatti Town Panchayat Bus Stand Commercial Complex was auctioned in the year 2012 for a period of three years and after expiry of the licence period, the local authority issued a notification for a fresh auction, which was challenged contending that the existing licensee is entitled for extension of licence period as per G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007. In that case, the Division Bench of this court held that the licence period is only for three years and after expiry of the same, it is for the local authority, to decide, as to whether extension of the lease has to be made, by upward revision of lease amount, as per the terms and conditions of the Government Order or to go for public auction to augment more revenue. Holding so, rejected the case of the licensees.

18. Following the decision reported in 2014(5) MLJ 129 in the case of *P.Muthusamy vs. State of Tamil Nadu*, in the case of *C.Vinoba Vs. The Commissioner, Palladam Municipality* (2015(3) CTC 170), directed the respondent municipality to put the shops to fresh auction with a view to find out the fair market rent.

19. In a recent decision reported in (2016)3 MLJ 698 in the case of *P.P.M.S.C.L.W.Assn. vs. Commissioner*, a Division Bench of this court considering a number of decisions of this court as well as the Supreme court, in para 26, held as follows:-



"26. There is no two option of a vital fact that the 2nd respondent/Municipality is the competent/appropriate authority to determine what rent a particular shop of the Panchayat may fetch and it is well settled principle in Law that a lease cannot be extended much to the detriment of panchayat and in any event, the panchayat cannot be a loser on any score."

20. In the case on hand, it is specifically stated by the respondent municipality that the petitioners have been in possession of the shops for several years. Further, no material has been produced to show that they are entitled for renewal of licence for 9 years as per G.O.Ms.No.92. Hence, this court is not able to accept the contention raised by the petitioners.

21. It is to be noted that due to increase in literacy level, public awareness, expectations of the public from the local bodies for providing basis amenities are more and in fact, they want to enforce as of right. So, to meet the demands, the local bodies have determined to augment more revenue and to achieve the object, the public property is to be put into public auction by inviting tender, so as to enable the municipality to obtain the highest offer in a fair and transparent manner.

22. In the light of the above facts, this court does not find any reason to quash the orders impugned in these writ petitions. In that view, all the writ petitions are liable to be dismissed and they are, accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petition are closed.

Sd/-

Assistant Registrar (ADII)

/True Copy/

Sub-Assistant Registrar

+6 cc to Mr.M.Kannan, Advocate, SR.Nos.62542, 62543, 62544, 62545, 62546, 62547

+One cc to Mr.P.Athimoolapandian, Advocate, SR.No.62608

smk/skn/er

RL/8C/10P/JC/SAR1/1/9/2017

W.P. (MD) Nos.11905 to 11910 of 2017

&

WMP (MD) Nos.9168 to 9173 of 2017