



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

W.P(MD)Nos.2752, 4947, 5714, 5178 and 5296 of 2017
and

WMP(MD) .Nos.2280, 2281 3984,
3985, 4568, 4569,4178, 4246 and 4247,

A.Pandidurai

...Petitioner in WP(MD).Nos.2752,5714 and
5178 of 2017

P.Esawari

... Petitioner in WP(MD).No.4947 of 2017

Sethuraman

... Petitioner in WP(MD).No.5296 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.

2. The Commissioner of Municipalities,
Commissionerate of Municipal Administration,
6th Floor Ezhilagam, Annex Building,
Chepauk, Chennai.

3. The Commissioner,
Usilampatti Municipality,
Usilampatti,
Madurai District.

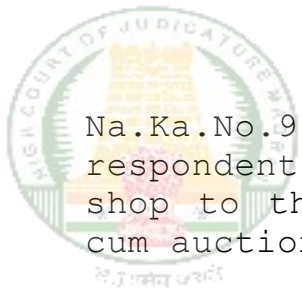
.. Respondents in all WPs

Prayer in WP(MD). 2752/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records pertaining to the Impugned Notice dated 03.02.2017 in Na.Ka.No.999/2013/A1 on the file of the Respondent No.3 herein and quash the same as illegal.

Prayer in WP(MD). 4947/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Manadamus to call for Impugned notice under



Na.Ka.No.999/2013/A1, dated 16.03.2017, on the file of the 3rd respondent pertaining to directing the petitioner to handover the shop to the 3rd respondent and consequential the impugned tender cum auction notice under Na.Ka.No.999/2013/A1, dated 16.03.2017.

Prayer in WP(MD). 5714/ 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 impugned notice under Na.Ka.No.999/2013/A1 dated 01.04.2017 on the file of the 3rd respondent pertaining to directing the petitioner to handover the shop No.82 (New No.102) to the 3rd respondent and direct the respondents to extend the period of lease by formulating a committee for fixation of fair rent as per Clause -III of G.O.Ms.No.92, Municipal Administration and Water Supply Department.

Prayer in WP(MD). 5178/ 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 pertaining to the Impugned Tender Notification published in Tamil New daily Daily Thanthi dated 19.03.2017 in Na.Ka.No.999/2013/A1 dated 16.03.2017 on the file of respondent No.3 and quash the same as illegal and consequently to direct the Respondents herein to extend the lease period of the petitioners shop till December 2018, with in time period prescribed by this Honble Court.

Prayer in WP(MD). 5296/ 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 impugned notice under Na.Ka.No.999/2013/A1, dated 16.03.2017, on the fie of the 3rd Respondent pertaining to directing the petitioner to handover the shop no.5 to the 3rd respondent and consequential the impugned tender cum auction notice under Na.Ka.No.999/2013/A1, dated 16.03.2017 on the file of the 3rd respondent and to quash the same as illegal and direct the respondents to extend the period of lease by formulating a committee for fixation of fair rent as per Clause -III of G.O.Ms.No.92, Municipal Administration and Water Supply Department.

For Petitioner : Mr.A.Nagarajan

For Respondents 1 & 2 : Mr.J.Gunaseelan Muthaiah
Government Advocate

For Respondent -3 : Mr.K.Mahendran
in all WPs

**COMMON ORDER**

These writ petitions are filed to issue a writ of Certiorari, to quash the impugned notice of the third respondent in Na.Ka.No.999/2013/A1, dated 01.04.2017 and direct the respondents to extend the period of lease as per G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2017.

2.Since the issues involved in these writ petitions are one and the same, they are disposed by way of a common order.

3. The learned counsel appearing for the petitioners would submit that the petitioners were allotted with the shops in the Muthuramalinga Thevar Memorial Bus Stand complex, Usilampatti, Madurai District and they have been paying the rent till date. After completion of three years from the date of commencement of the lease, periodically the rent was enhanced by 15 % of the existing rent. The G.O.Ms.No.92 dated 03.07.2017, Municipal Administration and Water Supply Department, deals with the procedures to be adopted in respect of lease, and the third respondent without following, any of the conditions imposed in the said G.O, issued the impugned notice dated 01.04.2017, directing to hand over the possession of the shops and informing that the possession is not handed over, the shops would be locked by the third respondent Municipality. Further, the third respondent though notified for auction in respect of all the shops, has illegally renewed the lease only for 86 shops. Pointing out the action of the third respondent which is in violation of the said G.O, the petitioners are before this Court, against the impugned notice.

4.The learned counsel appearing for the petitioners would submit that the main allegation against the respondents by the petitioners is that no action, for extending lease, has been taken by the authorities, but on the other hand the authorities directed all the lease holders to give consent to the monthly rent arbitrarily fixed by the authorities.

5.Such submission as well as the allegation are stoutly refuted by the learned counsel appearing for the third respondent, who claims that the committee as constituted under G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, has considered the entire area and fixed nominal increase in the lease rentals and placed the same to the respective lease holders for their consent. Under such circumstances, according to the learned counsel for the respondent the allegations levelled by the petitioners are untenable.

6.To give quietus, this Court directs the respondents to



get consent letter from the petitioners also on par with all other shop owners in the adjacent area and decide the actual lease amount to be paid. If the petitioners are not inclined to pay the fixation already made, it is for the respondents to take appropriate action.

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7. It is also alleged by the learned counsel for the respondents that the petitioner in WP(MD).No.5178 of 2017 is in occupation to an extent which was not allotted to him. It is also submitted by the learned counsel for the respondents that actual lease holders are not in occupation of the shops and they have sublet the same and earning more money.

8. This Court, while dealing with the similar issue of enhancement of rent as per G.O.Ms.No.92 dated 03.07.2007, had considered all the aspects, given anxious consideration, perused the material documents and passed a detailed order in the case of **M.Muthusamy and others vs. The Commissioner, Palani Municipality, Palani, Dindigul District [W.P(MD)Nos.17966 to 17968 of 2017]** decided on 21.09.2017, which is extracted hereunder:

" 7. It is no doubt true and there is no second opinion that there is no automatic extension of lease and it cannot be renewed on its every expiry, but at the same time, it is to be remembered that any decision in respect of enhancement of rent should be only after following due process of law. In the given case on hand, the principles of *audi alteram partem*, has not been followed. Though the State is under obligation to secure the best market price available in a market economy, it should be fair and reasonable and revision should be only after proper notice / communication to the lease holders and after receipt of their objections and the unexpected hike on one fine morning is unheard of under law, that too with retrospective effect.

8. It was also brought to the attention of this Court that the State has issued a circular dated 02.02.2009, by which suitable instructions have been issued to the authorities to give an opportunity to the tenants before the rent is finally fixed, based on which, a Hon'ble Division Bench of this Court has passed an order dated 06.02.2009 in the case of **Arulmigu Angala Parameswari and Kasivishwanathaswami Temple Adimanaiveal House Owners Association**, reported in **2009 (6) CTC 512**, vide which, the authorities were directed to fix or re-fix the lease rent in accordance with law after notice to the respective tenants.

9. In view of the foregoing discussions and also taking into account the proceedings issued by the State



dated 02.02.2009, the following directions are issued in these writ petitions:

i) the respondent Municipality is directed to provide a copy of the report of the Committee as well as the calculation sheet to the petitioners forthwith, if not already given;

ii) This Court, normally while granting interim orders, would uniformly direct the petitioners / lease holders to deposit 50% of the enhanced rent immediately and in view of final disposal of all these writ petitions, the petitioners shall at the first instance, deposit 50% of the enhanced amount, if not already remitted and thereafter file their objections supported by whatever documents they have in their possession within a period of two weeks from the date of receipt of a copy of this order to the concerned authorities; and

iii) the authorities, upon satisfaction of the remittance of the 50% of the amount by the petitioners, on scrutiny of the documents produced by the petitioners and upon considering their objections, shall fix or re-fix the lease rent in accordance with law, within a period of two weeks thereafter."

9. Following the above judgment and also considering the fact the said judgment is squarely applicable to the facts of the present cases on hand, these writ petitions are disposed of with the following directions:

i) the respondent Municipality is directed to provide a copy of the report of the Committee as well as the calculation sheet to the petitioners forthwith, if not already given;

ii) This Court, normally while granting interim orders, would uniformly direct the petitioners / lease holders to deposit 50% of the enhanced rent immediately and in view of final disposal of all these writ petitions, the petitioners shall at the first instance, deposit 50% of the enhanced amount, if not already remitted and thereafter file their objections supported by whatever documents they have in their possession within a period of two weeks from the date of receipt of a copy of this order to the concerned authorities; and

iii) the authorities, upon satisfaction of the remittance of the 50% of the amount by the petitioners, on scrutiny of the documents produced by the petitioners and upon considering their objections, shall fix or re-fix the lease rent in accordance with law, within a period of two weeks thereafter.

iv) the respondents are directed to collect the details of persons, if any, in respect of the subject mentioned shops and issue notice and evict them after following due procedures of law.



10. With the above directions, these writ petitions are disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St. George Chennai.
2. The Commissioner of Municipalities,
Commissionerate of Municipal Administration,
6th Floor Ezhilagam, Annex Building,
Chepauk, Chennai.

+1cc to The Special Government Pleader in SR.Nos.81054 to 81058
+3ccs to Mr.K.Mahendran, Advocate in SR.Nos.80452 to 80454

dsk

AE/KK/SAR2/01.11.2017/6P/7C

ORDER MADE IN
W.P (MD) Nos.2752, 4947, 5714,
5178 and 5296 of 2017
21.09.2017