

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A.No.1012 of 2018
WMP.No.8547 of 2018

A.Nazeem

... Appellant/Petitioner

vs.

The Commissioner,
Villupuram Municipality,
Villupuram.

..Respondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 20.11.2017 made in W.P.No.14604 of 2017.

W.P.No.14604 of 2017:

Writ Petition filed under Article 226 of the constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the notice dated 4.5.2017 in NA. KA. No. 14546/2016/A5 on the file of the respondent quash the same and consequently direct the respondent to renewal the lease in Shop No. 03 (Allotment No.044/131) Thiru Vi. Ka. Street Villupuram.

For Appellant : Mr.R.Babu

For Respondent : Mr.P.Srinivas, Standing Counsel

O R D E R

By consent, this Writ Appeal itself is taken up for final disposal.

2. The appellant is the petitioner in W.P.No.14604 of 2017 and according to him, she was a successful bidder in respect of Shop No.3, Thiru-Vi-Ka Street, Villupuram and the licence to run the shop was initially granted for a period of three years from 01.04.2007 to 31.03.2010 on a monthly rent of Rs.820/- and thereafter, at every three years, it has been enhanced by 15% and she was also prompt in paying the same. It is the claim of the petitioner that she is eking out his livelihood solely on the income earned in running the said shop and the licence amount has also been enhanced periodically and as of now, she is

paying Rs.1,202/- per month. However, to her shock and surprise, the respondent has issued the impugned notice enhancing the licence amount manifold to Rs.8,394/- and she made a challenge to the said order by filing a writ petition in W.P.No.14604 of 2017 and it was entertained. Similarly placed persons had also filed W.P.Nos.14602, 14603 and 14605 to 14618 of 2017.

3. The learned Judge, vide common order dated 20.11.2017, after taking note of the factual aspects and the Division Bench decision of this Court in P.Muthusamy v. State of Tamil Nadu, Rep by its Secretary to Government, Municipal Administration and Water Supply Department, Chennai and Another [(2014) 5 MLJ 129], has dismissed the writ petitions and it is relevant to extract para 10 of the said judgment :

"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 municipality, since they have been in occupation of the premises for several years, failing which, the respondent Municipality 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 Municipality 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."

The writ petitioner, challenging the legality of the same, has filed this Writ Appeal.

4. The learned counsel appearing for the appellant would submit that in similar facts and circumstances, this Court has entertained W.A.Nos.1793 to 1796 and 1798 to 1800 of 2017 and granted interim orders on condition that the petitioners therein continue to pay 50% of the enhanced amount of the rent and therefore, prays that similar benefit may be extended to the appellant herein also.

5. Per contra, Mr.P.Srinivas, learned standing counsel appearing for the respondent Municipality would submit that the learned Judge, taking note of the Division Bench decision of

this Court in P.Muthusamy case (cited supra) has rightly dismissed the writ petition and therefore, prays for dismissal of this Writ Appeal.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. The learned Judge, in the impugned order, has taken note of the fact that as per G.O.Ms.No.92, Municipal Administration and Water Supply (Finance -IV) Department dated 03.07.2007, a committee was constituted and it has gone into the issue and fixed the licence amount. The primordial submission made by the learned counsel appearing for the appellant is that before enhancing the licence/rental amount, fair and reasonable opportunity ought to have been given to the appellant for the reason that the increase of the licence amount is exorbitant and on the higher side. In the considered opinion of the Court, the said submission lacks merit and substance for the reason that it is a settled legal position that an instrumentality of a State should always endeavour by following the procedure by way of public auction or inviting tender and the above said Government Order carved out an exception to the well settled legal position and as per the terms of the Government Order, the appellant/writ petitioner continues to remain in possession for nearly 11 long years, subject to increase of 15% in rent every three years and therefore, this Court is of the view that the said Government Order has reached its purpose.

8. The Division Bench of this Court in the decision in P.Muthusamy v. State of Tamil Nadu, Rep by its Secretary to Government, Municipal Administration and Water Supply Department, Chennai and Another [(2014) 5 MLJ 129], has considered the scope of the above said Government Order and it is relevant to except the following portions of the said judgment:

"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.

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23. It is settled law that an instrumentality of a State should always endeavour by following the procedure by way of public auction or inviting tender, as held in P.N. Chinnasamy and Others v. Assistant Director of Town Panchayat, Coimbatore District and Others : (2011) 1 CTC 584 : LNIND 2011 MAD 102, S. Selvarani v. Commissioner, Karaikudi Municipality : (2005) 1 CTC 81 : LNIND 2004 MAD 1600 : (2005) 1 MLJ 394, C. Jayanthi v. Commissioner, Mettur Municipality, Salem District : (2006) 5 CTC 236 : LNIND 2006 MAD 1770 : (2006) 4 MLJ 128, D. Kannan v. Commissioner of Municipal Administration, Chepauk CDJ 2010 MHC 1636 : LNIND 2010 MAD 759 and Ram and Shyam Company v. State of Haryana and Others : AIR 1985 SC 1147 : (1985) 3 SCC 267 : LNIND 1985 SC 188."

9. In the case on hand, the appellant/writ petitioner was granted liberty to pay the enhanced licence amount and in the event of non-acceptance, public auction is resorted to and therefore, the procedure followed by the respondent Municipality cannot be faulted with.

10. At this juncture, the learned counsel appearing for the appellant submitted that the appellant may be permitted to submit a representation expressing her grievances and it may be directed to be considered and disposed of by the respondent Municipality and appropriate orders may be passed and till such time, interim protection may be given for the reason that she is

in occupation of only smaller extent of land and eking out her livelihood out of the income generated from running the said shop.

11. This Court, on an independent application of mind to the entire materials placed before it, is of the considered view that there is no error or infirmity in the reasons assigned by the learned Judge in dismissing the writ petition. Accordingly, this Writ Appeal is dismissed, confirming the common order dated 20.11.2017 made in W.P.No.14604 of 2017.

12. This Court, taking into consideration the alternative plea made by the learned counsel appearing for the appellant, directs the appellant/writ petitioner to submit a detailed representation to the respondent within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the respondent is directed to consider and dispose of the same and pass appropriate orders on merits and in accordance with law within a further period of four weeks thereafter and till such time, shall defer further decision to evict/dispossess the petitioner from the shop in question. It is made clear that the appellant/writ petitioner, till the disposal of the representation by the respondent, shall not create any third party rights in respect of the shop in question. It is also made clear that the appellant/writ petitioner, if so advised, is at liberty to participate in the auction to be conducted in respect of the shop in question.

13. This Writ Appeal is dismissed, subject to the above observations. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

jvm
To

The Commissioner,
Villupuram Municipality,
Villupuram.

+1 CC to Mr.R. Babu, Advocate sr 32802.

W.A.No.1012 of 2018
WMP.No.8547 of 2018

SKS (CO)
SP(30/05/2018)