IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WA.No.1041 of 2018

and
C.M.P.No.8747 of 2018

Abdul Samad ... Appellant

Vs.

The Commissioner,
Villupuram Municipality,
Villupuram. ... Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, against the Order of this Court dated 20.11.2017 passed in W.P.No.14605 of 2017 and prays for setting aside the same.

PRAYER IN WP.14605 OF 2017: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of the 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. 12 (Allotment No.044/145) Hospital Road, Complex, Villupuram.

For Appellant : Mr.N.Naresh Kumar

For Respondent : Mr.P.Srinivas,
Standing Counsel

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, the writ appeal is taken up for final disposal. Mr.P.Srinivas, learned Standing Counsel accepts notice on behalf of the respondent.

2. The petitioner in W.P.No.14605 of 2017, is the appellant herein and aggrieved by the dismissal of the writ petition as well as connected writ petitions, vide common order dated 20.11.2017, has filed this writ appeal. The appellant / writ petitioner would aver that he was a successful bidder in respect of Shop No.12, Hospital Road Complex and he was given allotment of the said shop bearing Allotment No.044/145 initially for a period of three years from 30.01.1996 to 31.03.1999 on a monthly rent of Rs.436/- for the next three years. The petitioner has paid an enhanced rent at the rate of 15% of the original lease amount and continue to pay the said amount in terms of G.O.Ms.No.92, Municipal Administration and Water Supply (NaNi4) Department, dated 03.07.2007. The petitioner would claim that he is a small time business operator and however to his shock and surprise, he was issued with the impugned notice dated 01.03.2017 by the respondent by enhancing the monthly rent from Rs.984/- to Rs.12562/- and the said demand is arbitrary, very much on the higher side and also in violation of the above cited Government Order. Therefore, made a challenge to the said proceedings, the petitioner has filed the writ petition, with a further direction directing the respondents to renew the lease of the shop. The writ petition was entertained and notices were ordered and the respondent took a stand that the petitioner and other similarly placed persons were in possession and enjoyment of the shops in question for very many years and in order to augment the revenue of the local body, a fair decision has been taken to increase the license amount and the Committee has also gone into the issue and took a fair decision to increase the license amount and therefore, prays for dismissal of this writ petition.

3. The learned Judge, after taking note of the factual aspects of the case and by placing reliance upon the decision of a Division Bench of this Court in P.V.Subramanian V. Secretary to Government, reported in 2014 (5) MLJ 129, found that the respondent Municipality has fixed the rent with all due consideration and since the writ petitioners including the appellant herein have been in occupation of the premises for several years, they want to accept the enhancement of lease amount, otherwise, granted liberty to the respondent Municipality to go ahead with the auction and also granted liberty to the petitioner to participate in the public auction and till such time the auction is announced, the petitioners may continue to remain in possession of the same. If the auction consequently completed, possession may be handed over and Police aid can also be sought for, if required. The writ petitioner, challenging the legality of the said order, has filed this writ appeal.

4. The learned counsel appearing for the appellant would

submit that the petitioner was paying monthly rent of Rs. Rs.984/- per month and however vide impugned communication of the respondent dated 01.03.2017, it was increased to Rs.12562/-. The said exercise is not rational or have nexus to the object sought to be adduced. That apart, before increasing the said amount, the appellant / writ petitioner is not at all been put on notice and would further add that since he is a small time business operator, it is impossible to pay the enhanced amount and therefore, prays for interference.

5. Per contra, Mr.P.Srinivas, learned Standing Counsel appearing for the respondent would submit that the petitioner was given allotment of the shop during January 1996 and till 2018, he continued by availing the benefit of G.O.Ms.No.92, Municipal Administration and Water Supply (NaNi4) Department, dated 03.07.2007 and the respondent Municipality in order to augment the revenue of the local body, took a fair decision to increase the license amount and a Committee has also been constituted and it has gone into all the relevant aspects and taken a fair decision to increase the license amount and it may not be faulted with and would further add that since the decision was taken in public interest, this Court may not interfere with the same in exercise of it's appellate jurisdiction under Clause 15 of the Letters Patent and prays for dismissal of the writ petition. The learned Standing counsel appearing for the respondent has also invited the attention of this Court to the order dated 28.04.2018 made in W.A.No.992 of 2018 [Palani Vs. The Commissioner, Villupuram Municipality, Villupuram].

6. This Court paid its best attention to the rival submission and also perused the materials placed before it.

7. The Division Bench of this Court had gone into the said issue, especially the scope and purport of G.O.Ms.No.92, Municipal Administration and Water Supply (NaNi4) Department, dated 03.07.2007 in the decision in P.V.Subramanian V. Secretary to Government, reported in 2014 (5) MLJ 129 and it is relevant to extract the following portions 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.

....

"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.

....

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."

8. The Division Bench of this Court in the above cited judgment has considered the factual aspects and found that the action on the part of the respondent Municipality to increase the license amount is fully justified. It is also well settled position of law, that the public auctions are conducted in order to augment the revenue for the betterment of the local body and it cannot be faulted with and therefore this Court finds no merit in this writ appeal.

9. At this juncture, learned counsel appearing for the appellant/writ petitioner would pray that the appellant may be permitted to submit his representation for reduction of the licence amount and to participate in the auction and in response to the said submission, the learned counsel appearing for the Municipality would submit that if the petitioner so advised, he is at liberty to submit his representation to the respondent and upon receipt of the same, it is open to the respondent to consider and dispose of the same in accordance with law within a period of four weeks from the date of receipt of the said representation.

10. It is also open to the respondent Municipality to proceed with the Tender cum Auction of the shops and the same shall be conducted in a fair and transparent manner in accordance with the relevant norms.

11. This writ appeal is dismissed with the above observations. No costs. Consequently connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

TO

1.THE COMMISSIONER,
VILLUPURAM MUNICIPALITY,
VILLUPURAM.

2. THE SECRETARY OF TAMIL NADU,
MUNICIPAL ADMINISTRATION AND WATER SUPPLY DEPARTMENT,
CHENNAI.

+1cc to Mr.S.SRINIVAS, Advocate, S.R.No.38778

W.A.No.1041 of 2018

SS(CO)
TR(13/07/2018)