IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.04.2018

PRONOUNCED ON : 07.06.2018

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

WP.NOS.5197 TO 5200 OF 2018, 26006 & 26007 OF 2014,
26872 TO 26874 OF 2014, 4862 OF 2018
AND W.M.P.NOS.6359 TO 6362, 5996 OF 2018
AND MP.NOS.1,1,1,1,1 & 2,2,2,2,2 OF 2014

M/s.Sree Annapoorna Sree Gowrishankar
Hotels Private Limited,
Rep. by its Joint Managing Director
D.Srinivasan ... Petitioner in all the petitions

Vs.

The Assistant Commissioner,
Central Zone,
Coimbatore Corporation,
Coimbatore. ... Respondent in all the petitions

PRAYER in W.P.No.5197 of 2018:

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records and quash the impugned proceedings in Na.Ka.No.4934/2017/A2(M), dated 26.12.2017 by the respondent insofar as the petitioner's shop No.20, 21, 25, 27 & 26 respectively is concerned. (In Wps.5197 to 5200 of 2018 & 4862 of 2018)

Prayer in WPs.26006 & 26007 OF 2014, &
WPs.26872 to 26874 OF 2014:-

Writ of certiorarified Mandamus or any other appropriate Writ, Order or direction in the nature of a Writ, calling for the records on the files of the respondent in its impugned proceedings made in Na.Ka.No.10119/12/A1(M) dated 17.07.2014 in so far as the petitioners shop No.21, 21, 25, 26 & 27 respectively is concerned quash the same further direct the respondent to consider and pass orders on the representation made by the petitioner dated 22.07.2014 and pass such further or other orders:-

For Petitioner :- Mr.T.R.Rajagopalan,
SR.Advocate for
M/S.P.Veena Suresh, Advocate
in WP.No.5197 to 5200; 4862 of 2018

Mr.T.R.Rajagopalan,
SR.Advocate for
M/s.R.Hemalatha
in WP.No.26006; 26007 of 2014 and
26872 to 26874 of 2014.

For Respondents :- Mr.K.Magesh,
in WP.26006; 26007 of 2014 and
WP.26872 to 26874 of 2014

Mr.S.Saravanan in
WP.5197 to 5200 of 2018
and 4862 of 2018

COMMON ORDER

The licensee of the Shop Nos.20, 21 and 25 to 27 in Commercial Complex at Gandhipuram Central Bus Stand, Coimbatore has filed these writ petitions, challenging re-fixation of rent by the respondent-Corporation.

2. The case of the petitioner is that in the auction held in the year 1995, the petitioner became the licensee of the said shops and as per the G.O.Ms.No.147, dated 30.12.2000, the respondent had decided to extend the licence instead of auctioning the shops. Based on G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, the respondent-Corporation has decided to raise the monthly rent at 15% for those, whose lease period has completed by three years and revised the licence fee for those whose lease period has completed nine years.

3. The petitioner would state that the respondent-Corporation by issuing notice Na.Ka.No.10119/2012/A1 (M), dated 17.07.2014, increased the licence fee based on the resolution of the Coimbatore Corporation. The petitioner challenged the revision of licence fee in W.P.Nos.26006, 26007, 26872, 26873, 26874 of 2014. While admitting those writ petitions, this Court granted interim order of stay on condition that the petitioner shall pay 50% of the difference between the enhanced rent and old rent, together with the old rent. While those writ petitions were pending, again through notice Na.Ka.No.4934/2017/A2(M), dated 26.12.2017, rent was increased by 15%. Hence, the subsequent Writ Petitions have been filed.

4. According to the petitioner, enhancing rent more than 100% without even putting on notice to the petitioner and without informing the basis on which, the rent has been increased is an arbitrary decision. It is further stated that as per the decision of this Court in the case of R.Umayaraj vs. the Commissioner, Kovilpatti Municipality, Thookudi District reported in 2017 (5) CTC 342, rent would be determined as per the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter called as Rent Control Act).

5. The respondent has filed counter affidavit denying the allegations of the petitioner and it is further stated that the rent was revised based on the resolution No.80, dated 25.06.2014. Without challenging the resolution, these writ petitions have been filed, hence they are not maintainable. It is further stated that the said commercial complex comes under the Corporation limit. As meager rent was paid by the petitioner compared to the market rate, the respondent-Corporation is losing revenue, which is needed to serve public and carryout its objectives. Even as per the G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, after expiry of nine year lease period, i.e., on 31.03.2013, the Corporation is entitled to enhance the rent as per the present market rate. The respondent fixed the rent after ascertaining the surrounding rental properties and the market rate of property and there is no violation as alleged by the petitioner.

6. Heard Mr. Mr.T.R.Rajagopalan, learned Senior Counsel appearing for M/s.P.Veena Suresh, learned counsel for the petitioner and Mr.K.Mahesh, and Mr.S.Saravanan, learned counsels appearing for the respondent and perused the materials available on record.

7. The learned Senior Counsel for the petitioner by placing reliance on the decisions of this Court in the cases of (i) Corporation of Calcutta vs. Sm. Padma Debi and others reported in AIR 1962 SC 151, (ii) the Guntur Municipal Council vs. the Guntur Town Rate Payers' Association, reported in 1970 (2) SCC 803, (iii) B.R. Dalavi vs. Government of Tamil Nadu (Ramanujam, J.) reported in (1978) 91 LW 110, (iv) United India Periodicals Pvt. Ltd. vs. M/s. M & N Publications Ltd. and others reported in (1993) 1 SCC 445, (v) A.Sathar vs. the District Collector, Coimbatore reported in AIR 1998 Mad 217 and (vi) East India Commercial Co. Pvt. Ltd. vs. Corporation of Calcutta (1998) 4 SCC 368, submitted that the respondent is entitled to revise the rent, but it should be fair and reasonable and the unilateral increase of rent is not justified. It is further contended that as per the G.O.Ms.No.92, dated 03.07.2007 while fixing the market rent, an opportunity should have been given to the licensees to put forth their case.

8. Per contra, the learned Standing Counsel for the respondent submitted that the revision of rent had taken place after expiry of nine years and as per the G.O.Ms.No.92, dated 03.07.2007, the respondent has right either to bring the shops for auction or increase the rent based on the annual rental value. The Standing Committee after evaluating the entire aspect has fixed the market rent. Based on the revised market value, the rate was fixed at Rs.75/- per sq.ft. within the Coimbatore Corporation limit and after receiving the representation, it was reduced to Rs.43/- per sq.ft.

9. The learned Standing Counsel further contended that the respondent Corporation has an obligation to provide basic amenities for the welfare of the general public in compliance with the Directive Principles of the State Policy. So the respondent in order to get more revenue, has revised the rent, which is fair and reasonable and as per the decision of this Court, revision of rent is only an offer and the provision of the Rent Control Act would not have any application for revision of rent.

10. In the instant case, indisputably the petitioner became a licensee of the shops in the year 1995. It is evident from the statement of revision of rent enclosed at page No.46 of the typed set of papers that the respondent-Corporation had revised the rent once in three years by increasing the rent at 15%. From 01.04.2003, the rent was increased based on the annual rental value and after expiry of nine years therefrom, in the year 2013, the rent was again increased. In the decisions relied on by the learned Senior Counsel for the petitioner, the Hon'ble Supreme Court has held that the local-bodies shall fix the rent reasonably. There is no quarrel over the proposition suggested by the learned Senior Counsel for the petitioner.

11. It is an admitted fact that to meet out the constitutional obligations, the State Government has been implementing various welfare schemes for the benefit of the general public, such as the implementation of underground drainage water, supply of drinking water, public health, sanitation conservancy and solid waste management, for which, the local bodies need substantial amount.

12. In the case of P.Muthusamy Vs. State of Tamil Nadu reported in (2014) 5 MLJ 129, 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. 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 bee 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 ad 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 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."

13. When a similar notification was challenged in a batch of writ petitions in W.P.(MD).No.9333 of 2017, etc., I dismissed the writ petitions holding that the licensees have no vested right in seeking extension of lease and the provisions of the Rent Control Act will have no application and the licensees have no say in re-fixing the licence fee. The order was confirmed by the Division Bench of this Court in W.A.(MD)Nos.1058 to 1086 of 2017, holding that the revision was only an offer and it was up to the licensee to either accept or vacate the premises, which would run thus:

"4. As rightly held by the learned Single Judge the appellants do not have any vested right and their period of licence already got over. They did not have any say in the fixation of rent. The rent fixed forms part of an offer. It is for the appellants to accept or to leave it. The auction is fixed tomorrow i.e., on 10.08.2017. Therefore, it is for the appellants to take part in the said auction. After all, the ultimate interest is that of the respondent, which is a public authority catering to the needs of general public. It is nothing but a commercial activity intended to augment more revenue. Therefore, we do not find any reason to interfere with the order passed by the learned Single Judge. Accordingly, the writ appeals are dismissed.

5.However, considering the facts and circumstances of the case, still the auctions are confirmed, the appellants are permitted to continue in the respective shops subject to payment of old rent along with arrears, if any. Liberty is given to the appellants to take part in the auction. No costs. Consequently, connected miscellaneous petitions are also closed."

14. In similar facts, the licensees under the local bodies

challenge the enhancement of licence fee, on the ground that it was increased in arbitrary manner, in a batch of Writ Petitions in W.P.No.12706 of 2017, etc., and a learned Single Judge by an order dated 22.11.2017, rejected the contention and observed that the enhancement of licence fee is only an offer and the licensees can either accept the revision or vacate the premises.

15. In the light of the above latest decisions of this Court, I am not able to agree with the submissions of the learned Senior Counsel for the petitioner. It is up to the petitioner to accept the offer given by the respondent, within a period of one month and shall pay arrears, if any, within a period of two months. In case the petitioner failed to give consent for the payment of the enhanced amount within one month, the respondents are directed to take action for public auction forthwith. This Court holds that once the auction notification is published, the petitioner is deemed to have vacated the tenement and the respondent can enter the place with the help of police force, if required.

16. With the above observations and directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Assistant Commissioner,
Central Zone,
Coimbatore Corporation,
Coimbatore.

+5ccs to M/S.P.Veena Suresh, Advocate, S.R.No.35595 to 35599
+1cc to Mr.K.Magesh, Advocate, S.R.No.35292
+2ccs to Mr.S.Saravanan,Advocate, S.R.No.35279 & 35280

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RV(CO)
CS/16/07/18