

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.04.2018

Pronounced on: 26.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.Nos.10247, 10499, 10163, 10291, 9434, 9454 & 9455 of 2018
and
W.M.P.Nos.12182, 12451, 12108, 12224, 11278, 11309 & 11310 of
2018

1.K.Baskaran

2.K.Vasudevan

3.S.Sekar

4.S.Navusath Ali

5.A.V.Padmanabhan

6.V.Jagadeesan

7.A.Abdul Wajid

8.R.Kesavan

9.S.B.Baskaran

10.B.Navvekumar

11.K.M.Habibur Rahman ... Petitioners in W.P.No. 10247 of 2018

1. A.D.SELVAM

S/O.DHANASEKAR SHOP NO.1 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.

2. K.SATHIYAMOORTHY

S/O.KRISHNAN SHOP NO.2 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.

3. G.VELAYUTHAM

S/O.GOVINDASWAMY SHOP NO.3 DAILY MARKET
SHOP ARCOT VELLORE DISTRICT.

4. R.SARAVANAN
S/O.RAJI SHOP NO.4 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.
5. V.YOGESH
S/O.VINAYAGAM SHOP NO.5 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.
6. SYED RAGHEEMBASHA
S/O.RAFABAI SHOP NO.6 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.
7. K.RAJI
S/O.KRISHNAN SHOP NO.7 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.
8. E.KESAVAN
S/O.EKAMBARAM SHOP NO.8 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.
9. V.MOHANAVEL
S/O.VINAYAGAM SHOP NO.9 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.
10. SMT.R.DANALAKSHMI
W/O.RAJI SHOP NO.10 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.
11. E.MADHAVAN
S/O.EKAMBARAM SHOP NO.11 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.
12. A.K.S.PALANI
S/O.SUBRAMANI SHOP NO.12 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.
13. S.JANAKIRAMAN
S/O.SINKARA NAICKER SHOP NO.13 DAILY
MARKET SHOP ARCOT VELLORE DISTRICT.
14. S.MOHANAVELU
S/O.SHANMUGAM SHOP NO.14 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.
15. A.V.ARUMUGAM
S/O.VEERABANDAVA NAICKER SHOP NO.15 DAILY
MARKET SHOP ARCOT VELLORE DISTRICT.

16. A.SURESH
S/O.ARUMUGAM SHOP NO.16 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.
17. SMT.B.KRISHNAVELI
W/O.BASKARAN SHOP NO.17 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.
18. A.E.ARUMUGAM
S/O.EKAMBARAM SHOP NO.18 DAILY MARKET SHOP
ARCOT VELLORE DISTRICT.
19. N.MANI
S/O.NATARAJA NAICKER SHOP NO.19 DAILY
MARKET SHOP ARCOT VELLORE DISTRICT.
...PETITIONERS in W.P.No.10499/2018.
- 1.P.N.UDAYAKUMAR
S/O.NATARAJAN SHOP NO.1 (DEMAND NO.69)
CHEYYAR ROAD BUILDING ARCOT VELLORE
DISTRICT.
- 2.S.PANDIYAN
S/O.SUNDARAM SHOP NO.2 (DEMAND NO.70)
CHEYYAR ROAD BUILDING ARCOT VELLORE
DISTRICT.
- 3.SMT.ESWARI
W/O.ESWARAN SHOP NO.3 (DEMAND NO.194)
CHEYYAR ROAD BUILDING ARCOT VELLORE
DISTRICT.
..... PETITIONER in WP No.10163 of 2018
- 1 B.JAGANMOHAN
S/O.BASKARAN SHOP NO.2 P.T.ESWARAN
BUILDING ARCOT VELLORE DISTRICT.
- 2 A.KUPPUSWAMY
S/O.AKKU SHOP NO.3 P.T.ESWARAN BUILDING
ARCOT VELLORE DISTRICT.
- 3 SMT.A.HEMAVATHY
W/O.NARASHIMAN SHOP NO.4 P.T.ESWARAN
BUILDING ARCOT VELLORE DISTRICT.
- 4 S.RAJA
S/O.SHANMUGAM SHOP NO.5 P.T.ESWARAN
BUILDING ARCOT VELLORE DISTRICT.
- 5 ISMAIL SHERIFF
S/O.MOHIDEEN SHERIFF SHOP NO.6 P.T.ESWARAN
BUILDING ARCOT VELLORE DISTRICT.

- 6 A.MALIKA BEGUM
W/O.YUSUF SHOP NO.7 P.T.ESWARAN BUILDING
ARCOT VELLORE DISTRICT.
- 7 T.SARAVANAMOORTHY
S/O.THIRUNAVUKKARASU SHOP NO.8 P.T.ESWARAN
BUILDING ARCOT VELLORE DISTRICT.
- 8 T.MANI
S/O.THANGAVEL NAICKER SHOP NO.9 P.T.
ESWARAN BUILDING ARCOT VELLORE DISTRICT.
- 9 M.N.SARAVANAN
S/O.NATARAJAN SHOP NO.10 P.T.ESWARAN
BUILDING ARCOT VELLORE DISTRICT.
- 10.M.BASKARAN
S/O.MOHANA NAICKER SHOP NO.7 10 & 11 P.T.
ESWARAN BUILDING ARCOT VELLORE DISTRICT.
- ... PETITIONERS in WP No.10291 of 2018
- 1 C.S.ABDUL KUTHOOS
S/O.C.A.SHAIK ABDUL KHADER SHOP NO.3 AGR
BUILDING ARCOT VELLORE DISTRICT.
- 2 DINAKARAN
S/O.KANDASWAMY NADAR SHOP NO.2 AGR
BUILDING ARCOT VELLORE DISTRICT.
- 3 G.SRINIVASAN
S/O.GOVINDAN SHOP NO.4 AGR BUILDING ARCOT
VELLORE DISTRICT.
- 4 A.P.ARUNACHALAM
S/O.PONNUSWAMY NAICKER SHOP NO.5 AGR
BUILDING ARCOT VELLORE DISTRICT.
- 5 V.DHANASEKAR
S/O.VARADHARAJA MUDALIAR SHOP NO.6 AGR
BUILDING ARCOT VELLORE DISTRICT.
- 6 V.SEKAR
S/O.VARADARAJA MUDALIAR SHOP NO.7 AGR
BUILDING ARCOT VELLORE DISTRICT.
- 7 M.SARAVANAN
S/O.MUNIVEL NAICKER SHOP NO.8 AGR BUILDING
ARCOT VELLORE DISTRICT.

- 8 K.PARTHASARATHY
S/O.KATHIRVEL NAICKER SHOP NO.9 AGR
BUILDING ARCOT VELLORE DISTRICT.
- 9 S.B.RAJENDIRAN
S/O.BALAKRISHNAN SHOP NO.10 AGR BUILDING
ARCOT VELLORE DISTRICT.
- 10.E.KUMARAVEL
S/O.EKAMBARAM SHOP NO.11 AGR BUILDING
ARCOT VELLORE DISTRICT.
- 11.K.S.VENUGOPAL
S/O.SAMBANDAMOORTHY SHOP NO.12 AGR
BUILDING ARCOT VELLORE DISTRICT.
12. A.GOPAL
S/O.APPAVOO CHETTIAR SHOP NO.13 AGR
BUILDING ARCOT VELLORE DISTRICT.
... PETITIONERS in WP No.9434 of 2018
- 1 A.K.NATARAJAN
S/O.KUPPUSAMY SHOP NO.1 (DEMAND NO.67) BUS
STAND PART BUILDING ARCOT VELLORE DISTRICT.
... PETITIONER in WP No.9454 of 2018
- 1 A.N.SARAVANAN
S/O.A.K.NATARAJAN SHOP NO.1 (DEMAND NO.
156) DEPARTMENTAL STORE BUILDING ARCOT
VELLORE DISTRICT
... PETITIONER in WP No.9455 of 2018
- vs.

1.The Commissioner of Municipal Administration,
Ezhilagam Annex, 6th Floor,
Chepauk, Chennai - 600 005.

2.The Regional Director of Municipal Administration,
No.10, Sarathy Nagar,
Kagithapattarai, Vellore - 632 012.

3.The Commissioner,
Arcot Municipal Office,
Arcot 632 503,
Vellore District.

... Respondents in all W.Ps

Prayer in in W.P.No. 10247 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 3rd respondent related to common Notice Na.Ka.No.1810/2016/A1, dated 23.03.2018 in respect of Shop Nos.1,2,3,4,5,6,7,8,9,10, & 11 situated at Gandhi Building, Arcot, Vellore District and quash the same.

WP No.10499 of 2018:

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated therein, and in the affidavit filed therewith the high court will be pleased to issue writ of Certiorari calling for the records of 3rd respondent related to common Notices Na.ka. No.1810/ 2016/A1 dated 23.03.2018 in respect of Shop Nos.1,2,3,4,5,6,7,8,9, 10,11,12,13,14,15,16, 17,18 & 19 situated at Daily market Shop, Arcot, Vellore District and quash the same.

WP No.10163 of 2018:

Calling for the records of the 3rd respondent related to common Notice Na.Ka. No.1810/2016/A1 dated 23.03.2018 in respect of Shop Nos.1,2 and 3 situated at Cheyyar Road Building, Arcot, Vellore District and quash the same.

WP No.10291 of 2018:

Calling for the records of the 3rd respondent related to common Notices bearing Na. Ka. No. 1810/2016/A1 dt 23.3.2018 in respect of Shop Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the petitioners situated at P.T.Eswaran Building, Arcot, Vellore District and quash the same.

WP No.9434 of 2018:

Calling for the records of the 3rd respondent related to common notice Na.Ka. No.1810/2016/A1 dated 23.03.2018 in respect of Shop Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 situated at AGR Building Arcot, Vellore District and quash the same

WP No.9454 of 2018:

Calling for the records of the 3rd respondent in relation to the Notice Na.Ka. No.1810/ 2016/A1 dated 23.03.2018 in respect of Shop No.1 (Demand No.67) situated at Bus Stand Part Building, Arcot, Vellore District and quash the same

WP No.9455 of 2018:

calling for the records of the 3rd respondent in relation to the Notice Na. Ka. No. 1810/2016/A1 dated 23.3.2018 in respect of Shop No.1 (Demand No.156) situated at Departmental Store Building, Arcot, Vellore District and quash the same

For Petitioner in all W.Ps : Mrs.S.Hemalatha

For Respondent in all W.Ps : Mr.S. Jaganathan G.A.(CS)
(for RR1& 2)
Mr.A.S.Thambuswamy (for R3)

COMMON ORDER

Heard Mrs.S.Hemalatha, learned counsel for the petitioners, Mr.B.Anand, learned Government Advocate appearing for the respondents 1 & 2 and Mr.A.S.Thambuswamy, learned Standing Counsel appearing for the 3rd respondent.

2. The lessees under the 3rd respondent Municipality have filed these Writ Petitions assailing the revision of licence fee on the grounds that there is no transparency in the action of the 3rd respondent and it was fixed in an arbitrary manner even without issuing notice to the petitioners.

3. According to the petitioners, they became the licensees under the 3rd respondent in the year 2009. The lease period commenced on 01.04.2009 and ended on 31.03.2012. As per the G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, the lease was periodically renewed till 31.03.2018.

4. It is contended that during the subsistence of the lease period, by proceedings, dated 06.03.2017, the 3rd respondent revised the licence fee and enhanced the rent. Immediately, the petitioners-Association, viz., Nethaji Arcot Municipal Shops Owners Association made a representation to the 3rd respondent on 31.03.2017. Accepting the same, the 3rd respondent, by his proceedings, dated 23.05.2017, withdrew the revision of licence fee and permitted the petitioners to pay the existing fee. However, by issuing the impugned order, the 3rd respondent has enhanced the licence fee in manifolds in an arbitrary manner. Hence, they have come up before this Court, by filing these Writ Petitions.

5. The learned counsel for the petitioner urged that the 3rd respondent had revised the licence fee in the year 2017 based on the resolution No.451, dated 03.03.2017 and the present revision has been made on the basis of the resolution No.718, dated 29.12.2017. According to the learned counsel for the petitioners, unless the resolution No.451, dated 03.03.2017, was cancelled by the Government, under Section 36 of the District Municipalities Act, the 3rd respondent has no power or authority to revise the licence fee based on the resolution dated 29.12.2017.

6. It is next contended that the petitioners were not given an opportunity and they are kept in dark, while the revision of licence fee had taken place and there is no record to show on what basis, the 3rd respondent has revised the licence fee.

7. The 3rd respondent has filed a common counter affidavit denying the allegations of the petitioners and contended that the resolution No.451, dated 03.03.2017 was cancelled, pursuant to the order of the Regional Director of Municipal Administration. The revision of the licence fee had taken place, as per the decision of the Monitoring committee consisting of Regional Director of Municipal Administration, Vellore, Municipal Commissioner of the Tiruvannamalai Municipality, Municipal Commissioner, Kallakurichi Municipality, Municipal Engineer of the Gudiyatham Municipality, Manager of the Arcot Municipality, Town Planning Officer, Vaniyambadi Municipality, and Revenue Inspector of Ranipet Municipality. The said committee followed the procedures to arrive at the prevailing market rent and the revision fee fixed is a reasonable one.

8. It is further stated that the Arcot Town has developed enormously and the cost of the living has also increased, as well as the rent for various buildings, including both public and private has increased manifold. Similarly, the expenses of the Municipality to carry out the welfare measure in the City, has also increased enormously.

9. The learned Standing Counsel for the 3rd respondent based on the counter affidavit referred above, submitted that the resolution No.451, dated 03.03.2017 was cancelled by a resolution No.718, dated 29.12.2017. It is the contention of the 3rd respondent that in all the cases, the resolution of the Municipalities does not require cancellation by the Government, and only the cases, which fall under Section 36(C), the Government has to cancel the resolution.

10. Section 36 of the Tamil Nadu District Municipalities Act, reads as follows:

"Power to suspend or cancel resolution etc., under Act:- 1. The Government may, by order in writing

(i) Suspend or cancel any resolution passed, order issued, or licence or permission granted or

(ii) Prohibit the doing of any act which is about to be done or is being done in pursuance or under colour of this Act, if in their opinion.

(a) such resolution, order, licence permission or act is in excess of the powers

conferred by this Act or any other law, or

(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or any other law, or

(c) the execution of such resolution or order, the continuance in force of such licence or permission or the doing of such act is likely to cause danger to human life, health or safety or is likely to lead to a riot or any affray:

Provided that the State Government shall, before taking action under this section on any of the grounds referred to in clauses (a) and (b) give the authority or person concerned an opportunity for explanation:

Provided further that nothing in this sub-section shall enable the State Government to set aside any election which has been held.

(2) If, in the opinion of the District Collector, immediate action is necessary on any of the grounds referred to in clause (c) of sub-section (1), he may suspend the resolution, order licence, permission or act, as the case may be, and report to the State Government who may thereupon either rescind the Collector's order or after giving the authority or person concerned a reasonable opportunity of explanation direct that it continue in force with or without modification permanently or for such period as they think fit."

11. Sucheendran Town Panchayat in Kanyakumari District passed a resolution authorising Panchayat to collect parking fees. The Collector ordered auction, but the bid was rejected by the Panchayat. The Collector by exercising the power under Section 36(i)(c) of the Act passed an order cancelling the resolution. While considering the power of the Government and the Collector, under Section 36(i)(c) of the Tamil Nadu District Municipalities Act, this Court in the case of Pitchammal vs. the Collector, Kanyakumari District, Nagercoil, reported in 2000 (III) CTC 636, held that unless the resolution attracts the conditions enumerated in Section 36 (i) (C), they have no power to interfere in the resolution of the Municipality.

12. Section 21 of the General Clauses Act, reads as follows:
"21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.--Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and

conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

13. A cursory perusal of the Section would make it clear that the authority, who has passed the resolution has got power to revise, modify or rescind the same. In the instant case, the 3rd respondent had revised the licence fee, in the year 2017, while the existence of the licence period and as per the order of the Regional Director, the revision of the licence fee was withdrawn. The 3rd respondent at the time of passing resolution No.718 dated 29.12.2017, has cancelled the resolution No.451 dated 03.03.2017. In view of the Section 21 of the General Classes Act, and the decision of this Court, referred supra, I do not find force in the contention of the learned counsel for the petitioner that in all the cases, until the resolution of the Municipality is cancelled by the Government under Section 36 (1)(c) of the Act, the Municipality has no power or right to pass any resolution in the same subject.

14. The learned Standing Counsel submitted that the petitioners were inducted as tenants, more than 15 years ago, on a meager rent and the rent was revised by the Monitoring Committee, as per the G.O.Ms.No.92, dated 03.07.2007 and it is now up to the licensees to accept it or not. If they do not agree for the same, the Municipality has no other option, except to bring the shops for public auction.

15. The Division Bench of this Court in W.A.(MD)Nos.1058 to 1086 of 2017 has held that licensees have no say in the fixation of rent and the rent fixed by the fee fixation committee forms part of an offer and it is for the licensees to accept or leave it.

16. In similar facts, in another batch of Writ Petitions in W.P.No.12706 of 2017, etc., by an order dated 22.11.2017, a learned Single Judge, while dismissing the Writ Petitions, has issued the following directions:

"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, since they have been in occupation of the premises for several years, failing which, the respondent shall go ahead with the auction. If there are any arrears and the petitioners want to continue with the enhanced rent amount, the arrears shall be paid within two months from the date of acceptance of the offer. In case the petitioners do not give consent for the payment of the enhanced amount within one month, it is open to the respondent 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 tenement and the respondents can enter the place with the help of police force, if required."

17. Taking note of the above facts, I find no merit in these Writ Petitions. They are liable to be dismissed on the same lines, as extracted in the above paragraph. Accordingly, they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

pvs

To

1. The Commissioner of Municipal Administration,
Ezhilagam Annex, 6th Floor,
Chepauk, Chennai - 600 005.

2. The Regional Director of Municipal Administration,
No.10, Sarathy Nagar,
Kagithapattarai, Vellore - 632 012.

3. The Commissioner,
Arcot Municipal Office,
Arcot 632 503,
Vellore District.

+7 Ccs to Mrs.S. Hemalatha, Advocate sr 31830.

+1 CC to Mr.A.S. Thambusamy, Advocate sr 31432.

+1 CC to Govt. Pleader sr 31793, 31794, 31795, 31796, 31798, 31799,
31800.

W.P.Nos.10247, 10499, 10163,
10291, 9434, 9454 & 9455 of 2018

GJ(CO)
SP(04/05/2018)