

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1806 of 2017 & CMP Nos.22649 & 22650 of 2017,
and WP.No.12444 of 2017
W.A.No.1807 of 2017 & CMP Nos.22651 & 22652 of 2017
and WP.No.12445 of 2017
and W.A.No.527 of 2018 & CMP Nos.4954 & 4955 of 2018
and WP.No.19606 of 2017

WA No.1806 of 2017

1. K.Amjath Basha
2. K.Subhani
3. A.Rafeeq
4. R.Sathiya
5. G.Palani
6. G.Selvaraj
7. Arunachalam
8. K.Rajesh
9. K.Chenkeeran
10. A.Devakumar
11. K.Sivanesan
12. A.Jafer Alikhan
13. C.Selvam

... Appellants/Petitioner

WA No.1807 of 2017

1. C.Pasupathy
2. K.Elumalai
3. V.Mohanavelu
4. N.Anandan
5. G.Palani
6. P.Preethi
7. N.Selvarajan
8. K.Saravanan
9. R.Selvi
10. Najeemunnisa
11. Ansar Bhasa
12. A.Kadhar

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13. P.Jeyasankar
14. A.Sallammal
15. K.Kalaimani
16. P.Pasupathi
17. M.G.Gajapathy
18. M.Indumathi

19. K.Hassen
20. Najameemunissa
21. K.Elumalai
22. N.Selvaraj

... Appellants/Petitioner

WA No.527/2018

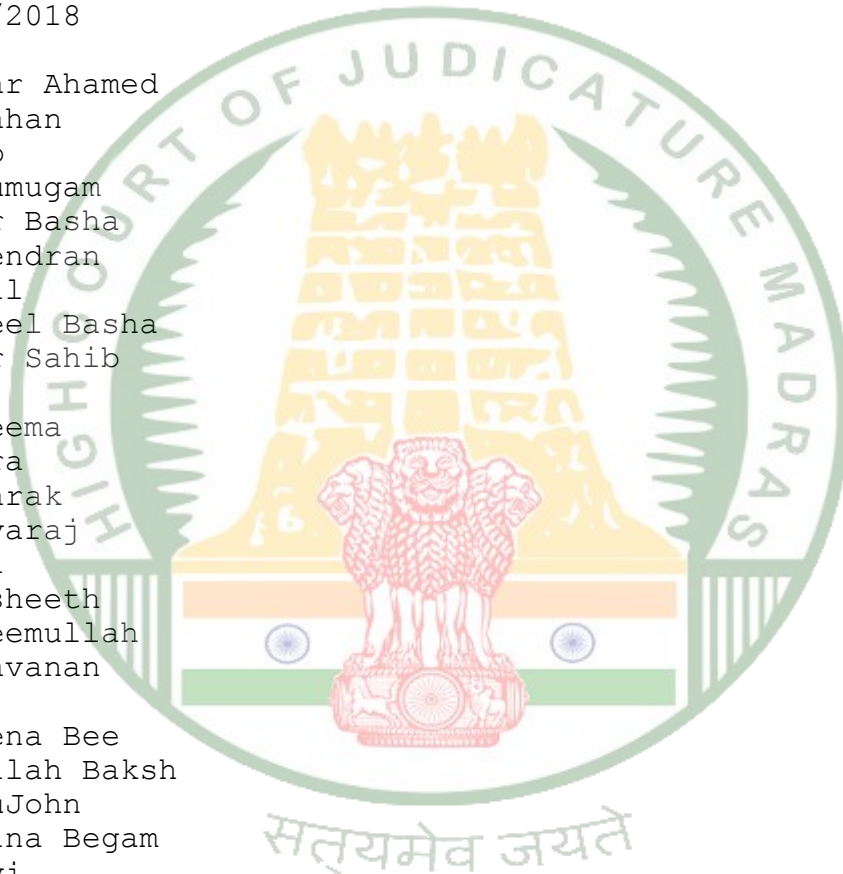
1. S.Gulsar Ahamed
2. I.Shajahan
3. A.Munab
4. C.M.Arumugam
5. K.Anwar Basha
6. A.Machendran
7. K.Mujmil
8. N.Khaleel Basha
9. K.Jafar Sahib

10. B.Nazeema
11. G.Meera
12. A.Mubarak
13. A.Selvaraj
14. V.Devi
15. B.Jamsheeth
16. A.Kareemullah
17. V.Saravanan

18. S.Ameena Bee
19. A.J.Allah Baksh
20. Y.BabuJohn
21. N.Shaina Begam
22. V.Selvi
23. J.Eliyas
24. J.Razak Basha

25. Vegetable Traders Union,
Rep by its President A.S.K.Subani
Shop No.201, New Market Shop,
Gandhi Market, Arani 632 301.

26. P.Lakshmiammal
27. P.Mohan
28. S.K.Anwar Basha
29. A.Mubarak Basha



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30. A.Munab
31. A.H.Fakrudeen Ali Ahmed
32. R.Abdul Nazeer
33. J.Anbalagan

... Appellants/Petitioner

versus

1. The Secretary to Government
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai 9.
2. The Director of Municipal Administration
Municipal Administration Department,
Ezhilagam, Chepauk, Chennai 5.
3. The Regional Director of Municipal Administration
Sarathi Nagar, Kakithaipattarai,
Vellore 12.
4. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
5. The Commissioner,
Arani Municipality,
Thiruvannamalai District,
Thiruvannamalai.

... Respondents
in all the Appeals

Appeals filed against the orders passed by this Court dated 13.11.2017, 13.11.2017 and 15.11.2017 passed in W.P.Nos. 12444, 12445 and 19906 of 2017 respectively.

W.P.Nos. 12444, 12445 and 19906 of 2017:-

W.P.No.12444 of 2017:-

These Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorari Calling for the records relating to the Impugned Notices bearing Na.Ka.No.1408/2016/A3 dated 03.03.2017 and 26.04.2017 in respect of the petitioners Shop Nos.1, 2, 3, 4, 6, 7, 8, 9, 10, 11/11c, 11B, 11 & 11A respectively situated at "Periyar Maligai" near Old Bus Stand, Arani, on the file of the 5th respondent.

W.P.No.12445 of 2017:-

Calling for the records relating to the Impugned Notice bearing Na.Ka. No.1408/2016/A3 dated 03.03.2017 and 26.04.2017 in respect of the petitioners Shop Nos.16, 18, 22, 23, 24,

27, 36, 1A, B-1, 2, 3, 6, 8, 9, 10, 11, 12, 13, 7, 4, 19 & 38 respectively situated at "Periyar Maligai" near Old Bus Stand, Arani on the file of the 5th responseent.

WP.No.19606 of 2017:-

calling for the records relating to the Impugned Notices bearing Na.Ka.No.1408/ 2016/ A3 dated 03.03.2017 and 26.04.2017 respectively in respect of the petitioners Shop Nos.17 and 18, 19, 21, 24, 26, 28, 10, 14, 29, 40, 45, 50, 54, 67, 68, 69, 70, 71, 73, 75, 81 and 82, 85, 195, 199 and 201 in New Market Shop Nos.3, 3A, 7, 8 and 9 in New Bus Stand Shop Nos.19 and 29 in Old Market, Shop No.1 in Vandimeedu Timber shops i.e. totally 35 shops situated at Arani on the file of the 5th Respondent.

For Appellants : Mr.V.Ramamurthy
(in all the Appeals) for Ms.D.Kamachi

For Respondent : Mr.V.Anandhamoorthy
(in all the Appeals) Additional Govt.Pleader
for R 1 to R4

Mr.K.Anbarasan
for Mr.M.Paul Raj for R5

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in these intra Court Appeals is to the orders of the learned Single Judge dated 13.11.2017 and 15.11.2017 made in WP No.12444, 12445 and 19906 of 2017. By the orders impugned in these Appeals, the learned Single Judge had dismissed the Writ Petition filed by the petitioners/appellants herein, who are tenants in occupation of various shops belonging to the Municipality.

2. The appellants herein had challenged the notices issued by the Municipality on 10.04.2017, in and by which, the rent payable by the appellants for the shops in their occupation was revised. The upward revision was nearly 10 times in each case. The main ground of challenge in the Writ Petitions was that the respondents have not followed the instructions issued by the Government in various Government orders that are in force. The grant of lease and fixation of rents for the commercial buildings belonging to the Local Authorities has been plagued by several litigations in this Court as well as the Hon'ble Supreme

Court. By G.O.Ms.No.92, Municipal Administration & Water Supplies Department, dated 03.07.2007, the Government had issued several directions which are meant to serve as guidelines to the Local Bodies in the matter of leasing out of commercial properties belonging to them. While allowing the existing lessees to continue for a block period of three years up to total period of 9 years, subject to increase in rent by 15% for every block period of 3 years, after expiry of 9 years period, the rent payable by the occupants is to be revised based on the market value on the date of such revision.

3. The local bodies were required to give preference to the existing tenants in the event they come forward to pay the enhanced rent. In the event of the existing allottees not coming forward to pay the enhanced rent, the local bodies were at liberty to let out the commercial properties by adopting the procedure of public auction. The petitioners in all these Writ Petitions/ appellants herein, are all persons, who are occupying the shops belonging to Arani Municipality, on 30.11.2016 the Commissioner for Municipal Administration, Chepauk, Chennai 5, issued a circular bearing Na.Ka.No.15316/2016/A3 dated 30.11.2016, giving certain directions with reference to fixation of the rent payable for the commercial properties owned by the local bodies concerned. The Municipality in the Writ Petition claimed that the impugned notices had been issued based on the rent fixed by the Committee formed by the Municipality, according to the clarification issued by the Government in its letter dated 30.11.2016. Accepting the said submission of the Municipality, the learned Single Judge had dismissed the Writ Petition.

4. Aggrieved the appellants are before us by way of these intra Court Appeals.

5. We have heard Mr.V.Ramamurthy, learned counsel appearing for Mrs.D.Kamatchi, for the appellants and Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the Respondents 1 to 4 and Mr.Mr.K.Anbarasan, learned counsel appearing for Mr.M.Paul Raj, for the 5th respondent.

6. Inasmuch as the counter affidavit filed by the Municipality before the learned Single Judge did not spell out the procedure adopted by the Committee in fixing the rent for these Commercial properties and the composition of the Committee was also not clearly spelt out in the counter affidavit filed in the Writ Petition, we had required the Commissioner of the 5th respondent Municipality, viz. the Arani Municipality to file a detailed counter affidavit setting out the factual details. Pursuant to our direction, the Commissioner Arani Municipality, has filed a counter affidavit claiming that the rents were fixed

by the Committee consisting of the following members Regional Director of Municipal Administration, Vellore as President, Executive Engineer O/o. Regional Director of Municipal Administration, Vellore as Vice President, Commissioner, Arani Municipality as Member Secretary and Engineer, Sanitary Officer, Asst. Engineer-1, Asst. Engineer-2, Manager, Accountant, Town Planning Inspector -1 and Revenue Inspector as its members. It is only pursuant to the determination made by the said Committee the Municipality had issued the impugned notices to the occupants of commercial premises belonging to the Municipality.

7. Neither in the counter affidavit filed before us nor in the counter affidavit filed in the Writ Petition, the Municipal Commissioner, Arani Municipality has stated that the present occupants were put on notice of the proposed increase and an acknowledgement was obtained. Even though the letter dated 30.11.2016 does not contain a positive direction to the Municipality to hear the present occupants, while determining the rent for the future period by taking into account the present market value and the market conditions, we are of the considered opinion that inasmuch as the Government letter gives priority or a preference to the present occupants to pay the higher rent as determined by the Committee and continue to occupy the property in question, it would be in the interest of justice and fair play that the present occupants should be heard before refixation of the rent by the committee.

8. The learned counsel appearing for the 5th respondent has also no objection for such a course being adopted. The counsel for the appellants also would submit that they are ready to participate in the process of fixation of the higher rent in accordance with G.O.Ms.No.92, Municipal Administration & Water Supplies Department, dated 03.07.2007, read with the Government letter in Na.Ka.No.15316/2016/A3 dated 30.11.2016.

9. In the light of the above consensus reached between the parties, these Writ Appeals will stand allowed, the orders of the learned Single Judge as well as the impugned notices of enhancement of rent will stand set aside. There will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

10. We find that the Committee constituted by the Commissioner of the 5th respondent Municipality is unwieldy inasmuch as it contains 11 members and the enhancement of rent also is nearly 10 times the existing rent. The learned counsel appearing for the Municipality would upon instructions submit that the Municipality is prepared to reconstitute the Committee and refix the rent payable by the occupants after giving notice to the occupants. Upon the determination of rent by the

Committee after notice to the appellants, who are in occupation of shops belonging to the Municipality, the appellants shall decide as to whether they would continue to occupy by paying the higher rent or to vacate and handover the possession of land.

11. The Committee to be formed by the Commissioner, Arani Municipality, is directed to determine the rent afresh as on 01.07.2016. The process of re-fixation shall be completed at the earliest at any rate within a period of 6 months from the date of receipt of a copy of this order, after giving an opportunity of hearing to the present occupants/appellants before us. Such re-fixation shall take effect from 01.07.2016.

12. It is brought to our notice that the appellants have been paying 50% of the enhanced amount as per the interim orders passed during the pendency of the Writ Petitions. They shall continue to pay the same till such time, the Committee takes a final decision as per our direction supra. If rent fixed by the Committee is lower than the rent that is already paid by the respective allottees the differential amount will be adjusted towards the future payment in the event of the appellants opting to pay the higher rent and continue the possession. If the rent fixed is more than the amount paid the appellants shall pay the balance amount along with arrears in order to enable them to continue in possession.

13. In view of the above, the 5th respondent, the Commissioner of Arani Municipality is directed to form a smaller Committee with lesser number of members in compliance with the directions of the Government contained in the circular dated 30.11.2016. The said Committee shall take up the fixation of the rent for the premises in the occupation of the appellants. The Committee shall also hear the appellants on the question of enhancement and thereafter fix the rent payable for each shop or the Commercial premises in occupation of the appellants. Such fixation of rent shall be made with effect from 01.07.2016. Upon such re-fixation, the appellants may choose either to continue in occupation by paying the rent as fixed by the Committee or to vacate and handover the possession of the property to the local body.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

jv

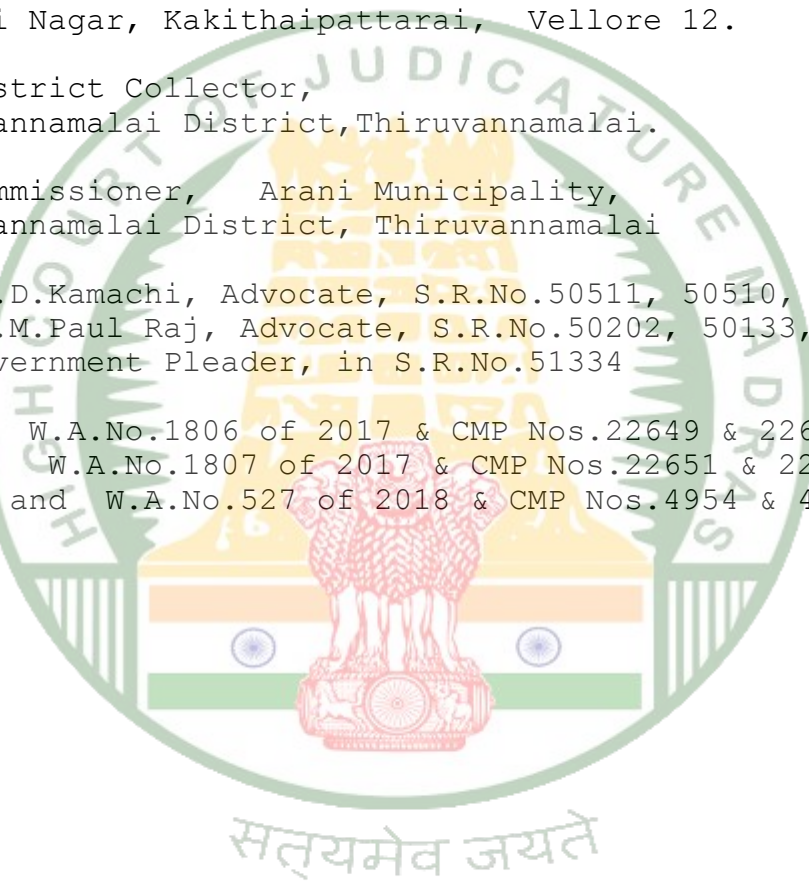
To

1. The Secretary to Government
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai 9.
2. The Director of Municipal Administration
Municipal Administration Department,
Ezhilagam, Chepauk, Chennai 5.
3. The Regional Director of Municipal Administration
Sarathi Nagar, Kakithaipattarai, Vellore 12.
4. The District Collector,
Thiruvannamalai District, Thiruvannamalai.
5. The Commissioner, Arani Municipality,
Thiruvannamalai District, Thiruvannamalai

+3ccs to Ms.D.Kamachi, Advocate, S.R.No.50511, 50510, 50519
+3ccs to Mr.M.Paul Raj, Advocate, S.R.No.50202, 50133, 50132
+1cc to Government Pleader, in S.R.No.51334

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W.A.No.1807 of 2017 & CMP Nos.22651 & 22652 of 2017
and W.A.No.527 of 2018 & CMP Nos.4954 & 4955 of 2018

PP(CO)
CS/28/08/18



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