IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

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THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.380 of 2018
and
W.M.P.No.434 of 2018

D.Venkatesan ...Petitioner

Versus

1.The Government of Tamil Nadu,
Represented by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St.George,
Chennai - 600 009.

2.The Director of Municipal Administration,
Municipal Administration Department,
Ezhilagam, Chepauk,
Chennai - 600 005.

3.The Regional Director of Municipal Administration,
Sarathi Nagar,
Kagitha Pattarai,
Vellore - 12.

4.The District Collector,
Vellore District,Vellore.

5.The Commissioner,
Ranipet Municipality,
Vellore District,
Vellore. ... Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records pertaining to the impugned notice vide Na.Ka.No.3807/2016/A3 dated 29.5.2017 of the 5th respondent and quash the same.

For Petitioner : Mr.M.Abdul Majeed
For Respondents: Mr.V.Shanmugasundar
Special Government Pleader, for R1 to R4

O R D E R

This writ petition has been filed to quash the impugned notice vide Na.Ka.No.3807/2016/A3 dated 29.5.2017 of the fifth respondent.

2. The case of the petitioner is that he is the lessees of the shops owned by the fifth respondent Municipality, after entering into a lease agreement with the respondent, based on which, the lease amount was fixed and it was revised once in every three years. According to the petitioner, the fifth respondent has revised the monthly rent by nearly 1000%, which is arbitrary and unreasonable. It is also stated that the fifth respondent has taken a decision to renew the lease and fixed the rent in an arbitrary and capricious manner, and the same is excessive and exorbitant. The fifth respondent ought to have adopted humane and practical approach while fixing the revised rent, and refixing it to nearly 1000% is not reasonable. It is further stated that the guideline value of the properties had been reduced to 33% by the State and that fixing it on higher amount, more particularly, asking the petitioner to pay the rent at nearly 1000%, needs to be interfered with. Hence the petitioner has come forward with this writ petition for the reliefs stated supra.

3. The learned counsel appearing for the respondents submitted that the petitioner has been periodically paying the revised rent once in every three years as per G.O.M.S.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007. According to the respondents, if the petitioner is not willing to pay the revised rent as demanded, it is open to them to go for public auction. Hence referred to Clauses 4(ii) and 4(iii) of the said Government Order and contended that as per the aforesaid Clauses, an opportunity has got to be given to the petitioner/tenement, once the revised rent that is fixed, if the tenements not accept the same, it is open to them to go ahead with public auction.

4. Heard the learned counsel for the petitioner and respondents and perused the materials available on record.

5. The sum and substance of the issue in question is as to whether the Municipality is entitled to fix the rent on a higher side, be it lease / rent and demand the amount from the petitioner, as calculated by them.

6. It is not in dispute that the petitioner is in occupation of the premises in question as a lessees and paying the rent periodically and it is not in dispute that it was revised periodically once in every three years as per the said Government Order.

7. This Court has considered the issue in question in the case of P.Muthusamy v. State of Tamil Nadu reported in 2015 (4) MLJ 164 (paragraph 7) and also the Division Bench of this Court in the case of P.V.Subramanian v. Secretary to Government reported in 2014 (5) MLJ 129 (paragraphs 9, 21 and 22), which are extracted as follows:

2015 (4) MLJ 164:-

> "7. It is a settled legal principle that whenever the Government grants allotment of public property by way of leas or grants, it cannot act arbitrarily, but must act in accordance with law and the decision should satisfy the test of fairness and reasonableness. The local bodies are enjoined with the duty to take care of the interest of the public, effect developmental activities in the locality maintained public facilities etc., for which funds are required. By way of grant of lease/licenses, the local bodies collect revenue and in order to augment revenue, the best highest price that could be obtained, while leasing out properties has to be insured, so that the interest of the local body is sufficiently protected."

2014 (5) MLJ 129

> "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.
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> 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."

8. From the above discussion and in the light of the decisions extracted supra, the fifth respondent herein has fixed the rent with all due considerations. Merely because there is a reduction of 33% in the guideline value, would not be a reason to interfere with the order of the decision of the fifth respondent. The Government might have reduced the guideline value by 1/3 (33%) only to safeguard their interest to avoid paying compensation to the landowners for the lands acquired by them, as they need to pay hefty compensation to the landowners in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and not otherwise.

9.Thus, this Court finds no merit in the writ petitions, which is therefore dismissed accordingly. If it is for the petitioner to accept the offer given by the fifth respondent, they have been in the occupation of the premises for several years, failing which, the fifth respondent shall go ahead with the auction. In case the petitioner do not give consent for payment of the enhanced amount within one month, it is open to the fifth respondent to go ahead with the auction and till such time, the auction is announced, the petitioner may continue in the same place. As there is possibility of challenging the auction notice and the petitioner continue in that place on account of a case or on account of interim order, this Court directs that once the auction notification is published, the petitioner is deemed to have vacated the tenement and the respondents can enter the place with the help of police force, if required.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary,
The Government of Tamilnadu,
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Water Supply Department,
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Vellore District,
Vellore.

5.The Commissioner,
Ranipet Municipality,
Vellore District,
Vellore.

+1cc to Mr.W.M.Abdul Majeed, Advocate SR.No.1483
+1cc to Government Pleader SR.No.2403

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and
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GN(29/01/2018)