

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-03-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.Nos.1446 & 1447 OF 2007

The Commissioner,
Arakkonam Municipality,
Arakkonam,
Vellore District.

... Appellant / Defendant
in both appeals

-vs-

The Arakkonam Municipality Daily Market
All Merchants Association,
rep.by its President.

... Respondent / Plaintiff
in both appeals

C.M.A.No.1446 of 2007 is filed against the judgment, dated 27.02.2004, passed in A.S.No.23 of 2001, on the file of Subordinate Court, Ranipet reversing the Judgement and decree dt 20/11/2000 in O.S. 75/95 on the file of the District Munsif court Arokkonam.

C.M.A.No.1447 of 2007 is filed against the judgment, dated 27.02.2004, passed in A.S.No.12 of 2001, on the file of Subordinate Court, Ranipet reversing the Judgement and decree dt 20/11/2000 in O.S.75/95 on the file of the District Munsif Court Arakkonam.

For appellant : Mr.V.P.Sengottuvel in both Appeals
For respondent : Mr.G.Jermiah in both Appeals

COMMON JUDGMENT

Appellant is the Arakkonam Municipality. The respondents were inducted as tenants in the shops built by the appellant-municipality. The appellant had passed a resolution vide Resolution No.529, dated 23.02.1987, which was approved by the Director of Municipal Administration, by his proceedings in Na.Ka.No.9305/87/R2, dated 24.06.1987. The respondents/tenants in the shops requested for reduction of rentals fixed by Resolution No.529, dated 23.02.1987. The Municipal Council has also recommended for reduction of rentals by 40%. But, the competent authority has advised the appellant to reduce the

rentals by 10%. On direction, Resolution No.131, dated 26.08.1994, was passed by the appellant-municipality. The said resolution was challenged in O.S.No.75 of 1995 on the file of District Munsif Court, Arakkonam. In the said suit, the respondent association sought for a declaration that the resolution is illegal and not binding on the tenants. The trial Court dismissed the relief with regard to declaration, but fixed the rentals at 60% of the original rent as fair rent and directed the tenants to pay the same with effect from 01.10.1988 with an upward revision of 5% once in three years. Aggrieved over the order passed by the trial Court, both the appellant and the respondent have preferred appeals. The lower appellate Court, while setting aside the order, has remanded the matter back to the trial Court to clarify as to why 5% upward revision was fixed, when the Hon'ble Supreme Court has directed enhancement by 15%. Aggrieved over the order of remand passed by the lower appellate Court, the Arakkonam Municipality is before this Court.

2. Heard both sides.

3. On perusal of the judgments of both the Courts below, it is seen that both sides have let in evidence before the trial Court and marked documents in support of their contentions. While the required material is available, the lower appellate Court must have considered the issue on merit and, if required, by taking additional evidence; whereas, remanding the matter for the purpose of clarifying the order is not sustainable in law. Therefore, the order of remand made in A.S.Nos.23 of 2001 and 12 of 2001, dated 27.02.2004, on the file of Subordinate Court, Ranipet, is set aside. The lower appellate Court is directed to decide the appeals on merit, if required, by taking additional evidence, on or before 15th July, 2018.

4. Civil Miscellaneous Appeals are disposed of accordingly. No costs. Consequently, the connected M.P.Nos.1980 and 1981 of 2007 are closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

dixit

To

1.The Subordinate Judge,
Ranipet.

2.The District Munsif, Arokkonam.

3.The Section Officer, VR Section, High Court Madras.(2 copies)

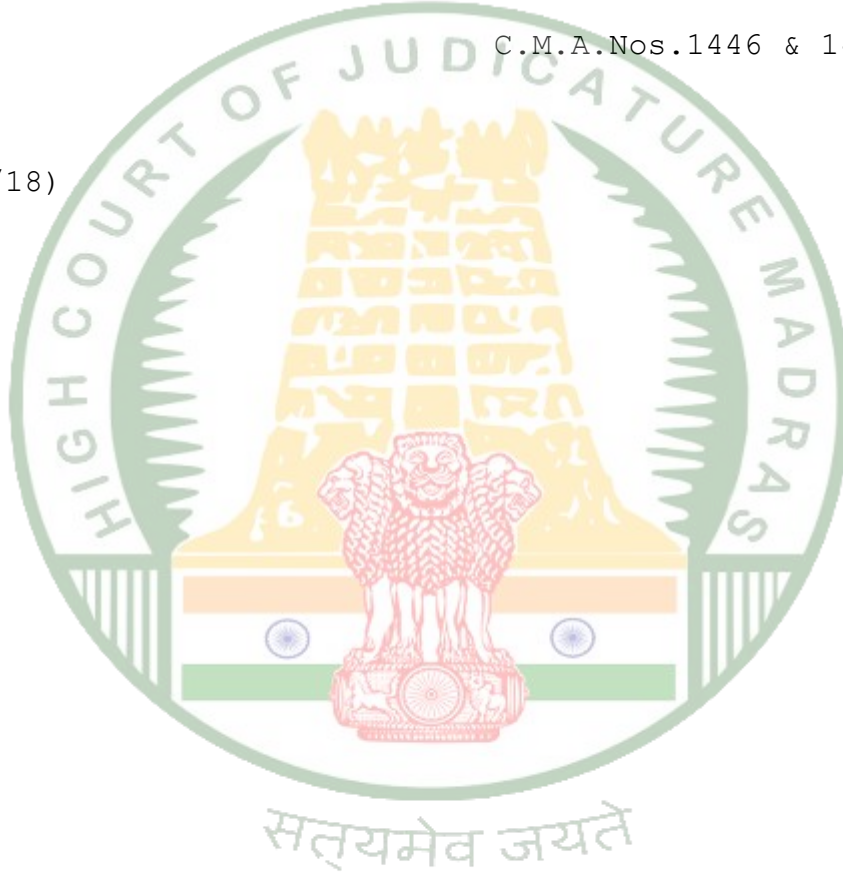
+1cc to Mr.V.P.Sengottuvel, Advocate, sr.no.22917

+1cc to Mr.Jeremiah, Advocate, sr.no.22166

C.M.A.Nos.1446 & 1447 OF 2007

KJI (CO)

RRK(04/06/18)



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