

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.616/2018 & CMP.No.5987/2018

- 1.Akbar Khan
- 2.Mohamed Ali
- 3.B.C.Baba John
- 4.Raheem Bog
- 5.K.Yasin
- 6.Ellal

Appellants / Writ Petitioners

Vs

- 1.The State of Tamil Nadu
rep.by its Secretary to Government
Municipal Administration & Water Supply
Department, Fort St George
Chennai 600 009.
- 2.The Commissioner of Municipal Administration
Municipal Administration Department,
Ezhilgam Annexe-6th Floor, Chepauk,
Chennai 600 005.
- 3.The Regional Director of Municipal Administration
Vellore.
- 4.The Commissioner
Tiruvannamalai Municipality
Tiruvannamalai.

..Respondents/Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 20.11.2017 passed by the learned Single Judge in WP.No.17268/2017.

Prayer in WP.No.17268/2017:Writ petition filed under Article 226 of Constitution of India praying for the issuance of writ of declaration declaring that the demand made by the 4th respondent for payment of revised rent from the petitioners for the shops allotted to them within the Tiruvannamalai Municipality by more than 450% of the existing rent by communication dated 11.3.2017 in Na.Ka. No.A1/4839/2016 as being illegal and unreasonable.

For Appellants

<https://hcservices.ecourts.gov.in/hcservices/>

: Mr.Ilanthiraiyan for
Mr.T.Sai Krishnan

For RR 1 to 3 : Mr.A.N.Thambidurai, Spl.GP
For R4 : Mr.A.S.Thamusamy

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

By consent, the writ appeal is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents 1 to 3 and Mr.A.S.Thambusamy, learned counsel accepts notice on behalf of the 4th respondent.

2 The writ petitioners / appellants claim to be the licencees / lessees in respect of Shops No.8, 5, 9, 10 of Muthuvinayagar Kovil Street, Polur Road Shop as well as Shops No.1, 2, 6 3, 4 and 11 of Vandimedu, Tiruvannamalai Taluk and District and according to them, each of them are in possession of the shops having measurement of 150 sq.ft. to 250 sq.ft. and they are paying the existing license amount

/ lease amount of Rs.1348/-, Rs.1909/- [Akbar Khan], Rs.1348/-, Rs.1329/- [Mohammed Ali], Rs.353/-, Rs.382/- [B.C.Baba John], Rs.293/- [A.Raheem Bog], Rs.412/-, Rs.382/- [K.Yasin] and Rs.293/- [Ellai] respectively. They claim to be in possession and enjoyment of the said shops for very many years and that the lease has also been extended in terms of G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007. The writ petitioners / appellants expressed the grievance that the 4th respondent - Municipality without putting them on notice and without following due process of law, has enhanced the said lease/licence amount manifold and directed them to pay the revised rents at the rate of Rs.4157/- and Rs.11250/- [Akbar Khan.M], Rs.4157/- and Rs.4157/- [Mohammed Ali], Rs.1866/- and Rs.1866/- [B.C.Baba John], Rs.1866/- [A.Raheem Bog] ; Rs.1866/- and Rs.1866/- [K.Yasin] and Rs.1866/- [Ellai] and challenging the same, they filed WP.No.17268/2016.

3 The writ petition was entertained and counter affidavit has been filed. The learned Single Judge, after taking note of the factual aspects and the decision rendered by a Division Bench of this Court reported in 2015 [4] MLJ 164 [P.V.Subramanian Vs. Secretary to Government], had dismissed the writ petition and it is relevant to extract paragraphs No.9 and 10 of the said order:-

"9....From the above discussion and in the light of the decision cited supra, it is seen that the respondent Municipality has fixed the rent with all due consideration. Reduction of 33% in the guideline value would not be a valid reason for the petitioners to interfere with the decision of the respondent Municipality herein. The Government might have revised the guideline value to 1/3 [33%]

only to safeguard their own 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.

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 Municipality, since they have been in occupation of the premises for several years, failing which, the respondent Municipality shall go ahead with the auction. In case, the petitioners do not give consent for the payment of the enhanced amount within one month, it is open to the respondent Municipality 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 of 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 tenements and the respondents can enter the place with the help of police force, if required."

The appellants / writ petitioners, challenging the dismissal of the writ petition, has preferred the present writ appeal.

4 Mr. Ilanthirayan, learned counsel assisted by Mr. T. Sai Krishnan, learned counsel appearing for the appellants / writ petitioners has drawn the attention of this Court to the impugned order as well as G.O. Ms. No. 92, Municipal Administration and Water Supply Department dated 03.07.2007 and would submit that the appellants / writ petitioners are small time traders and they are in occupation of meager extent of land and eking out their livelihood by doing small/petty business and though they are prepared to pay reasonable amount of rent, the 4th respondent-Municipality, without any rhyme or reason, and without affording them any opportunity whatsoever, had increased the license/lease amount manifold and also threatening them to dispossess them from the shops in question in the event of non-payment of the same and the learned Single Judge, without taking note of the factual aspect and legal position, had erroneously dismissed the writ petition and hence, prays for interference.

5 The Court heard the submissions of Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.A.S.Thambusamy, learned Standing counsel appearing for the 4th respondent, who would submit, on instructions that in terms of the above cited Government Order, a Committee has been constituted and after collecting all the relevant details, thought fit to increase the rent and in the facts and circumstances, it cannot be termed as an unreasonable one and would further add that the said Government Order issued by the Administration Department, is only in the nature of benevolence for the reason that it is also open to the 4th respondent / Local Body to go for Tender-cum-Auction to augment their revenue and would also submit that the challenge made by the persons similarly placed to the proceedings relating to the increase of rent in WA.Nos.203 and 204/2018, came to be dismissed by this Court vide common Judgment dated 19.04.2018 and prays for dismissal of this writ appeal.

6 The Court has considered the rival submissions and also perused the materials placed before it.

7 A Division Bench of this Court, in the decision reported in 2014 [5] MLJ 129 [P.Muthusamy Vs. State of Tamil Nadu represented by the Secretary to Government, Municipal Administration and Water Supply Department, Secretariat, Chennai-9 and another], has considered the scope of G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 and also the interest of the Local Body and it is relevant to extract paragraphs No.20, 21, 22 and 24, which reads thus:-

"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.

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.

24. It is settled law that an instrumentality of a State should always endeavour by following the procedure by way of public auction or inviting tender, as held in P.N.CHINNASAMY AND OTHERS V. THE ASSISTANT DIRECTOR OF TOWN PANCHAYAT, COIMBATORE DISTRICT AND OTHERS ((2011) 1 CTC 584), S.SELVARANI V. THE COMMISSIONER, KARAIKUDI MUNICIPALITY ((2005) 1 CTC 81), C.JAYANTHI V. THE COMMISSIONER, METTUR MUNICIPALITY, SALEM DISTRICT ((2006) 5 CTC 236), D.KANNAN V. THE COMMISSIONER OF MUNICIPAL ADMINISTRATION, CHEPAUK (CDJ 2010 MHC 1636) and RAM AND SHYAM COMPANY V. STATE OF HARYANA AND OTHERS ((1985) 3 Supreme Court Cases 267)."

8 It is a settled position of law that if it is for public largesse, auction is the best way to increase/augment the revenue and as rightly pointed out by the learned standing counsel appearing for the 4th respondent / Local Body, G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, is in the nature of benevolence and admittedly, the appellants/writ petitioners had enjoyed the benefit of the same and after completion of 9 years, they were given an option to pay the enhanced rent or in the alternate, to vacate, so that the Local Body can resort to public auction to augment their revenue. In the considered opinion of the Court, the exercise as to the enhancement of the lease/license amount, has been carried out by the 4th respondent / Local Body, strictly in terms of the above cited Government Order and the ratio laid down in the decision cited above, would also lay down the proposition that an instrumentality of the State should always endeavor by following the procedure by way of public auction or inviting Tender. In the considered opinion of the Court, the 4th respondent / Local Body, has acted in public interest and at the first instance, gave an option to the appellants / writ

petitioners to pay the enhanced rent and in the event of their non-inclination, it is going for Tender-cum-Public Auction and it cannot be faulted with.

9 The learned Single Judge, in the considered opinion of the Court, has taken into consideration, all the relevant aspects and had rightly reached the conclusion and in the absence of any infirmity or error apparent on the face of the record, it cannot be interfered with.

10 In the result, the writ appeal is dismissed confirming the order dated 20.11.2017 passed by the Learned Single Judge in WP.No.17268/2017. No costs.

11 De hors the dismissal of the writ appeal, it is open to the appellants / writ petitioners to pay the enhanced rent as demanded by the 4th respondent / Local Body on or before 11.06.2018 and continue to be in occupation and on their failure to do so, it is open to the 4th respondent / Local Body to resort to Tender-cum-Public Auction of the shops in question by following the due process of law. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Secretary to Government
State of Tamil Nadu
Municipal Administration & Water Supply
Department, Fort St George, Chennai 600 009.

2.The Commissioner of Municipal Administration
Municipal Administration Department,
Ezhilgam Annexe-6th Floor, Chepauk,
Chennai 600 005.

3.The Regional Director of Municipal Administration
Vellore.

4.The Commissioner
Tiruvannamalai Municipality, Tiruvannamalai.

+1cc to Government Pleader SR.No.30349

+1cc to Mr.A.S.Thambusamy, Advocate Sr.No.30303

+1cc to Mr.T.Sai Krishnan, Advocate SR.No.30090

SSV(CO)

sm:16.5.2018