IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.Nos.660 to 664 of 2018 & CMP.Nos. 6335 to 6343 of 2018

Kumarasamy .. Appellant in WA.No.660 of 2018

A.Gopi .. Appellant in WA.No.661 of 2018

T.V.Baskaran .. Appellant in WA.No.662 of 2018

Mustak Ahammed .. Appellant in WA.No.663 of 2018

A.Mohammed Gouse .. Appellant in WA.No.664 of 2018

Vs

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

2.Commissioner,
Municipal Administration,
Chepauk, Chennai-600 005.

3.Principal Director of Municipal Administration,
Kagitha Pattarai,
Vellore District, Vellore-1

4.The Commissioner,
Tirupattur Municipality,
Tirupattur, Vellore District

.. Respondents in all WA's

Common Prayer:- Writ Appeals filed under Clause 15 of the Letters Patent against the orders dated 20.11.2017 made in WP.Nos.21466, 21467, 21469, 21470 & 21471 of 2017 passed by the learned Single Judge.

PRAYER IN WP.Nos.21466, 21467, 21469, 21470 & 21471 of 2017:

Writ Petition filed Under Article 226 of the Constitution of India praying that in the issuance of the Writ of certiorari call for the records of the impugned order in Na.Ka. No.1677/ 2016/ A4 dated 19.06.2017 relating to Shop No.34,5,4 & 17 situate at New commercial Complex, Palanisamier Road, Thirupattur, Vellore District in WP NO.21466/17, 21467/17, 21469/17 & 21471/2017 and relating to shop nos.64, situated at V.C.M. New Shop Vaithiyar Chennamurthy Street, Thirupattur, Vellore Dist in WP.21468/17 and relating to shop No.3 situate at Rajan Street, Thirupattur, Vellore District in WP.21470/17 respectively passed by the 4th respondent and quash the same

For Appellants in all WA's	:	Mr.M.V.Venkataseshan
For Respondents in all WA's	:	Mr.S.R.Rajagopal, Additional Advocate General Assisted by Mr.A.N.Thambidurai, Special Government Pleader

COMMON JUDGMENT

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

The Appellants, who are the petitioners in W.P.Nos.21466 of 2017, 21467 of 2017, 21469 of 2017, 21470 of 2017 and 21471 of 2017, made a challenge to the impugned final notice of the 4th respondent, enhancing the lease / license amount in respect of the shops in their possession and further demanded to pay the same and also indicated, failing which the shops will be sealed and public auction will be conducted to grant lease / license of the shops.

2 The writ petitions, after contest, came to be dismissed vide impugned common order dated 20.11.2017. Challenging the legality of the same, the present writ appeals are filed.

3 Since the issue to be adjudicated in these writ appeals is one and the same, all the writ appeals are disposed of by this Common Judgement.

4 The appellants / writ petitioners were lessees of the shops owned by the 4th respondent / local body. It is their claim that the shops are having the measurement of about 200 Sq.ft. and odd and nearly for two decades, they are in possession of the shops and are eking out their livelihood by carrying out commercial activities in a small scale. It is their further submission that in terms of G.O.Ms.No.92, Municipal and Administration Water Supplies (TN.4 Department) dated 03.07.2007, the lease / license has been periodically increased once in three years, at the rate of 15% and they were also paying the same without any default. However, to their shock and surprise, the 4th respondent had issued impugned notices, enhancing the lease/license amount in manifold and the said increase is not supported by any rhyme or reason and also highly excessive and before revising the same, the appellants / petitioners have not at all been put on notice. There must be a fairness in the said auction and therefore, it is obligatory on the part of the 4th respondent to put them on notice as to the basis on which the manifold increase has been made and after eliciting their response, the 4th respondent should have been taken such a decision and since, it has not been done, prayed for interference.

3 The 4th respondent has filed counter affidavit in all the writ petitions and took a stand that as per clause 3 of the above cited Government Order, the leasing of shops should be either for three years or for 9 years, if the rent is to be revised, the revision in the rate of lease rent is to be at the rate of 15% for every three years and admittedly, the shops in question have been leased out in their favour for a meagre rent and in terms of clause 3, once in three years of lease, the license amount has been renewed periodically and after expiry of nine years, a decision has been taken to revise the lease rent and therefore, a specific committee was constituted, which went into the issues relating to enhancement of rent and after due and proper application of mind, had increased the rent and considering the location of the shops and the period of occupation of the appellants/writ petitioners, it cannot be said that the said increase is arbitrary or unreasonable and prays for dismissal of this writ appeals.

4 The learned Judge after taking into consideration of the materials placed and also the decision rendered by this Court reported in 2014 [5] MLJ 129 [P.Muthusamy Vs. The State of Tamil Madu, rep. By its Secretary to Government, Municipal Administration and Water Supply Department and another], held that it is for the appellants / writ petitioners to accept the offer made by the 4th respondent to pay the revised / enhanced rent for the reason that they are in occupation of the

shops/premises in question for several years and if they are not inclined, the 4th respondent /Municipality shall go ahead with the auction and also granted time to exercise such an auction. If the appellants / writ petitioners are not inclined to pay the enhanced rent within a period of one month, the respondents were at liberty to go ahead with the auction and further observed that till such time, the writ petitioners may continue to pay the same rent and also noted that the possibility of challenge being made to the auction notice and therefore, granted a direction that once the auction notice is issued, the writ petitioners/appellants are deemed to have vacated the tenements and the respondents can enter the same with the help of police personnel. The writ petitioners challenging the impugned common order dated 20.11.2017, passed in the writ petitions had filed these writ appeals.

5 Mr.M.V.Venkataseshan, learned counsel appearing for the Appellants/ Writ petitioners would submit that admittedly the shops in occupation of the petitioners are only having minimal and small extent and they are carrying on commercial activities only in a small scale and the income earned out of the said occupation is their sole source of livelihood and though they are willing to pay the enhanced lease amount/license amount, the 4th respondent / Municipality had increased the same manifold without assigning appropriate and sufficient reasons and prior to doing so, the Municipality should have put the writ petitioners/appellants on notice and elicited their response ; however, they did not do so.

6 It is further submission of the learned counsel appearing for the Appellants that though the said Government order does not contemplate an opportunity to put forth their views before the enhancement of rent, the principles of natural justice is inbuilt in the said Government Order and also in all fairness, the 4th respondent / Municipality ought to have put them on notice and therefore, prays for to set aside the impugned order passed, which is the subject matter of the challenge in these writ petitions with a further direction directing the 4th respondent to afford an opportunity to submit their response and thereafter, further directing the 4th respondent / Municipality to pass appropriate orders.

7 Per contra, Mr.S.R.Rajagopal, learned Additional Advocate General assisted by Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that the terms of G.O. Ms.No.92 of Municipal Administration and Water Supply Department dated 03.07.2007, has been strictly complied with and admittedly, the petitioners are enjoying the benefit of the said Government Order and are remaining in possession for over 9 years by paying 15% of the enhanced lease

amount/license amount once in three years and on the expiry of 9th year it is open to the 4th respondent/Municipality to revise the same and accordingly, a committee was constituted and it has collected various materials and take a fair decision to revise the rent / license amount purely to augment revenue for the local body and therefore, it cannot be faulted with. It is further submission of the learned Additional Advocate General, there is no need to afford an opportunity to show cause to the appellants / writ petitioners for the reason that they get benefited out of the said Government Order and impliedly they cannot turn around and make a challenge to the particular clause, which according to them, is against their claim and the learned Judge after taking into consideration all the relevant aspects and materials, had rightly reached the conclusion and therefore, prays for dismissal of the writ appeals.

8 This Court has carefully considered the rival submissions and also perused the materials placed before it.

9 G.O.Ms.No.92, Municipal Administration & Water Supplies Department dated 03.07.2007 came to be passed, giving guidelines for grant of lease / license of the shops owned by the local body as well as its renewal. It is relevant to extract Paragraph Nos.3 and 4 :-

> 3) For such lease of new type, for the next three years of lease, the lease amount (monthly rent) should have to be fixed, in excess of the earlier lease month (i.e.15% not lesser than of the same) in accordance with the prevailing market rent of rent the above increase in lease has to be done thereof;
>
> 4) That the above lease should not be renewed in the name of legal heirs of the lease holders; In the event of the lease property found available in the hands of the legal heirs, then those immovable properties may be seized from them then through public auction, the same may be leased out'

10 It is a well settled position of law that " the underlying object of judicial review, is to ensure that the authority does not abuse its power and ensure responsibilities just and fair treatment and not to ensure that the authority reaches a conclusion which correct in the eyes of this Court .

11 In the decision reported in 1994 [6] SCC 651 [Tata Cellular Vs. Union of India] in Paragraph No.71, the Hon'ble Supreme Court of India has observed as follows :

"71.Judicial quest in administrative matters, has been to find the right balance between the discretion to decide matter as per the Government Policy and the nature of fairness in any unfairness, must be set right by judicial review"

12 The Hon'ble Supreme Court of India in the decision reported in 2007 (8) SCC 1 [Reliance Energy Ltd. v. Maharashtra State Road Development Corporation] has considered the decision relating to the judicial power and it is relevant to extract paragraph No.39:

"39. In Reliance Airport Developers (P) Ltd. v. Airports Authority of India and others - (2006) 10 SCC 1, the Division Bench of this Court has held that in matters of judicial review the basic test is to see whether there is any infirmity in the decision-making process and not in the decision itself. This means that the decision-maker must understand correctly the law that regulates his decision- making power and he must give effect to it otherwise it may result in illegality. The principle of "judicial review" cannot be denied even in contractual matters or matters in which the Government exercises its contractual powers, but judicial review is intended to prevent arbitrariness and it must be exercised in larger public interest. Expression of different views and opinions in exercise of contractual powers may be there, however, such difference of opinion must be based on specified norms. Those norms may be legal norms or accounting norms. As long as the norms are clear and properly understood by the decision-maker and the bidders and other stakeholders, uncertainty and thereby breach of rule of law will not arise. The grounds upon which administrative action is subjected to control by judicial review are classifiable broadly under three heads, namely, illegality, irrationality and procedural impropriety. In the said judgment it has been held that all errors of law are jurisdictional errors. One of the important principles laid down in the aforesaid judgment is that whenever a norm/benchmark is prescribed in the tender process in order to provide certainty that norm/standard should be clear. As stated above "certainty" is an important aspect of rule of law. In the case of Reliance Airport Developers (supra), the scoring system formed part of the evaluation process. The object of that system was to provide identification of factors, allocation of marks of each of the said factors and giving of marks had different stages. Objectivity was thus provided"

13 In the decision reported in 2011 6 SCC (508) [Noida Entrepreneurs Association Vs. Noida and others], the judicial review on administrative action, once again came up for consideration and in paragraph No.38, the Hon'ble Supreme Court of India has held that:-

> "38 It is observed that the State or the public authority which holds the property for the public or which has been assigned the duty of grant of largesse etc., acts as a trustee and, therefore, has to act fairly and reasonably. The public authority is ultimately accountable to the people in whom the sovereignty vests and as such, all power so vested in him may be exercised for public wealth and promoting the public interest".

14 This Court keeping in mind, the principles / ratios laid down in the above cited decisions, has carefully scrutinised and analysed the materials placed before it.

15 It is also well settled position of law that the settlement of a Government property by way of private largesse, without open advertisement, is completely unfounded in law as laid down in the decision reported in 2018 1 SCC (123) [Jaykrishna Industries limited, through its Director Vs. State of Maharashtra and others].

16 G.O.Ms.No.92 of Municipal Administration and Water Supply Department, in the considered opinion of the Court, is of the nature of benevolence to the existing lease / license holders for the reason that it is apparent that the shops owned by the local bodies, are to be treated as public largesse and therefore, in order to augment the revenue for the local body, it is obligatory on their part to resort to public auction of the shops. However, the 1st respondent, for the reason best known to them, had chose to issue the said Government Order and thereby, enabling the lease / license holders to remain in possession of the shops for more than a decade by paying 15% enhancement of the lease / license amount once in three years.

17 The said Government order also came up for consideration before the Division Bench of this Court in decision reported in 2014 5 MLJ 129 [P.Muthusamy Vs.State of

Tamil Nadu, rep. by its Secretary to Government, Municipal Administration and Water Supply Department, Secretariat, Chennai and another], wherein, the auction notice issued by the local body was put to challenge. The Division Bench of this Court after tracing out the history of the said Government Order, observed as follows :-

> 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)."

18 The primordial submission made by the learned counsel appearing for the appellants is that enhancement of lease / license has been done manifold without any rhyme or reason and also without following the due process of law. Therefore, this Court vide order dated 06.04.2018 has directed the learned standing counsel appearing for the 4th respondent / local body to produce the records and accordingly, records have been produced. A perusal of the same would disclose that the 4th respondent has constituted a committee consisting of Revenue Inspector, Town Planning Officer, Engineer, Manager cum Executive Officer and they individually gone into the details relating to each of the shops and also collected guideline value relating to the area in which the shops are located and also given a calculation as to how the enhanced amount came to be fixed. In the considered opinion of this Court, the 4th respondent has done that exercise strictly, in accordance with the said Government Order.

19 The learned senior counsel appearing for the appellants made yet another submission that before enhancement they should have been put on notice and afforded with an opportunity to put forth their views with regard to the revision / enhancement of rent / license amount. In the considered opinion of the Court, the said submission lacks merit and substance for the reason that but for the Government Order, it is obligatory on the part of the local body to go for public auction of the shops, once in three years or expiry of a particular period.

20 In the decision reported in 2014 5 MLJ 129 (cited supra), the said aspect has also been taken into consideration in paragraph No.22 of the said decision, which has also been extracted above and the Division Bench of this Court after taking into consideration very many decisions, in paragraph No.24 had observed that 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.

21 It is also submission of the learned counsel appearing for the Appellants that the enhancement of revised rent / lease amount is unreasonable. However, this Court is of the view, it is a subjective one and what is reasonable to the appellants, may be unreasonable to the 4th respondent and what is reasonable to the 4th respondent, may be unreasonable to the appellants / writ petitioners. The writ petitioners / appellants remain in possession for quite long time and the said Government order permitted them to continue to be in occupation / possession as lessees / licencees appropriately subject to the payment of enhancement of lease / license amount by 15% once in a block period of 3 years for the period of 9 years and after 9 years, the 4th respondent Municipality after following the due process as contemplated in the said Government Order, has revised the rent and also give them option to pay the same and however, the appellants are not inclined to avail the said opportunity.

22 In the considered opinion of this Court, the 4th respondent has adopted a fair and transparent procedure and also gone strictly in conformity on with the said Government Order while renewing the license/ lease amount and in the absence of allegation of mala fides or arbitrariness, this Court cannot interfere with the same. The Learned Judge has taken into consideration all the materials and rightly reached the conclusion to dismiss the writ petitions. This Court, on an independent application of mind to the entire materials, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned Judge in dismissing the writ petitions and find no merit in these writ appeals.

23 This Court is of the considered view that it is high time for the Government to revisit their policy to grant extension of lease/licence in the light of the said Government Order for the reason that it is affecting the revenue being earned by the Local Body and the Judgments of the Hon'ble Supreme Court as well as by this Court lay emphasis that public auction is to be conducted in respect of shops/places owned by the Local Body to augment their revenue.

24 In the result, the writ appeals are dismissed confirming the common order dated 20.11.2017 passed in WP.Nos.21466, 21467, 21469, 21470 & 21471 of 2017. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

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

2.Commissioner,
Municipal Administration,
Chepauk, Chennai-600 005.

3.Principal Director of Municipal Administration,
Kagitha Pattarai,
Vellore District, Vellore-1.

4.The Commissioner,
Tirupattur Municipality,
Tirupattur, Vellore District.

5.The Chief Secretary to the Government
of Tamil Nadu, Fort St. George,
Secretariat, Chennai 600 009.

+1cc to Mr.M.V.VENKATESAN, Advocate, S.R.No. 27162

WA.Nos.660 to 664 of 2018

KAN(CO)
TR(14/05/2018)