IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.Nos.689 to 691 of 2018

M/s.Oriental Canvas Company
Rep.by its Proprietor Ramesh Kumar Jain
N5. N57-010-F8
No.329, Wall Tax Road,
Chennai .. Appellant in WA.No.689 of 2018

M/s.Oriental Canvas Company
Rep.by its Proprietor Ramesh Kumar Jain
N5. N57-010-F8
No.329, Wall Tax Road,
Chennai .. Appellant in WA.No.690 of 2018

Ramesh Kumar Betala .. Appellant in WA.No.691 of 2018



Vs

The Assistant Revenue Officer,
Zone-5, Greater Chennai Corporation
Chennai .. Respondents in all WA's



Prayer in WA.No.689 of 2018:- Writ Appeals filed under Clause 15 of the Letters Patent to set aside the order in W.P.No.2210 of 2018, dated 02.02.2018.

Prayer in WA.No.690 of 2018:- Writ Appeals filed under Clause 15 of the Letters Patent to set aside the order in W.P.No.2211 of 2018, dated 02.02.2018.

Prayer in WA.No.691 of 2018:- Writ Appeals filed under Clause 15 of the Letters Patent to set aside the order in W.P.No.2212 of 2018, dated 02.02.2018.

For Appellants in all WAs : Mr.V.Raghavachari

For Respondents in all WAs : Mr.K.Soundararajan, Standing Counsel

COMMON JUDGMENT

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

By consent, all the writ appeals are taken up final disposal and disposed of by this common judgment as the issue to be adjudicated in these writ appeals are one and the same.



WA.No.689 of 2018:

2 The petitioner claims to be the Licensee in respect of Shop No.F8, Corporation Shopping Complex, Wall Tax Road, Chennai-79 and he was granted license to occupy the said shop in the year 2000 and the total area of

the shop is 840 sq.ft and presently, he is paying a rent of Rs.8.85 per sq.ft + (Service Tax). Originally license amount was fixed at Rs.5.00 per sq.ft. The appellant / writ petitioner was willing to pay Rs.4.00 per sq.ft, however he agreed and started paying the license amount. The appellant to his shock and surprise was informed by the respondent that the rate of license has been increased to Rs.32.00 per sq.ft vide Resolution No.086/2017 dated 21.02.2017 and called upon the petitioner to renew the Agreement by accepting to the pay enhanced license amount or in the alternate, to vacate the shop and handover the possession of the same. The appellant has sent a detailed response dated 24.10.2017 praying for furnishing all information as to the ground for enhancing the license amount and also prayed for furnishing relevant documents and it was also followed by a further representation dated 19.11.2017. The respondent vide communication dated 24.11.2017, proceedings No.k/m/5.t/J/e/f/vz;/3645/2017. has cited the reasons for enhancing the license amount and the petitioner challenging the legality of the proceedings in and by which, the license amount has been enhanced, came forward to file WP.No.2210 of 2017.



WA.No.690 of 2018

3 The petitioner claims to be the Licensee in respect of Shop No.F9, Corporation Shopping Complex, Wall Tax Road, Chennai-79 and it is the

storage area of his brother's Company M/s.Oriental Canvas Company / appellant in WA.No.689/2018 and the total area of the shop is 840 sq.ft and presently he is paying a rent of Rs.6.00 per sq.ft + (Service Tax). Originally license amount was fixed at Rs.5.00 per sq.ft. The appellant / writ petitioner was willing to pay Rs.4.00 per sq.ft, however he agreed and started paying the license amount. The appellant to his shock and surprise was informed by the respondent that the rate of license has been increased to Rs.32.00 per sq.ft vide Resolution No.086/2017 dated 21.02.2017 and called upon the petitioner to renew the Agreement by accepting to pay the enhanced license amount or in the alternative to vacate the shop and handover the possession of the same. The appellant has sent a detailed response dated 24.10.2017 praying for furnishing all information as to the ground for enhancing the license amount and also prayed for furnishing relevant documents and it was also followed by a further representation dated 19.11.2017. The respondent vide communication dated 24.11.2017, proceedings No.k/m/5.t/J/e/f/vz;/3645/2017. has cited the reasons for enhancing the license amount and the petitioner challenging the legality of the proceedings in and by which, the license amount has been enhanced, came forward to file WP.No.2211 of 2017.

WA.No.691 of 2018

4 The petitioner claims to be the Licensee in respect of Shop No.F9, Corporation Shopping Complex, Wall Tax Road, Chennai-79 and it is the storage area of his brother's Company M/s.Oriental Canvas Company / appellant in WA.No.689/2018 and the total area of the shop is 840 sq.ft and presently he is paying a rent of Rs.8.85 per sq.ft + (Service Tax). Originally license amount was fixed at Rs.5.00 per sq.ft. The appellant / writ petitioner was willing to pay Rs.4.00 per sq.ft, however he agreed and started paying the license amount. The appellant to his shock and surprise was informed by the respondent that the rate of license has been increased to Rs.32.00 per sq.ft vide Resolution No.086/2017 dated 21.02.2017 and called upon the petitioner to renew the Agreement by accepting to pay enhanced license amount or in the alternative to vacate the shop and handover the possession of the same. The appellant has sent a detailed response dated 24.10.2017, praying for furnishing all information as to the ground for enhancing the license amount and also prayed for furnishing relevant documents and it was also followed by a further representation dated 19.11.2017. The respondent vide communication dated 24.11.2017, proceedings No.k/m/5.t/J/e/f/vz;/3645/2017. has cited the reasons for enhancing the license amount and the petitioner challenging the legality of the proceedings

in and by which, the license amount has been enhanced, came forward to file WP.No.2212 of 2017.

5 The learned Judge vide common order dated 02.02.2018 in WP.Nos.2210, 2211 and 2212 of 2018, has considered the said issue and it is relevant to extract Paragraph Nos.4 and 5 of the said order:

"*4.The Licensees of shops in Rajapalayam Municipality filed a batch of writ petitions before Madurai Bench of Madras High Court, in W.P.(MD) Nos.9333 of 2017, etc., expressing the same grievance. The writ Court, following the decisions of Single Judges and Division Bench of this Court A.Sathar Vs. the District Collector, Coimbatore and Another (AIR 1998 MAD 217), WA (MD) No.546 of 2010, dated 19.08.2010, P.N.Chinnasamy and 13 another Vs. The Assistant Director of Town Panchayat, Coimbatore District (2010 1 CTC 584), P.Muthusamy Vs. State of Tamil Nadu Municipality (2014 5 MLJ 129), C.Vinoba Vs. the Commissioner, Palladam Municipality (2015 3 CTC 170) and P.P.M.S.C.L.W.Association Vs. Commissioner (2016 3 MLJ 698) dismissed the writ petitions holding the licensees by relying on the G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 have no right in seeking extension of lease in perpetuation and the provisions of the Tamil Nadu Buildings (lease and Rent Control ) Act as amended, have no application in fixation of license fee.*

*5. The said judgment was confirmed by the Division Bench in W.A.(MD)Nos.1058 to 1086 of 2017 by observing that licensees have no say in the fixation of rent and the rent fixed by the fee* *fixation committee forms part of an offer and it is for the licensees to accept or leave it.”*

6 The learned Judge having found that the above cited judgments are squarely applicable to the facts of these cases, granted liberty to the writ petitioners/appellants herein to accept the offer given by the respondent, within a period of one month and shall pay arrears, if any, within a period of two months and if they fails to give consent, the respondent is directed to take action for public auction forthwith and further held that once the auction notification is published, the petitioners are deemed to have vacated the tenements and the respondent can enter the place. The writ petitioners challenging the legality of the said common order file these appeals.

7 The learned counsel appearing for the appellants would submit that the respective appellants are in possession of meagre area and all of a sudden the license amount has been increased by manifold and due to threat of dispossession, they had started paying the license amount and would further add that in all fairness, reasonable opportunity ought to have been provided as to the reasons for the enhancement of the license amount. Since opportunity has been denied, he prays for appropriate orders.

8 Per contra, learned standing counsel appearing for the Corporation of Chennai would submit that the Hon'ble Supreme Court of India and this Court, in catena of decisions held that public auction is the method to augment their revenue. The Division Bench of this Court in the decision 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 ],*** had elaborately gone into the said aspect and also considered G.O.Ms.No.92, Municipal and Administration Water Supplies (UA-4) Department, dated 03.07.2007 and held so and would further add that with regard to the enhancement of the license amount, procedure contemplated in the said Government Order has been strictly complied with and a Committee consisting of Zonal Officer, Assistant Revenue Officer and Accountant has been constituted and the said Committee have considered all the relevant details and rightly take a decision to fix the license amount at the rate of Rs.32.00 per sq.ft. Since the said decision has been taken in fair and proper manner, this Court, in exercise of its appellate jurisdiction may not interfere with the well considered order passed by the learned Single Judge and prays for dismissal of these appeals.

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

10 In the decision 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],*** this Court has held in Paragraphs No.20, 21, 22 and 24 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.*



*23. The decision relied upon by the learned counsels appearing for the petitioners Labha Ram and Sons and Others v. State of Punjab (supra) cited above has no application to the facts involved in the present cases. In the said decision the existing licensees were asked to vacate in view of the creation of a new multi complex.*



*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. Assistant Director of Town Panchayat, Coimbatore District and Others : (2011) 1 CTC 584 : **LNIND 2011 MAD 102**, S. Selvarani v. Commissioner, Karaikudi Municipality : (2005) 1 CTC 81 : **LNIND 2004 MAD 1600** : (2005) 1 MLJ 394, C. Jayanthi v. Commissioner, Mettur Municipality, Salem District :*

*(2006) 5 CTC 236* : ***LNIND 2006 MAD 1770*** *: (2006) 4 MLJ 128, D. Kannan v. Commissioner of Municipal Administration, Chepauk* ***CDJ 2010 MHC 1636*** *:* ***LNIND 2010 MAD 759*** *and Ram and* ***Shyam Company v. State of Haryana and Others*** *:* ***AIR 1985 SC 1147*** *: (****1985) 3 SCC 267*** *:* ***LNIND 1985 SC 188****.*

11 The grievance expressed by the appellants is that no proper, adequate and sufficient reasons have been given as to the manifold increase of the license amount in per sq.ft.

12 In the considered opinion of this Court, at this juncture, it cannot interfere with the decision taken in terms of the Committee recommended. However, taking into consideration, the submission made by the learned counsel for the appellants, that the representation submitted by the appellants may be considered and disposed of, this Court passes the following order:-

The writ petitioners/appellants are at liberty to submit individual detailed representations as to the grievances, to the respondent within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the respondent is directed to give an opportunity of personal hearing to the appellants or their authorised representative and pass orders in accordance with law within a further period of four weeks thereafter and communicate the decision taken, to the appellants/writ petitioners and till such time, the respondent shall defer further decision in terms of the directions issued in the impugned common order dated 02.02.2018.

13 In the result, the writ appeals stand disposed of. No costs.

[M.S.N., J.,] [P.R.M., J]
27.04.2018

Internet:No
Index :Yes

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To

The Assistant Revenue Officer,
Zone-5, Greater Chennai Corporation
Chennai

M.SATHYANARAYANAN, J.,
and
P.RAJAMANICKAM, J.,

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WA.Nos.689 to 691 of 2018

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