

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.757 of 2018 & CMP Nos.7176 & 7177 of 2018,
W.A.No.760 of 2018 & CMP Nos.7196 & 7197 of 2018 ,
W.A.No.761 of 2018 & CMP Nos. 7204 & 7205 of 2018
and W.A.No.1189 of 2018 & CMP Nos. 9518 & 9519 of 2018

WA No.757 of 2018:

1. A.Akkim
2. E.Nazar
3. M.Rajiya
4. D.Vadivel Murugan
5. C.Nagavalli
6. K.Chinnakutti
7. M.R.Palani
8. K.Jayavelu
9. S.Ramesh
10. Shabeer Ahamed
11. P.Thiyagarajan
12. S.Vasu
13. M.Munusamy
14. N.Abdul Kareem
15. S.Arumugam
16. S.Murugan
17. J.Seenu
18. S.Prakash
19. V.Murali
20. S.M.Boopalan
21. C.S.Narayanan
22. V.Shanmugam
23. Maboopjohn
24. A.Akkim
25. P.Ravi
26. S.A.Kalimullah
27. S.Rakesh

... Appellants

WA No.760 of 2018

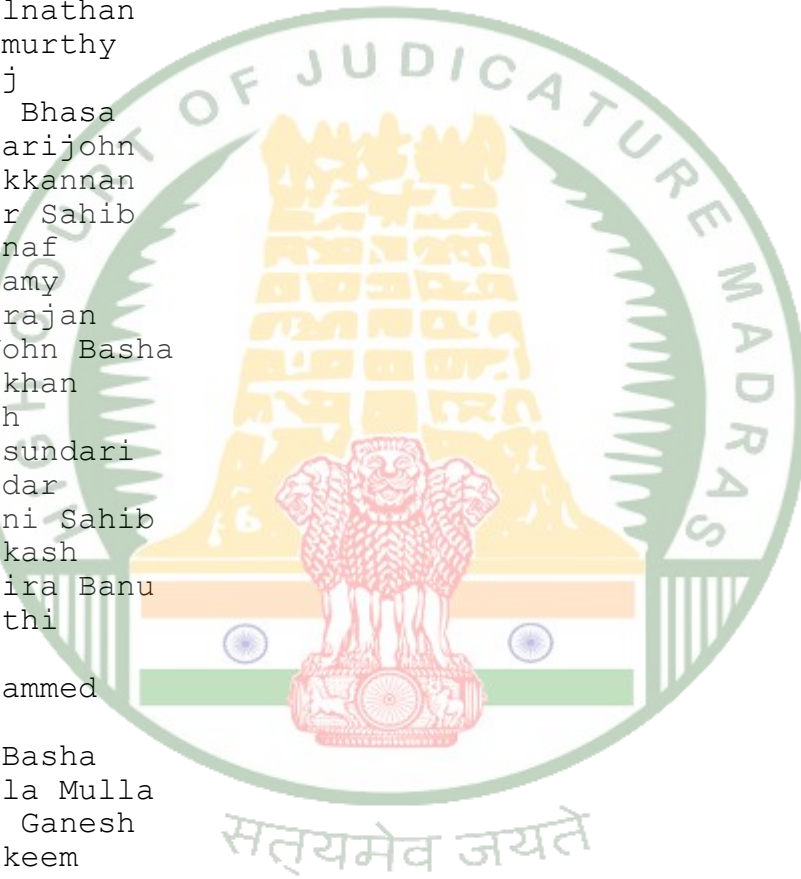
1. R.Subramani
2. A.Sugumaran
3. S.Jagan
4. H.Khader Sheriff
5. J.Palani

6. M.Rajaperumal
7. Khader Sheriff
8. S.Jayaprakash
9. S.Jagadeesan
10. B.Nagarajan
11. V.Karunanidhi
12. G.Palani
13. K.Sasikumar
14. V.Karunanidhi
15. N.Saravanan
16. G.Sankar
17. P.Gnanprakasam
18. S.Senthilnathan
19. N.K.Ramamurthy
20. Thangaraj
21. L.Khader Bhasa
22. A.S.N.Piarijohn
23. V.Kamalakkannan
24. H.Basheer Sahib
25. Abdul Munaf
26. C.Kuppusamy
27. V.Soundarajan
28. A.S.N. John Basha
29. S.Gulsarkhan
30. P.Prakash
31. Smt.Vanasundari
32. Syed Sardar
33. C.Hussaini Sahib
34. Allah Bakash
35. Smt. Munira Banu
36. Pugazhenthil
37. Mujeeb
38. Noor Mohammed
39. K.Wahid
40. Mubarak Basha
41. P.V.Kamala Mulla
42. S.Sankar Ganesh
43. Abdul Rakeem
44. K.Sivakumar
45. S.Abfsal Basha
46. V.Manjula

... Appellants

WA No.761/2018

1. M.Saleemsait
2. L.Noorjahan
3. G.Venkatesan
4. K.Subhani
5. Sathick Basha
6. R.Bane Sahib
7. B.Anwar



WEB COPY

8. N.Koteeswari
9. S.Shabeer Ahamed
10. R.Rizwanullah
11. A.R.Ajees Bhasha
12. L.Allabhagash
13. S.Nazeer Ahamed
14. K.Sathick Basha
15. K.Vahheeth
16. V.Vijayaraghavan
17. N.Gouse Mohammed
18. N.Kumar
19. P.Venkatesan
20. A.Amanullah
21. S.Shabeer Ahamed
22. B.Anwar Sahibu
23. A.Kather Basha
24. Bane Sahib
25. R.A.Nawab Jan
26. D.Anwar Sahib
27. S.Maboobee
28. B.Lalbasha
29. K.Subani
30. R.A.Babu
31. R.Sukumar
32. J.Rajeswari
33. P.K.Jameel Sayab
34. R.Seshachalam
35. A.V.Gows Basha
36. B.Answar Sahibu

... Appellants

WA No.1189/2018

1. J.Jayanthi
2. S.B.Abdul Malik Sahib
3. A.Baskar
4. S.Senthil Nathan
5. M.Palani
6. A.L.Shabeer
7. K.Kumar
8. A.B.Kamal Badsha
9. M.Raja
10. A.Ramesh
11. A.Anandan
12. M.Kasi
13. A.Aslam Basha
14. N.Aslam
15. K.Palani
16. H.Babu
17. B.Lakshmi Ammal
18. G.Venkatesan
19. K.Wakith Basha

... Appellants

WEB COPY

versus

1. The Secretary to Government
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai 9.
2. The Director of Municipal Administration
Municipal Administration Department,
Ezhilagam, Chepauk, Chennai 5.
3. The Regional Director of Municipal Administration
Sarathi Nagar, Kakithaipattarai,
Vellore 12.
4. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
5. The Commissioner,
Arani Municipality,
Thiruvannamalai District, ... Respondents
in all the Appeals

Appeals filed against the orders passed by this Court dated 15.11.2017, 28.11.2017, 15.11.2017 and 12.01.2018 passed in W.P.Nos. 12447, 13102, 12446 of 2017 and 384 of 2018 respectively.

W.P.12447/2017:

Writ Petition filed under Article 226 of the constitution of India praying for the issuance of a Writ of certiorari calling for the records relating to the Impugned Notice bearing Na.Ka. No.1408/2016/A3 dated 3.3.2017 and 26.4.2017 in respect of the petitioners Shop Nos.14B 1 4 5 10 19 21 17 8 27 22 21 5 1b 12 13 11 1A 6 14 29 26 2 31 22 34 & 35 respectively situated at (ground and first floor) New Bus Stand row of shops at Arani on the file of the 5th responseent and quash the same.

W.P.13102/2017:

This Petition is filed under Article 226 of the constitution of India praying issue Writ of certiorari calling for the records relating to the impugned Notice bearing Na.Ka.No. 1408/2016/ A3 dated 03.03.2017 and 26.04.2017 in respect of the petitioners Shops No. 7 5 4 3 15 6 2 89 7 16 180 116 181 186 19 184 7 26 80 79 47 31 200 23 10-A 14 63 39 34 & 35 43 44 65 66 76 59 64 74 84 1B 198 197 18 61 25 5 & 17 situated at Periyar Maligai Back Side of Anna Road Old Market New Market New Bus Stand Old Bus Stand Totally 47 Shops. on the file of the 5th respondent and quash the same.

W.P.12446/2017:

Writ Petitions filed under Article 226 of the constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the Impugned Notice bearing Na.Ka. No.1408/2016/A3 dated 3.3.2017 and 26.4.2017 in respect of the petitioners Shop Nos.1 1B 83 1 1A 2A 16 17 191 192 193 194 196 77 78 86 20 22 25 27 190 7 37 41 42 46 48 49 51 57 58 60 62 3 72 & 30 respectively situated at Market Arani on the file of the 5th responseent and quash the same.

W.P.384/2018:

Writ Petitions filed under Article 226 of the constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the Impugned Notices Na.Ka. No.1408/2016/ A3 dated 03.03.2017 and 26.04.2017 in respect of the petitioners shop Nos.18 and 6 in Old Market shops Shop No.185 in New Market Shops Shop No.31 in Old Market Shops Shop NO.8 in Thai Sei Nala Veduthi Kadai Shop Nos.1 2 & 4 and 3 in New Market Shops Shop No.6 at Bharathiyar Street Shop Nos.9 32 and 33 in New Market Shops Shop No.2 in Stair case Shop in the Market Shop Nos.36 38 52 55 56 95 & 96 and 101 & 102 in New Market Shops i.e. totally 23 shops situated at Arani on the file of the 5th Respondent and quash the same.

For Appellants : Mr. V.Ramamurthy
(in all the Appeals) for Mr.U.Karunakaran

For Respondents : Mr.V.Anandhamoorthy
(in all the Appeals) Additional Govt. Pleader
for R 1 to R4

Mr.K.Anbarasan
for Mr.M.Paul Raj for R5

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in these intra Court Appeals is to the orders of the learned Single Judge dated 15.11.2017, 28.11.2017 and 12.01.2018 made in WP No.12447, 13102, 12446 of 2017 and WP No.384 of 2018. By the orders impugned in these Appeals, the learned Single Judge had dismissed the Writ Petition filed by the petitioners/appellants herein, who are tenants in occupation of various shops belonging to the Municipality.

2. The appellants herein had challenged the notices issued by the Municipality on 10.04.2017, in and by which, the rent

payable by the appellants for the shops in their occupation was revised. The upward revision was nearly 10 times in each case. The main ground of challenge in the Writ Petitions was that the respondents have not followed the instructions issued by the Government in various Government orders that are in force. The grant of lease and fixation of rents for the commercial buildings belonging to the Local Authorities has been plagued by several litigations in this Court as well as the Hon'ble Supreme Court. By G.O.Ms.No.92, Municipal Administration & Water Supplies Department, dated 03.07.2007, the Government had issued several directions which are meant to serve as guidelines to the Local Bodies in the matter of leasing out of commercial properties belonging to them. While allowing the existing lessees to continue for a block period of three years up to total period of 9 years, subject to increase in rent by 15% for every block period of 3 years, after expiry of 9 years period, the rent payable by the occupants is to be revised based on the market value on the date of such revision. The local bodies were required to give preference to the existing tenants in the event they come forward to pay the enhanced rent. In the event of the existing allottees not coming forward to pay the enhanced rent, the local bodies were at liberty to let out the commercial properties by adopting the procedure of public auction.

3. The petitioners in all these Writ Petitions/ appellants herein, are all persons, who are occupying the shops belonging to Arani Municipality. On 30.11.2016 the Commissioner for Municipal Administration, Chepauk, Chennai 5, issued a circular bearing Na.Ka.No.15316/2016/A3 dated 30.11.2016, giving certain directions with reference to fixation of the rent payable for the commercial properties owned by the local bodies concerned. The Municipality in the Writ Petition claimed that the impugned notices had been issued based on the rent fixed by the Committee formed by the Municipality, according to the clarification issued by the Government in its letter dated 30.11.2016. Accepting the said submission of the Municipality, the learned Single Judge had dismissed the Writ Petition.

4. Aggrieved the appellants are before us by way of these intra Court Appeals.

5. We have heard Mr.V.Ramamurthy, learned counsel appearing for Mr.U.Karunakarn, for the appellants and Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the Respondents 1 to 4 and Mr.Mr.K.Anbarasan, learned counsel appearing for Mr.M.Paul Raj, for the 5th respondent.

6. Inasmuch as the counter affidavit filed by the

Municipality before the learned Single Judge did not spell out the procedure adopted by the Committee in fixing the rent for these Commercial properties and the composition of the Committee was also not clearly spelt out in the counter affidavit filed in the Writ Petition, we had required the Commissioner of the 5th respondent Municipality, viz. the Arani Municipality to file a detailed counter affidavit setting out the factual details. Pursuant to our direction, the Commissioner Arani Municipality, has filed a counter affidavit claiming that the rents were fixed by the Committee consisting of the following members Regional Director of Municipal Administration, Vellore as President, Executive Engineer O/o. Regional Director of Municipal Administration, Vellore as Vice President, Commissioner, Arani Municipality as Member Secretary and Engineer, Sanitary Officer, Asst. Engineer-1, Asst. Engineer-2, Manager, Accountant, Town Planning Inspector -1 and Revenue Inspector as its members.

It is only pursuant to the determination made by the said Committee the Municipality had issued the impugned notices to the occupants of commercial premises belonging to the Municipality.

7. Neither in the counter affidavit filed before us nor in the counter affidavit filed in the Writ Petition, the Municipal Commissioner, Arani Municipality has stated that the present occupants were put on notice of the proposed increase and an acknowledgement was obtained. Even though the letter dated 30.11.2016 does not contain a positive direction to the Municipality to hear the present occupants, while determining the rent for the future period by taking into account the present market value and the market conditions, we are of the considered opinion that inasmuch as the Government letter gives priority or a preference to the present occupants to pay the higher rent as determined by the Committee and continue to occupy the property in question, it would be in the interest of justice and fair play that the present occupants should be heard before refixation of the rent by the committee.

8. The learned counsel appearing for the 5th respondent has also no objection for such a course being adopted. The counsel for the appellants also would submit that they are ready to participate in the process of fixation of the higher rent in accordance with G.O.Ms.No.92, Municipal Administration & Water Supplies Department, dated 03.07.2007, read with the Government letter in Na.Ka.No.15316/2016/A3 dated 30.11.2016.

9. In the light of the above consensus reached between the parties, these Writ Appeals will stand allowed, the orders of the learned Single Judge as well as the impugned notices of enhancement of rent will stand set aside. There will be no order

as to costs. Consequently, the connected miscellaneous petitions are closed.

10. We find that the Committee constituted by the Commissioner of the 5th respondent Municipality is unwieldy inasmuch as it contains 11 members and the enhancement of rent also is nearly 10 times the existing rent. The learned counsel appearing for the Municipality would upon instructions submit that the Municipality is prepared to reconstitute the Committee and refix the rent payable by the occupants after giving notice to the occupants. Upon the determination of rent by the Committee after notice to the appellants, who are in occupation of shops belonging to the Municipality, the appellants shall decide as to whether they would continue to occupy by paying the higher rent or to vacate and handover the possession of land.

11. The Committee to be formed by the Commissioner, Arani Municipality, is directed to determine the rent afresh as on 01.07.2016. The process of re-fixation shall be completed at the earliest at any rate within a period of 6 months from the date of receipt of a copy of this order, after giving an opportunity of hearing to the present occupants/appellants before us. Such re-fixation shall take effect from 01.07.2016.

12. It is brought to our notice that the appellants have been paying 50% of the enhanced amount as per the interim orders passed during the pendency of the Writ Petitions. They shall continue to pay the same till such time, the Committee takes a final decision as per our direction supra. If rent fixed by the Committee is lower than the rent that is already paid by the respective allottees the differential amount will be adjusted towards the future payment in the event of the appellants opting to pay the higher rent and continue the possession. If the rent fixed is more than the amount paid the appellants shall pay the balance amount along with arrears in order to enable them to continue in possession.

13. In view of the above, the 5th respondent, the Commissioner of Arani Municipality is directed to form a smaller Committee with lesser number of members in compliance with the directions of the Government contained in the circular dated 30.11.2016. The said Committee shall take up the fixation of the rent for the premises in the occupation of the appellants. The Committee shall also hear the appellants on the question of enhancement and thereafter fix the rent payable for each shop or the Commercial premises in occupation of the appellants. Such fixation of rent shall be made with effect from 01.07.2016. Upon such re-fixation, the appellants may choose either to continue in occupation by paying the rent as fixed by the Committee or to vacate and handover the possession of the

property to the local body.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registra

jv
To

1. The Secretary to Government
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai 9.
2. The Director of Municipal Administration
Municipal Administration Department,
Ezhilagam, Chepauk, Chennai 5.
3. The Regional Director of Municipal Administration
Sarathi Nagar, Kakithaipatturai,
Vellore 12.
4. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
5. The Commissioner,
Arani Municipality,
Thiruvannamalai District,
Thiruvannamalai

+1 CC to Mr.M. Paul Raj, Advocate sr 50203.

+4 Ccs to M/s. Kamachi, Advocate sr 50515,50516,50517,50518.

W.A.No.757 of 2018 & CMP Nos.7176 & 7177 of 2018,
W.A.No.760 of 2018 & CMP Nos.7196 & 7197 of 2018 ,
W.A.No.761 of 2018 & CMP Nos. 7204 & 7205 of 2018
and W.A.No.1189 of 2018 & CMP Nos. 9518 & 9519 of 2018

KAN (CO)
SP (03/09/2018)