

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2018

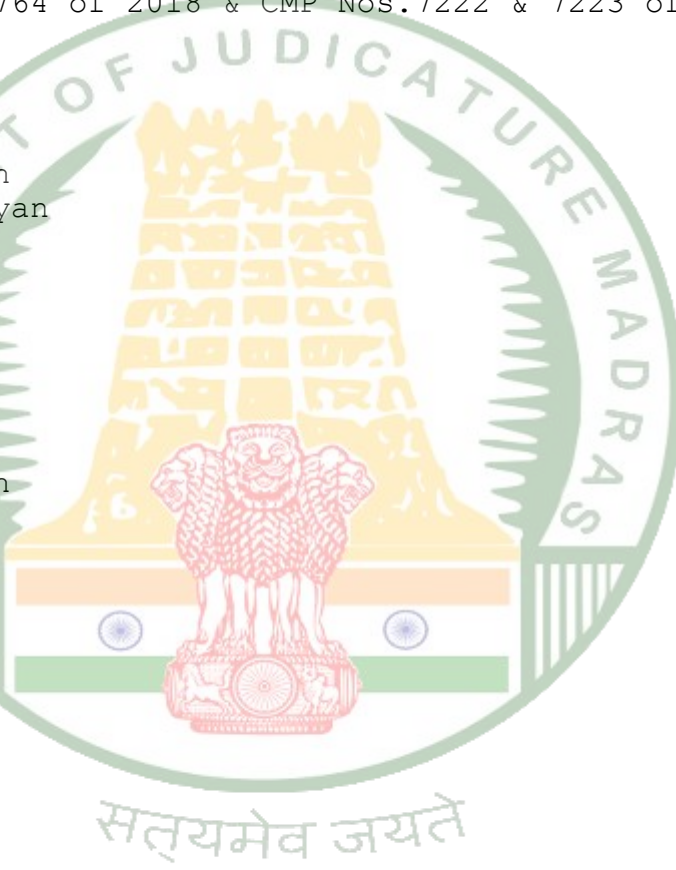
CORAM:

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

W.A.No.762 of 2018 & CMP Nos.7218 & 7219 of 2018,
W.A.No.763 of 2018 & CMP Nos.7220 & 7221 of 2018
and W.A.No.764 of 2018 & CMP Nos.7222 & 7223 of 2018

WA No.762 of 2018

1. T.N.Thirunathan
2. D.Dhananchezhiyan
3. K.A.Subramani
4. P.Ramesh
5. M.P.Babu
6. M.N.Sabapathi
7. M.N.Baskaran
8. P.V.Duraiswami
9. K.Murugan
10. R.K.Janakiraman
11. P.S.Manikandan
12. R.Mohankumar
13. D.Rajendran
14. J.Murali
15. P.S.Shanmugam
16. P.Purusothaman
17. G.Selvi
18. M.Muthuswamy
19. K.Venkatesan
20. R.Kumadhavalli
21. S.G.Jayaraman
22. D.Usha
23. M.N.Jayaraman
24. D.Rajendran
25. D.Ramalingam
26. M.N.Paranthaman



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... Appellants

WA No.763/2018

1. K.Sekar
2. K.Srinivasa Moorthy
3. P.Arumugam

4. A.Devendran
5. P.S.Shanmugam
6. T.Sampath
7. U.Chandran
8. T.Munusamy
9. K.Dimitrao
- 10.N.Selvam
- 11.S.Balaji
- 12.S.R.Kirubanandam
- 13.B.Maheswari
- 14.V.Arulkumar
- 15.V.Lalitha
- 16.J.Shyamsundar
- 17.S.Sulochana
- 18.N.Krishnamoorthy
- 19.K.Senthilkumar
- 20.K.Gunasekaren

... Appellants

WA No.764/2018

1. K.Ramesh Babu
2. M.D.Nagarathinam
3. E.N.Velmurugan
4. D.Rajendran
5. M.N.Paneerselvam
6. R.Krishnamoorthy
7. N.kuppan
8. R.Jaganathan
9. Karima @ Fathima
No.4, Ground Floor
- 10.V.Kubendran
- 11.Karima @ Fathima
No.3, Ground Floor
- 12.R.Devaki
- 13.K.Shagul Hameed
- 14.K.Srinivasamoorthy
- 15.V.Arun Kumar
- 16.S.Anbu
- 17.G.Arul Kumar
- 18.R.Krishnamoorthy
- 19.Chandrammal

सत्यमेव जयते

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... Appellants

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,
Vellore District,
Vellore.
 5. The Commissioner,
Municipal Commissioner,
Gudiyattam Municipality,
Gudiyattam, Vellore District.
- ... Respondents
in all the Appeals

Appeals filed against the order passed by this Court dated 28.11.2017 passed in W.P.Nos.12854, 12853 and 13312 of 2017 respectively.

Prayer in W.P.Nos.12853, 12854 and 13312 of 2017:-

These Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, Calling for the records relating to the Impugned Notices Na.Ka.No.846/2016/A1 dated 27.02.2017, 27.03.2017 and 27.03.2017 and 10.04.2017 in respect of the petitioners shops Nos.3, 9, 2A, 4, 7, 8, 12, 10, 14, 1, 5, 6, 8, 7, 9, 3, 2, 5 and I respectively situated at Santhapettai, Municipality office building, Anna Street, Veerabathran Street, J.K. Street. Government Hospital road, Gudiyattam, (in WP.12853 of 2017) shop Nos.7, 4, 5, 8, 6, 1, 2, 7, 1, 4, 5, 1, 11, 2, 6, 5, 3, 4, 3, 2, 3, 6, 3, 3, 2 & 12 respectively situated at Santhapetti, Thalaiyattam Bazaar, Anna Street, J.K. Street, Veerabathran Street, South Kulakarai Street, Gudiyattam. (in WP.12854 of 2017), Shops No.2, 11, 8, 11, 6, 9, 10, 5, 4, 10, 3, 2, 9, 4, 6, 1, 1, 10 & 10 i.e. totally 19 shops at Santhapetti, Veerabathran Street, South Kulakari Street, Old Shops Around Municipal Buildings, Government Hospital Street at Gudiyattam, (in WP.13312 of 2017) shops Nos.2, 5, 4, 9, 4, 12 & 1 respectively situated at Santhapettai, Veerabathiran Street, Thazhaiatham Bazaar Street, Gudiyattam, (in WP.No.13105 of 2017), on the file of the 5th respondent and quash the same.

For Appellants : Mr. V.Ramamurthy
(in all the Appeals) for Ms.D.Kamachi

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

Mr.P.S.Sivashanmugasundaram
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 order of the learned Single Judge dated 28.11.2017 made in WP No.12853 of 2017 etc batch, these appeals are directed against WP Nos. 12854, 12853 and 13312 of 2017. By the common order impugned in these Appeals, the learned Single Judge had dismissed the Writ Petitions 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 between 300 to 600% 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 Authority 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 for 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.

3. 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. The petitioners in all these Writ Petitions/ appellants herein, are all persons, who are occupying the shops belonging to Gudiyattam Municipality, on 30.11.2016 the Commissioner for Municipality 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. Inasmuch as the counter affidavit filed by the Municipality before the learned Single Judge did not spell out the process 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 Gudiyattam Municipality to file a detailed counter affidavit setting out the factual details. Pursuant to our direction, the Commissioner Gudiyattam Municipality, has filed a counter affidavit claiming that the rents were fixed by the Committee consisting of the Regional Director of Municipal Administration as Chairman, the Commissioner of the Municipality as a convenor, the Revenue Inspector, Town Planning Inspector, Manager and the Municipal Engineer as its members. The report of the said Committee has been accepted by the Municipality and it is only thereafter the impugned notices were issued to the respective allottees informing them of the upward revision of rents.

6. We have heard Mr.V.Ramamurthy, learned counsel appearing for Mrs.D.Kamatchi, for the appellants and Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the Respondents 1 to 4 and Mr.P.S.Sivashanmugasundaram, learned counsel appearing for the 5th respondent.

7. Neither in the counter affidavit filed before us nor in the counter affidavit filed in the Writ Petition, the Municipal Commissioner, Gudiyattam 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 order 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. The Committee formed by the Commissioner, Gudiyattam Municipality, consisting of Regional Director Municipal Administration as a Chairman, the Commissioner Municipality as a Convenor, Revenue Inspector, Town Planning Inspector, Manager, and Municipal Engineer as its members is directed to determine the rent afresh as on 01.07.2016. The process of refixation 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. 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.

11. 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 in 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.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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, Chempauk, Chennai 5.
3. The Regional Director of Municipal Administration
Sarathi Nagar, Kakithaipatturai,
Vellore 12.
4. The District Collector,
Vellore District,
Vellore.
5. The Commissioner,
Municipal Commissioner,
Gudiyattam Municipality,
Gudiyattam, Vellore District.

+1cc to Mr.P.S.Sivashanmugasundaram, Advocate, S.R.No.50870
+3ccs to Ms.D.Kamachi, Advocate, S.R.No.50512 TO 50514

W.A.No.762 of 2018 & CMP Nos.7218 & 7219 of 2018,
W.A.No.763 of 2018 & CMP Nos.7220 & 7221 of 2018
and W.A.No.764 of 2018 & CMP Nos.7222 & 7223 of 2018

KAN(CO)
CS/29/08/18