IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARYANAN

AND

THE HONOURABLE MR. JUSTICE S.RAMATHILAGAM

W.A.No.896 of 2018
&
C.M.P.No.7825 of 2018

1.A.Elango
2.P.Dhanam
3.K.Babu
4.Sakthivel
5.S.Megala .. Appellants/1st Petitioner, petitioners 3 to 6

Versus

1.The State of Tamil Nadu
Rep. By its Secretary to Government
Municipal Administration and Water Supply Department
Fort St. George
Chennai - 600 009

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

3.The Regional Director of Municipal Administration
Vellore

4.The Commissioner
Tiruvannamalai Municipality
Tiruvannamali

5. A.Raghu .. Respondents/Respondents, 2nd Petitioner

Writ Appeal filed under Clause 15 of the Letter Patent to set aside the order dated 12.01.2018 made in W.P.No.759 of 2018.

prayer in W.P.No.759 of 2018

The Petition is filed Under Article 226 of the Constitution of India, seeking for a 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 communication dated 22.06.2017 in Na.Ka.No.A1/ 4839/ 2016 as being illegal and unreasonable.

For Appellant : Mr.T.Sai Krishnan

For Respondents : Mr.R.Udhayakumar

JUDGMENT

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

The appellants, who are the writ petitioners, aggrieved by the dismissal of the writ petition vide order dated 12.01.2018, has filed this writ appeal.

2. The petitioners in the affidavit filed in support of the writ petition would claim that they are the lessees of the shop belonging to the 4^{th} respondent Municipality and plinth area of the shops are admeasuring 80 sq.ft and all of them are paying rent of Rs.1602/-, Rs.1329/- and Rs.1739/- respectively. However, the fourth respondent, without rhyme or reason and without providing any opportunity whatsoever, increased the lease amount many fold to the tune of Rs.10,067/- and Rs.4157/- respectively vide impugned communication dated 22.01.2017 and they made challenge to the impugned notice by filing writ petition and the learned single Judge, after taking note of the earlier decisions of this Court including the decisions in P.N.Chinnasamy and 13 another Vs. The Assistant Director of Town Panchayat, Coimbatore District (2010 1 CTC 584), P.Muthysamy Vs. State of Tamil Nadu (2014 5 MLJ 129), C.Vinoba Vs. The Commissioner, Palladam Municipality (2015 3 CTC 170) and P.P.M.S.C.L.V.Association Vs. Commissioner (2016 3 MLJ 698 as well as unreported judgment in W.A (MD) 546 of 2010 dated 19.08.2010, found that the challenge made to the impugned communication of the fourth respondent is unsustainable and accordingly dismissed the writ petition and hence, the present writ appeal.

3. The learned counsel appearing for the appellants /writ petitioners has invited the attention of this Court to the typed-set of documents and would submit that the petitioners are in possession of meager extent of land and eking out their

livelihood by carrying on business in a small scale and all of a sudden, without affording any opportunity whatsoever, the lease amount has been increased many fold and they are not economically sound to comply with the demand made by the fourth respondent in the impugned communication and further, the learned single, without properly appreciating the materials and facts and circumstances, had dismissed the writ petition erroneously and prays for interference.

4. Per contra, Mr.R.Udhayakumar, learned standing counsel, who accepts notice on behalf of the official respondents, would submit that the petitioners cannot claim to be lessees and they are only licencees and they availed the benevolence and benefit of G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 and that the lease amount has been used as an augment of the revenue and though an option was given to the appellants/writ petitioners to pay the increased licence amount, they did not pay the same and as such, the shops in question are going to be auctioned through public auction and it cannot be found fault with and prays for dismissal of this writ appeal.

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

6.This Court, on an earlier occasion, vide common judgment dated 12.04.2018 in W.A.No.660 to 664 of 2018, pertains to shop belonging to Tirpattur Municipality, had rejected the similar challenge. It is relevant to extract the following paragraphs of the judgment rendered by a Division Bench of this Court:

> "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 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)."

7. Admittedly, the appellants/writ petitioners had availed the benevolence and benefit of the above said Government Order and the fourth respondent Municipality has taken note of the public interest and in order to augment the Revenue, they have increased the lease amount and also afforded an opportunity to

the appellants to pay the same. However, the appellants did not pay the same alleging that the fourth respondent without rhyme or reason and without providing any opportunity whatsoever, increased the lease amount and they are not economically sound to pay the said amount.

8. It is a well settled position of law that the licencees cannot claim perpetual possession of the shops in question and to augment the revenue of the local bodies, public auction will be resorted to and this would in turn benefit the local body. Therefore, this Court does not find fault with the reasons assigned by the learned single Judge for dismissing the writ petition. However, if the petitioners are so advised, they are at liberty to submit a detailed representation to the fourth respondent ventilating their grievance especially with regard to the increase of the licence amount and they may do so within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the fourth respondent is directed to consider the said representation and give a disposal in accordance with law within a further period of three weeks thereafter and communicate the decision taken to the appellants/writ petitioners.

The writ appeal is dismissed subject to the above observation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-ii)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Secretary to Government
Municipal Administration and Water Supply Department
Fort St. George
Chennai - 600 009

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Ezhilagam Annexe- 6th Floor
Chepauk, Chennai - 600 005

3.The Regional Director of Municipal Administration
Vellore

4.The Commissioner
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Tiruvannamali

+1cc to Mr.T.SAIKRISHNAN, Advocate, S.R.No. 34643
+1cc to the Government Pleader, S.R.No. 34740

W.A.No.896 of 2018 &
C.M.P.No.7825 of 2018

NMI(CO)
TR(14/06/2018)