

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2018

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THE HONOURABLE MR.JUSTICE R. MAHADEVAN

W.P.No.7955 of 2010 and

M.P.No.1 of 2010

M. Natarajan

... Petitioner

Vs.

The Commissioner,
Tiruvarur Municipality,
Tiruvarur.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondent or its men or agent from in any way interfering with the peaceful possession and enjoyment of Shop Nos.1 to 4 in New Bus Stand, Tiruvarur Town, Tiruvarur by the petitioner as the Lessee except in accordance with law.

For Petitioner : Mr.M.K. Subramanian
For Mr. K. Sukumaran

For Respondent : Mr.J. Ramesh
Additional Government Pleader

O R D E R

Heard Mr.M.K.Subramanian, learned counsel representing Mr.K.Sukumaran, counsel for the petitioner and Mr.J.Ramesh, learned Additional Government Pleader appearing for the respondent and also perused the documents placed before this Court.

2.According to the petitioner, he has been in possession and enjoyment of Shop Nos.1 to 4 in the New Bus Stand, Tiruvarur Town, as a lessee. The lease is renewed once in three years and the renewal is subject to payment of the enhanced lease amount. Till today, he has been paying the enhanced rent, without any protest. In the year 2003, he carried out the renovation and repair works of the shops in question, after getting necessary permission from the respondent. While so, the petitioner came to know that the respondent was taking steps to dispossess the petitioner from the shops in question, at the instigation of some third parties. Hence, he has come up with the present writ petition, for a mandamus, forbearing the respondent from in any way interfering with his peaceful possession and enjoyment of the Shops in question, except under due process of law.

3.When the matter was taken up for consideration, the learned counsel for the petitioner has drawn the attention of this Court to the receipts for payment of the rent in respect

of the shops in question, which have been produced in the form of additional typed set of papers and submitted that the respondent, as per G.O.Ms.No.92 Municipal Administration and Water Supply Department, dated 03.07.2007, has revised the rent for every time, while making renewal of the lease in respect of the shops in question, which is drastically exorbitant, that too, without complying with the principles of natural justice. The learned counsel ultimately, submitted that on earlier occasion, this Court, while dealing with the similar issue of enhancement of rent in terms of G.O.Ms.No.92 dated 03.07.2007, had passed a detailed order in M.Muthusamy and others v. The Commissioner, Palani Municipality, Palani, Dindigul District [W.P(MD)Nos.17966 to 17968 of 2017] decided on 21.09.2017, the relevant portion of which, for better appreciation, is extracted hereunder:

7. It is no doubt true and there is no second opinion that there is no automatic extension of lease and it cannot be renewed on its every expiry, but at the same time, it is to be remembered that any decision in respect of enhancement of rent should be only after following due process of law. In the given case on hand, the principles of *audi alteram partem*, has not been followed. Though the State is under obligation to secure the best market price available in a market economy, it should be fair and reasonable and revision should be only after proper notice / communication to the lease holders and after receipt of their objections and the unexpected hike on one fine morning is unheard of under law, that too with retrospective effect.

8. It was also brought to the attention of this Court that the State has issued a circular dated 02.02.2009, by which suitable instructions have been issued to the authorities to give an opportunity to the tenants before the rent is finally fixed, based on which, a Hon'ble Division Bench of this Court has passed an order dated 06.02.2009 in the case of Arulmigu Angala Parameswari and Kasivishwanathaswami Temple Adimanaiveal House Owners Association, reported in 2009 (6) CTC 512, vide which, the authorities were directed to fix or refix the lease rent in accordance with law after notice to the respective tenants.

9. In view of the foregoing discussions and also taking into account the proceedings issued by the State dated 02.02.2009, the following directions are issued in this writ

petition:

i) the respondent Municipality is directed to provide a copy of the report of the Committee as well as the calculation sheet to the petitioners forthwith, if not already given;

ii) This Court, normally while granting interim orders, would uniformly direct the petitioners / lease holders to deposit 50% of the enhanced rent immediately and in view of final disposal of all these writ petitions, the petitioners shall at the first instance, deposit 50% of the enhanced amount, if not already remitted and thereafter file their objections supported by whatever documents they have in their possession within a period of two weeks from the date of receipt of a copy of this order to the concerned authorities; and

iii) the authorities, upon satisfaction of the remittance of the 50% of the amount by the petitioners, on scrutiny of the documents produced by the petitioners and upon considering their objections, shall fix or refix the lease rent in accordance with law, within a period of two weeks thereafter."

Hence, the learned counsel sought for a similar relief to the petitioner, for which, the learned Additional Government Pleader appearing for the respondent, has no serious objection.

4. Following the aforesaid order and also considering the fact that the said order is squarely applicable to the facts of the present case, this writ petition is disposed of, with the following directions:

i) the respondent Municipality is directed to provide a copy of the report of the Committee as well as the calculation sheet to the petitioner forthwith, if not already given;

ii) This Court, normally while granting interim orders, would uniformly direct the petitioner/lease holder to deposit 50% of the enhanced rent immediately and in view of final disposal of this writ petition, the petitioner shall at the first instance, deposit 50% of the enhanced amount with arrears, if not already remitted and thereafter file his objections supported by whatever documents he is in possession, within a period of two weeks from the date of receipt of a copy of this order to the concerned authorities; and

iii) the authorities, upon satisfaction of the remittance of the 50% of the amount by the petitioner, on scrutiny of the documents produced by the petitioner and upon considering his objections, shall fix or refix the lease rent in accordance with law, within a period of two weeks thereafter.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msm/rk

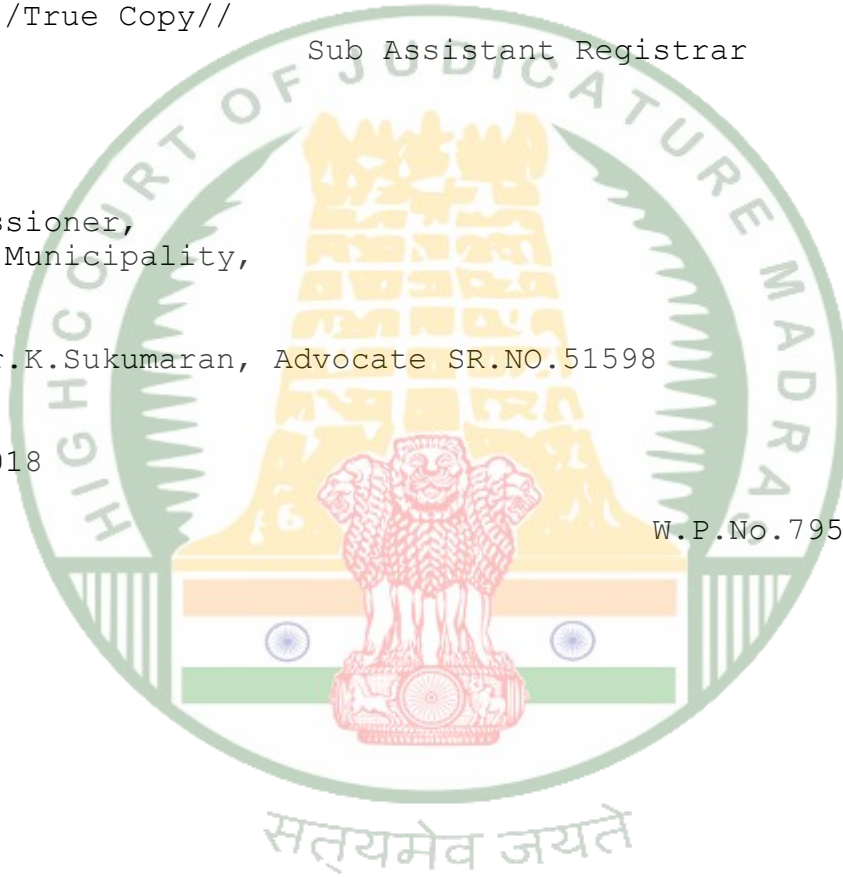
To

The Commissioner,
Tiruvarur Municipality,
Tiruvarur.

+1cc to Mr.K.Sukumaran, Advocate SR.NO.51598

PA(CO)
EU:20.8.2018

W.P.No.7955 of 2010



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