

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04/07/2018

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.Nos.13022 to 13026, 13048 to 13066  
and 13142 to 13151 of 2018  
and

W.M.P.Nos.15301 to 15305, 15329 to 15347  
and 15451 to 15460 of 2018

S.LINGAMOORTHY ... PETITIONER in WP No.13022 of 2018  
M.SHANKARAN ... PETITIONER in WP No.13023 of 2018  
M.SHANMUGAM ... PETITIONER in WP No.13024 of 2018  
M.SHANMUGAM ... PETITIONER in WP No.13025 of 2018  
A.MADHAVAN ... PETITIONER in WP No.13026 of 2018  
V.RAMAN ... PETITIONER in WP No.13048 of 2018  
C.THIRUMALAI ... PETITIONER in WP No.13049 of 2018  
K.VISWANATHAN ... PETITIONER in WP No.13050 of 2018  
D.SARASWATHY ... PETITIONER in WP No.13051 of 2018  
S.DEVAGI ... PETITIONER in WP No.13052 of 2018  
M.NAGAPPAN ... PETITIONER in WP No.13053 of 2018  
D.BABU ... PETITIONER in WP No.13054 of 2018  
M.SUBRAMANI ... PETITIONER in WP No.13055 of 2018  
M.VELAYUDHAM ... PETITIONER in WP No.13056 of 2018  
R.VELU ... PETITIONER in WP No.13057 of 2018  
S.SELVAM ... PETITIONER in WP No.13058 of 2018  
K.SIVARAJ ... PETITIONER in WP No.13059 of 2018  
T.SAHADEVAN ... PETITIONER in WP No.13060 of 2018

J.MAGESWARI ... PETITIONER in WP No.13061 of 2018  
N.DURAIMURUGAN ... PETITIONER in WP No.13062 of 2018  
J.TAMILVANAN ... PETITIONER in WP No.13063 of 2018  
J.MALAR ... PETITIONER in WP No.13064 of 2018  
TMT.SARASWATHY ... PETITIONER in WP No.13065 of 2018  
M.SUBRAMANI ... PETITIONER in WP No.13066 of 2018  
K.RAJ ... PETITIONER in WP No.13142 of 2018  
S.SEZHIYAN ... PETITIONER in WP No.13143 of 2018  
S.PURUSHOTHAMAN ... PETITIONER in WP No.13144 of 2018  
B.VIJAYAN ... PETITIONER in WP No.13145 of 2018  
M.VARADHAN ... PETITIONER in WP No.13146 of 2018  
P.RANI ... PETITIONER in WP No.13147 of 2018  
T.KANNIAPPAN ... PETITIONER in WP No.13148 of 2018  
S.JAYAKUMAR ... PETITIONER in WP No.13149 of 2018  
M.K.LOGANATHAN ... PETITIONER in WP No.13150 of 2018  
E.AJASS ... PETITIONER in WP No.13151 of 2018

Versus

1. The Government of Tamilnadu,  
Represented by its Secretary,  
Municipal Administration and  
Water Supply Department,  
Fort St.George, Chennai - 600 009.
2. The Director of Municipal Administration,  
Municipal Administration Department,  
Ezhilagam, Chepauk,  
Chennai - 600 005.
3. The Regional Director of Municipal Administration,  
Sarathi Nagar, Kagitha Pattarai,  
Vellore - 12.

4. The District Collector,  
Vellore District,  
Vellore.
5. The Commissioner,  
Ranipet Municipality,  
Vellore District, Vellore.

.. Respondents  
in all Writ Petitions

Prayer in W.P.No.13022 to 13026 of 2018;  
13048 to 13066 of 2018 and  
WP.13142 to 13151 of 2018:-

These Writ Petitions is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records pertaining to the impugned notice vide Na.Ka.No.3807/2016/ A3, dated 03.03.2017 and 29.05.2017 respectively of the 5<sup>th</sup> respondent and quash the same.

For Petitioner : Mr.Subbiah  
Senior counsel for  
Mrs.G.Sumitra  
(in W.P.No.13022 of 2018 to 13026/18)

Mr.Subbiah, Senior counsel for  
W.M.Abdul Majeed in  
WP.No.13048 to 13066 of 2018 &  
WP.13142 to 13151 of 2018

For Respondents : Mr.V.Shanmuga Sundar  
Special Government Pleader  
for R1 to R4 all WPs.

Mr.V.Jayaprakash Narayanan for R5  
all WPs

सत्यमेव जयते  
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COMMON ORDER

Heard Mr.Subbiah, learned Senior Counsel appearing for the petitioners, Mr.V.Shanmuga Sundar, learned Special Government Pleader for the respondents 1 to 4 and Mr.V.Jayaprakash Narayanan, learned counsel appearing for the 5<sup>th</sup> respondent and perused the materials available on record.

2. These writ petitions have been filed challenging the notices issued by the Ranipet Municipality and revision of licence fee and consequently direct the respondents to renew the lease period and permit the petitioners to continue as lessees of their Shops situated Ranipet Municipal Limits, Vellore District.

3. It is the case of the petitioners that they are lessees of the shops situated at Ranipet Municipal Limits, Vellore District and they have been in occupation of the shops for several years on lease/rent. According to the petitioners, demanding of enhanced rent is arbitrary and licence fee could be increased by 15% as per G.O.Ms.No.92, Municipal Administration Department, dated 03.07.2007.

4. The learned Senior Counsel for the petitioners submitted that the petitioners are lessees of the shops constructed by the respondent-Municipality and as per G.O.Ms.No.92, Municipal Administration Department, dated 03.07.2007, they are entitled for renewal of lease initially for a period of nine years and on payment of 15% of enhanced fee, once in three years and thereafter, the Municipality has to re-fix the licence fee based on the market value and shall make an offer to the tenants to pay the new rent. In the event, the lessees refused to pay the revised rent, then the shops could be brought for public auction.

5. It is the contention of the learned Senior Counsel for the petitioners that the demand has been made more than 200 times, though the petitioners have not challenged the authority of the respondents to revise the license fee, however, they are entitled to know on what basis the rent has been raised. It is further submitted that there are possibilities of committing mistake while calculating the figure and for that reason, the petitioners are entitled to see the break-up figure.

6. The Commissioner of Ranipet Municipality has filed a counter affidavit stating that the petitioners have been in possession of the shops for long number of years and the licence in respect of their shops have to be revised and enhanced, as per the G.O.Ms.No.92, Municipal Administration Department, dated 03.07.2007 and hence a committee constituted by the respondents for this purpose has surveyed and scanned the prevailing market value of the property and fixed the lease rent for the shops.

7. It is further contended in the counter that the respondent Municipality has to augment the income and strengthen their resourcefulness to render service to the public at large. Hence, the Municipality has no other option except to enhance the licence fee in accordance with the guidelines fixed by the

Government. This Court rejected the averments of the similarly placed persons, challenging the very same notification issued by the respondents in W.P.Nos.434 of 2018, etc.

8. This Court, in the following decisions has consistently taken the view that the licensees of the Panchayat / Municipal Shops have no vested right to seek renewal of licence in perpetuity and the shops/buildings of the Local Bodies to be put in public auction with an object to augment more Revenue and also to provide opportunity to the general public to participate in the auction. The demand of increased licence fee is only an offer and it is up to the Licensees either to accept or vacate the shops to enable the local bodies to bring them for public auction.

9. The Division Bench of this Court in A.Sathar Vs. The District Collector, Coimbatore and Another (AIR 1998 MAD 217) has held as follows:-

"...We are of the view that the appellant has no vested right to continue in occupation of the premises in question belong to the second respondent/panchayat which is entitled to lease out the properties owned by it by public auction. As rightly pointed by the learned single judge, properties owned by the Municipality are also a source of revenue to the Municipality and the interest of the Municipality has to be balanced as against the interest of the shop owner lessee. It cannot be disputed that the lessees may also be entitled to a fair terms and the Government, had, therefore, allowed the lessees to continue their occupation for a second term. As already seen the appellant was given extension of lease period from time to time from the year 1988 to 31.02.1997 on terms. Even the last lease was extended for three years by enhancing the rent by 30 per cent. Under these circumstances, it is not fair on the part of the appellant to ask for the extension of the lease for further term of three years from 01.04.1997 to 31.03.2000 on an enhancement of 15 per cent of the previous rent. The extension granted earlier by the Panchayat, to the appellant would not meant that the appellant is entitled to continue in possession of the premises in question for ever by paying ridiculously low rent. We are of the view

that the extension of the lease to the appellant is against the interest of the Panchayat. As already noticed the rental income from the properties owned by the Panchayat is one of the sources of income of the Panchayat. Therefore, the interest of the Panchayat cannot be jeopardized by permitting the appellant to continue in possession of the premises in question at the enhanced rate of 15 per cent as prayed for. There are absolutely no merits in this writ appeal and the same is dismissed."

10. In the case of O.A.Nowshad Farooq vs. The Commissioner, Tiruvelveli Municipal Corporation, Tirunelveli and another (W.P (MD)No.3535 of 2009, dated 30.04.2009), reported in Indiakannon.org/doc/1721899, it has been held that the petitioner is not entitled for an automatic renewal of his licence on the basis of the Government Order in G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 as well as the Government Order in G.O.Ms.No.181, Municipal Administration and Water Supply Department, dated 19.09.2008. It is also observed that the Government Order is not applicable to the existing licensees and thereby, licence would be renewed for a further period and there is no such condition incorporated in the Government Order.

11. In WA(MD)No.546 of 2010, dated 19.08.2010 (P.Ravi vs. 1.Madurai City Municipal Corporation Council, represented by its Hon'ble Mayor, Madurai City Municipal Corporation, Tallakulam, Madurai and another, the Division Bench of this Court has observed in para 6 as follows:-

"6.In the award of public largesse, particularly involving the revenue, the municipal Corporation should have the paramount interest of augmenting the revenue. .... We may also point out that even in case of the Government Orders granting such benefit, those Government Orders should be considered and interpreted to be of advantage of the Corporation and not to the licensee. This again is on the principle of augmenting the revenue to the Corporation. As the appellant had not satisfied this Court as to his entitlement for the renewal of licence for a further period of two years, though he has relied upon the Government Order dated 25.5.2009."

12. Similar issue came up in the case of M.Periya Samy vs. The Assistant Director of Town Panchayats, Madurai, Madurai

District and The Executive Officer, T.Kallupatti Town Panchayat, T.Kallupatti, Madurai reported in [Indiankannon.org/doc/21280938](http://Indiankannon.org/doc/21280938), wherein, the shops situated in T.Kallupatti Town Panchayat Bus Stand Commercial Complex were auctioned in the year 2012 for a period three years and after expiry of the licence period, the Panchayat issued a notification to bring the shops for public auction. The existing licensee questioned the auction on the ground that he is entitled for extension of licence period as per G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007. The Division Bench of this Court held that the licence period is only for three years and after expiry of the same, it is for the local authority, to decide, as to whether extension of the lease has to be made, by upward revision of lease amount, as per the terms and conditions of the Government Order or to go for public auction, to augment more revenue, holding so rejected the case of the licensees.

13. Another Division Bench of this Court, in the case of P.Muthusamy Vs. State of Tamil Nadu reported in (2014) 5 MLJ 129, has held as follows:-

"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 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."

The above order of the Division Bench was followed by a learned Single Judge in the case of C.Vinoba Vs. The Commissioner, Palladam Municipality (2015(3) CTC 170).

14. In (2016)3 MLJ 698 in the case of P.P.M.S.C.L.W.Assn. vs. Commissioner, after considering a number of decisions of this court as well as the Supreme court, in para 26, held as follows:-

"26. There is no two option of a vital fact that the 2<sup>nd</sup> respondent/Municipality is the competent/appropriate authority to determine what rent a particular shop of the Panchayat may fetch and it is well settled principle in Law that a lease cannot be extended much to the detriment of panchayat and in any event, the panchayat cannot be a loser on any score."

15. The Division Bench, in the unreported judgment in W.A.No.616 of 2018, dated 23.04.2018, while considering the similar argument that the revision of license fee has been enhanced arbitrarily and without affording an opportunity to the licensees, repelled the contention.

16. Keeping in view, the principles laid down in the above referred decisions, I do not find force in the submission of the learned Senior Counsel for the petitioners. The revision of licence fee is worked out based on the market value of the property by the competent committee and it was only an offer and hence the grievance of the petitioners, it is an arbitrary exercise of power of the respondents cannot be countenanced.

17. In that view, it is up to the petitioners to accept the offer given by the respondents, within a period of two weeks and shall pay arrears, if any, within a period of two months. In case the petitioners do not give consent for the payment of the enhanced amount within two weeks, the respondents are directed to take action for public auction forthwith. This Court holds that once the auction notification is published, the petitioners are deemed to have vacated the tenement and the respondents can enter the place with the help of police force, if required.

18. For the foregoing reasons, I find no merit in these writ petitions. Accordingly, they are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Assistant Registrar (CS II)  
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Sub Assistant Registrar

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To

- 1.The Secretary,  
The Government of Tamilnadu,  
Municipal Administration and  
Water Supply Department,  
Fort St.George, Chennai - 600 009.
  - 2.The Director of Municipal Administration,  
Municipal Administration Department,  
Ezhilagam, Chepauk,  
Chennai - 600 005.
  - 3.The Regional Director of Municipal Administration,  
Sarathi Nagar,  
Kagitha Pattarai,  
Vellore - 12.
  - 4.The District Collector,  
Vellore District,  
Vellore.
  - 5.The Commissioner,  
Ranipet Municipality,  
Vellore District,  
Vellore.
- +2ccs to Mr.V.Jayaprakash Narayanan, Advocate, S.R.No.43526  
+5ccs to Mrs.G.Sumitra, Advocate, S.R.No.43562  
+30ccs to W.M.Abdul Majeed, Advocate, S.R.No.43561
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CS/07/08/2018

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