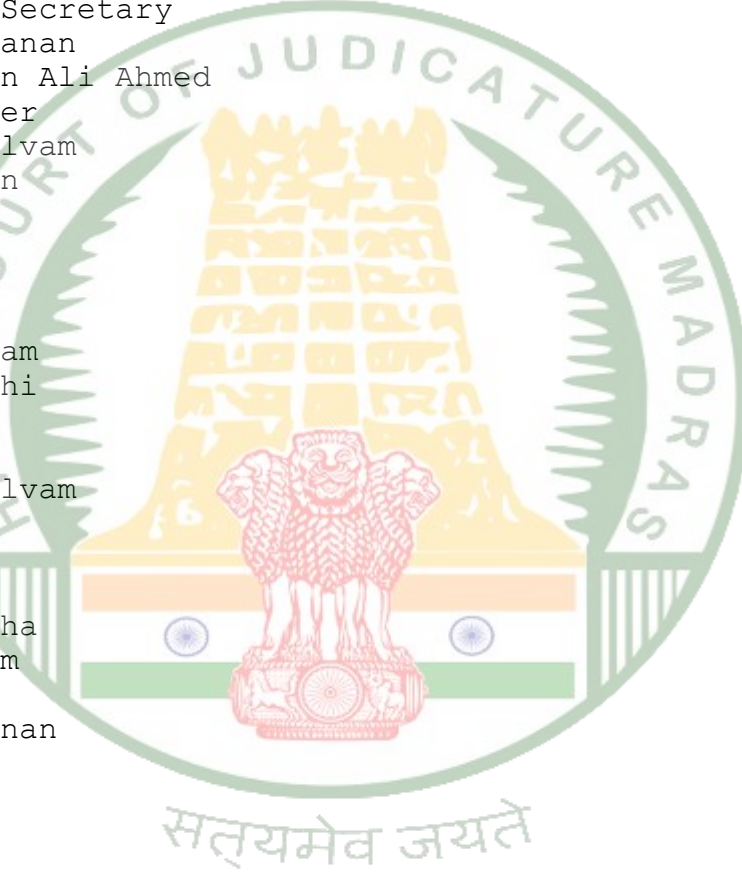


IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.09.2018
CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 19584 of 2017
and
W.M.P.s 21146 to 21148 of 2017

1. T.Raji
2. Thalivar, Viyabarigal Sangam,
rep. by its Secretary
Mr.C.S.Narayanan
3. A.H.Fakrudeen Ali Ahmed
4. A.Abdul Jaffer
5. M.D.Paneerselvam
6. J.Gunasekaran
7. P.Vijayaraj
8. R.Gowtham
9. D.Natarajan
10. P.Bakiyaraj
11. R.Rajanayagam
12. R.Poongulazhi
13. N.Sivagamy
14. M.Ramajayam
15. R.Paneer Selvam
16. C.Shankar
17. D.Shanmugam
18. S.Anandan
19. B.Ahmed Basha
20. V.Mahalingam
21. C.Kumar
22. B.Kamalakannan
23. N.Gandhi
24. R.Rajesh
25. S.Palani
26. S.Gnanavel
27. E.Natarajan
28. S.Elango
29. K.Rajamoorthy
30. V.Senthil Kumar
31. S.Senthil



WEB COPY

... Petitioners

Vs

1. The Secretary to Government,
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, Kakithapattarai,
Vellore-12.
4. The District Collector,
Thiruvannamalai District, Thiruvannamalai.
5. The Commissioner, Arani Municipality,
Thiruvannamalai District,
Thiruvannamalai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue 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 No.185 in Old Market, Shop No.5A in Old Market Building, Shop No.10 in Upstairs of Old Market Building and Shop Nos.16 & 22 in Old Market, Shop No.23, Upstairs in Old Market, Shop No.23 in Old market, Shop No.25 in Old Market Building, Shop No.43 in Old Market, Shop No.2 in New Bus Stand Telephone Booth, Shop Nos.10, 12, 13 & 15 in New Bus stand, Shop No.1 in Vandimedu Bunk Shops, Shop Nos.2,2,2 & 3 in Vandimedu Shops, Shop Nos.21, 25,25,26,29 & 30 in Periyar Malligai upstairs and Shop Nos.31, 32, 33 & 34 in Periyar Malligai, Shop No.37 in Periyar Malligai, First Floor, Shop No.39 & 28 in Periyar Malligai Upstairs Shops i.e. totally 31 shops situated at Arani, on the file of 5th respondent and quash the same.

For Petitioners : M/s.Kamachi D
For Respondents : Mr.A.N.Thambidurai,
Special Govt. Pleader
for Respondents 1 to 4
Mr.Paulraj for 5th Respondent

WEB COPY O R D E R

This Writ Petition has been filed challenging the notice issued by the 5th respondent Municipality fixing the lease amount in pursuant to the G.O. Ms.No.92 (Municipal Administration and Water Supply Department) dated 03.07.2007.

2. The grievance of the petitioners is that the petitioners are lessees under the 5th respondent Municipality in respect of various shops belong to the 5th respondent, and they are regularly paying the lease amount to the 5th respondent. Now,

suddenly, the 5th respondent has issued the impugned notices revising the lease amount purported to have been revised as per G.O.Ms.No.92 dated 03.07.2007 and enhanced the rent without conducting any enquiry and without hearing the petitioners. The contention of the petitioners is that now the revised rent fixed by the 5th respondent is very exorbitant and highly disproportionate. Hence, challenging the impugned notices, the present Writ Petition has been filed.

3. Miss.D.Kamachi, learned counsel appearing for the petitioners has contended that earlier, the lease amount has been revised by a Committee constituted by the 5th respondent Municipality and before revising the rent, no notice has been issued to the petitioners and no enquiry was conducted. She has further submitted that the Division Bench of this Court in respect of very same Municipality had passed an order dated 25.07.2018 in W.A.Nos.1806 of 2017 etc. directing the 5th respondent to form a Committee for revising the rent and to determine the rent afresh after giving opportunity to the occupants, and she has also produced the copy of the order before this Court.

4. The learned counsel appearing for the 5th respondent Municipality would submit that before revising the rent, a Committee has been constituted as per G.O.Ms.No.92 dated 03.07.2007, and the Committee after considering the entire materials fixed the lease amount, which is not exorbitant, and the petitioners cannot now challenge the revision of lease amount. He has also further stated that before revising the rent, no notice has been given to the petitioners.

5. The main grievance of the petitioners is that before revising the rent, the Committee has not given opportunity to the petitioners. In a similar circumstances, in respect of very same Municipality, a Division Bench of this Court has held that before revising the rent, the opportunity needs to be given to the existing lessees. The relevant portion of the order reads as follows :-

"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 in as much 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.

9. In the light of the above consensus reached between the parties, these Writ Appeals 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 the committee constituted by the Commissioner of the 5th respondent Municipality is unwieldy in as much 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 send 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 hand over the possession of land.

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 fixed 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 refixation, the appellants may choose either to continue in occupation by paying the rent as fixed by the Committee or to vacate and hand over the possession of the property to the local body."

6. In the said circumstances, in view of the order passed by the Division Bench of this Court, the impugned notices passed by the 5th respondent Municipality are set aside and the Committee is directed to fix the lease amount after hearing the

petitioners as per the order passed by the Division Bench of this Court. The above fixation will be given effect from 01.07.2016. After fixation of the lease amount, it is for the petitioners to decide either to continue in occupation by paying the lease amount as fixed by the Committee or to vacate and hand over the possession of the property to the local body. Till then, the petitioners are directed to pay 50% of the enhanced lease amount as directed by the Division Bench of this Court.

7. With the above direction, the Writ Petition stands disposed of. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rpp
To

1. The Secretary to Government,
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, Kakithapattarai, Vellore-12.
4. The District Collector,
Thiruvannamalai District, Thiruvannamalai.
5. The Commissioner, Arani Municipality,
Thiruvannamalai District, Thiruvannamalai.

+1cc to Mr.Paulraj, Advocate, S.R.No.65557
+1cc to M/s.Kamachi D, Advocate, S.R.No.65540
+1cc to the Government Pleader, S.R.No.65810

W.P. 19584 of 2017
and
W.M.P.s 21146 to 21148
of 2017

SR(CO)
CS/30/10/2018