

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.Nos. 31909 and 31910 of 2012
and
M.P.Nos.1,1,2,2,3 and 3 of 2012

K.Ramasamy ... Petitioner
(in W.P.No.31909 of 2012)

K.Samanaidu ... Petitioner
(in W.P.No.31910 of 2012)

Versus

1.The Commissioner,
Corporation of Coimbatore,
Coimbatore.

2.The Assistant Commissioner,
Central Zone,
Corporation of Coimbatore,
Coimbatore.

3.The Municipal Council,
Coimbatore Corporation,
Rep.by its Mayor,
Coimbatore.

4.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Municipal Administration and
Water Works Department,
Fort St.George, Chennai - 600 009.

.. Respondents
(in both W.Ps)

Common Prayer:

These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent pertaining to Resolution No.190, dated 16.8.2012 and the consequential notice of the 2nd respondent having Ref. No.Na.Ka.No.6355/12/A2(M), dated 14.9.2012 and quash the same and consequently direct the respondents 1 to 3 to permit the petitioner to continue as the lessee of Shop Nos.5 & 4 at

Ward No.72, Dr.Nanjappa Road Commercial Complex, Coimbatore with the enhanced rent of 15% of the existing rent for the block period of 3 years from 03.07.2007 upto 3.7.2016 in terms of G.O.Ms.No.92, dated 03.07.2007 read with the letter of the Municipal Administration and Water Supply Department having Ref.No.6655/Na Ni 4(2)/09-1, dated 12.03.2009, respectively.

For Petitioner : Ms.C.Uma
(in both W.Ps)

For Respondents : Mr.K.Magesh
Standing Counsel, for R1 to R3
(in both W.Ps)
Mr.N.Inbanathan
Additional Government Pleader, for R4
(in both W.Ps)

C O M M O N O R D E R

These writ petitions have been filed challenging fixation of licence fee by the second respondent and consequently direct the respondents 1 to 3 to renew the lease period and permit the petitioners to continue as lessees of Shop Nos.5 and 4 at Ward No.72, Dr.Nanjappa Road Commercial Complex, Coimbatore.

2. It is the case of the petitioners, they are the lessees of the shops situated at Ward No.72, Dr.Nanjappa Road Commercial Complex, Coimbatore and they have been running the shops for several years on lease/rent. According to the petitioners, demand of enhanced rent at 300% is arbitrary and licence fee could be increased by 15% as per G.O.Ms.No.92, dated 03.7.2007.

3. The issue involved in the case is no longer res integra. 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,

4. 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."

5. In the case of O.A.Nowshad Farooq vs. The Commissioner, Tirunelveli Municipal Corporation, Tirunelveli and another (W.P (MD)No.3535 of 2009, dated 30.04.2009), reported in Indiankannon.org/doc/1721899, has 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.

6. 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."

7. 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. In that case, the shops situated in T.Kallupatti Town Panchayat Bus Stand Commercial Complex was auctioned in the year 2012 for a period three years and after expiry of the licence period, the local authority issued a notification for a fresh auction, which was challenged contending that the existing licensee is entitled for extension of licence period as per G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007. In that case, 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.

8. Following the decision reported in 2014(5) MLJ 129, in

the case of P.Muthusamy vs. State of Tamil Nadu, in the case of C.Vinoba Vs. The Commissioner, Palladam Municipality (2015(3) CTC 170), directed the respondent municipality to put the shops to fresh auction with a view to find out the fair market rent.

9. 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 2nd 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."

10. In the light of the above decisions, the petitioners cannot seek extension of lease by relying upon G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, which in my view, would be against the interest of the local body.

11. The revision of licence fee is based on the market value of the property by the competent committee and it was only an offer and hence the grievance of the petitioner, it is an arbitrary exercise of power of the respondent cannot be countenanced.

12. 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.

13. In the light of the above findings, these writ petitions fail and they are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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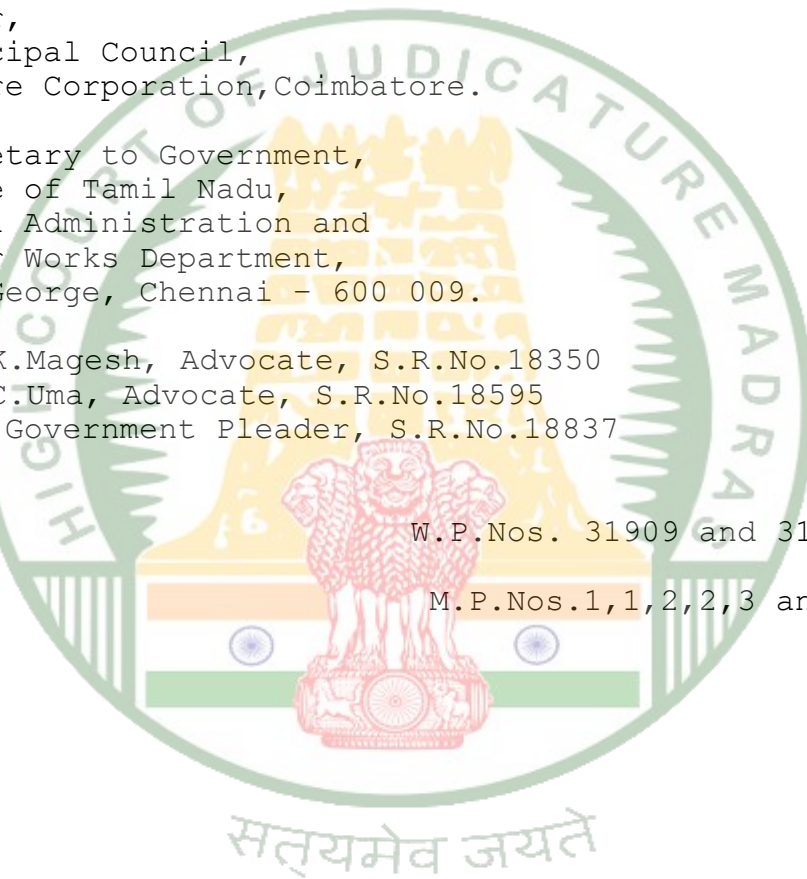
To

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The State of Tamil Nadu,
Municipal Administration and
Water Works Department,
Fort St. George, Chennai - 600 009.

+1cc to Mr.K.Magesh, Advocate, S.R.No.18350
+1cc to Ms.C.Uma, Advocate, S.R.No.18595
+1cc to the Government Pleader, S.R.No.18837

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MR (CO)
CS/10/04/18



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