IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2018

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THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.13277 to 13280 of 2013
and
M.P.Nos.3 to 3 of 2013

Parasumal ...Petitioner in W.P.No.13277 of 2013

Dhiresh Jayasi ...Petitioner in W.P.Nos.13278 &13279 of 2013

C.Arumugam ...Petitioner in W.P.No.13280 of 2013

Versus

1. The Commissioner,
Corporation of Coimbatore,
Coimbatore.

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

3. The Municipal Council,
Coimbatore Corporation,
Coimbatore. ... Respondents in all 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.253, dated 27.2.2012 and the consequential notice of the 2nd respondent having Ref.No. Na.Ka.No.1476/12/A1 dated 16.3.2012 and quash the same and consequently direct the respondents to renew the lease period with the enhanced rate of 15% of the existing rent for the future block period of 3 years upto 2016 for Room Nos.1, 3, 2, 4 at Coimbatore Corporation Commercial Complex at Ward No.24, Arokiasamy Road (West), R.S.Puram, Coimbatore in terms of the proceedings dated 12.3.2009 of the Municipal Administration and Water Supply Department, Government of Tamil Nadu read with G.O.Ms.No.92, dated 03.07.2007.

For Petitioners	:	Mrs.Nalini Chidambaram Senior counsel for Mrs.C.Uma (in all W.Ps)
For Respondents	:	Mr.J.Sathyanarayanaprasad Standing Counsel (in all W.Ps)

C O M M O N   O R D E R

Heard Mrs.Nalini Chidambaram, learned Senior Counsel appearing for M/s.C.Uma, learned counsel for the petitioners and Mr.J.Sathyanarayanaprasad, learned Standing Counsel appearing for the respondents and perused the materials available on record.

2. These writ petitions have been filed challenging the resolution of the Coimbatore Corporation 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 at ward No.24 in the Commercial Complex, Coimbatore.

3. It is the case of the petitioners that they are lessees of the shops situated at ward No.24 in the Commercial Complex, Coimbatore 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-Corporation 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 Corporation 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. According to the learned Senior Counsel, the lease period would commence only from the date of the G.O., irrespective of their occupation of the premises as per the letter of the Secretary to Government, Municipal Administration, dated 12.03.2009, however, the respondents without following the procedures have re-fixed the licence fee in an arbitrary manner.

6. The Commissioner of Coimbatore Corporation 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 it was placed before the Taxation and Finance Committee of the Coimbatore City Municipal Corporation and after elaborate discussion of the Committee, unanimous opinion was given for enhancing the licence fee.

7. It is further contended in the counter that the respondent Corporation has expanded from 72 wards to 100, so the Corporation has to augment revenue for providing basic amenities and infrastructure to the entire wards. Hence, the Corporation has no other option except to enhance the licence fee in accordance with the guidelines fixed by the Government, which does not offence the right of the petitioner guaranteed under Article 14 and 19 of the Constitution of India.

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, Tiruelveli Municipal Corporation, Tirunelveli and another (W.P (MD)No.3535 of 2009, dated 30.04.2009), reported in Indiankannon.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, 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 bee 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 ad 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 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.”

15. 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 contention of the petitioners, it is an arbitrary exercise of power of the respondents cannot be countenanced.

16. 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.

17. 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.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
   Corporation of Coimbatore,
   Coimbatore.

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

3. The Municipal Council,
   Coimbatore Corporation,
   Coimbatore.

+2cc to Mrs.C.Uma*, Advocate, S.R.No.39814
+4cc to Mr.J.Sathya Narayana Prasad, Advocate,
S.R.No.39980,39981,39982,39983.

W.P.No.13277 to 13280 of 2013
and
M.P.Nos.3 to 3 of 2013

KK(CO)
BM 11/07/2018