

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.01.2018
CORAM:

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.198 of 2018
& W.M.P.No.278 of 2018

- 1.A. Sardar Khan
2. D. Tamil Selvi
3. R. Parimala
4. P.K.Baskar
5. L.Gopi
6. K.Shanmugam
7. M.Malarkodi
8. Akthar Basha
9. A.Baranirajan
- 10.M.Sundar Singh
- 11.G.Dinesh Kumar
- 12.S.Thirumaran
- 13.G.Rahman Khan
- 14.K.Ramu
- 15.T.Raji
- 16.R.Saroja
- 17.S.Richard Fernando
- 18.C.Yesodha

..Petitioners

Versus

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, Kakithaipattarai,
Vellore - 12.
4. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
5. The Commissioner,
Thiruvathipuram Municipality,
Thiruvathipuram - 604407,
Thiruvannamalai District.

..Respondents

Prayer: The Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records relating to the Impugned Orders / Notices bearing Na.Ka.No.5664/2016/A2, dated 31.03.2017, 23.05.2017 and bearing Na.Ka.No.5664/2014/A2, 05.09.2017, issued by the 5th respondent herein in respect of the petitioners shop Nos.7, 20, 18, 27, 2, 11, 16, 17, 8, 6, 9, 15, 4, 19, 24, 21, 26, 22, 13, 14, 23, 3 and 12 i.e., totally 23 shops, situated at (IDSMT SHOPS), Office Front Side Shop, Municipality Office, Thiruvathipuram, on the file of the 5th respondent and quash the same.

For Petitioners : Mr.U.Karunakaran

for M/s.Kamachi D

For Respondents : Mr.V.Shanmugasundar

O R D E R

The petitioners have filed this petition to call for the records relating to the Impugned Orders / Notices bearing Na.Ka.No.5664/2016/A2, dated 31.03.2017, 23.05.2017 and bearing Na.Ka.No.5664/2014/A2, 05.09.2017, issued by the 5th respondent herein in respect of the petitioners shop Nos.7, 20, 18, 27, 2, 11, 16, 17, 8, 6, 9, 15, 4, 19, 24, 21, 26, 22, 13, 14, 23, 3 and 12 i.e., totally 23 shops, situated at (IDSMT SHOPS), Office Front Side Shop, Municipality Office, Thiruvathipuram, on the file of the 5th respondent and quash the same.

2. It is the case of the petitioners that they have been running the shops in question for several years on lease/rent. On coming to know of the revision of rent/lease through issuance of the impugned proceedings based on G.O.M.S.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, they have preferred with this Writ Petition for the relief stated supra.

3. It is the contention of the petitioners that the 5th respondent has taken a decision to renew the lease by revising the rent in an exorbitant rate in an arbitrary and capricious manner. The 5th respondent ought to have adopted a humane and practical approach while fixing the revised rent, and re-fixing the same in such excessive amount is unreasonable. It is further stated that the guideline value of the properties had been reduced to 33% by the State now and fixing it on the higher side, more particularly, asking the petitioners to pay the rent at exorbitant rate, needs to be interfered with by this Court.

4. Learned counsel appearing for the 5th respondent submitted that the petitioners have been periodically paying the revised rent once in every three years as per G.O.M.S.No.92,

Municipal Administration and Water Supply Department, dated 03.07.2007. According to him, if the petitioners are not willing to pay the revised rent as demanded, it is open to him to go for a public auction. Referring to clauses 4(ii) and 4(iii) of the said G.O., he contended that an opportunity has to be given to the petitioners, once the revised rent is fixed and that if the petitioners do not accept the same, it is open for him to go ahead with a public auction.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. The sum and substance of the issue in question is as to whether the Municipality is entitled to fix the rent on a higher side, be it lease/rent and demand the amount from the petitioners, as calculated by them.

7. It is not in dispute that the petitioners are in occupation of the premises in question as a lessee and paying the rent regularly and that it was revised periodically once in every three years as per the said Government Order.

8. In a similar circumstance, a Division Bench of this Court in the case of P.V.Subramanian v. Secretary to Government, 2014 (5) MLJ 129, has held that licence can not be converted into one of lease and that the object of letting out the shop is to collect more revenue for the Municipality/Corporation and that the extension granted to the existing licensees is only by way of concession and that the revision is made based on the prevailing market value and not otherwise. For better understanding, relevant portion of the said decision reads as under:

"20. The facts narrated above would clearly indicate that the petitioners have been given only a licence to run the shops. Just because the word "lease" has been mentioned, a licence cannot ipso facto be converted into a lease. Admittedly, the licence issued has a fixed terms. Therefore, the petitioners do not have a legal or a vested right to continue in occupation for ever. There is no doubt that the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1961, does not apply to the case on hand. The petitioners can very well participate in the proposed auction. In other words, they cannot claim the right of a statutory tenant.

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 Orders which in turn was complied with 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."

सत्यमेव जयते

9. From the above discussion and in the light of the decisions cited supra, the 5th respondent herein has fixed the rent with all due considerations. Merely because there is a reduction of 33% in the guideline value, it would not be a reason enough for the petitioners to interfere with the order of the decision of the 5th respondent. The Government might have revised the guideline value to 1/3 (33%) only to safeguard their own interest to avoid paying compensation to the landowners for the lands acquired by them, as they need to pay hefty compensation to the landowners in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and not otherwise.

10. Thus, this Court finds no merit in this writ petition, which is therefore, dismissed accordingly. It is upto the petitioners to accept the offer given by the 5th respondent, since they have been in occupation of the premises for several years, failing which, the 5th respondent shall go ahead with the auction. If there are any arrears and the petitioners want to continue with the enhanced rent amount, the arrears shall be paid within two months from the date of acceptance of the offer. In case the petitioners do not give consent for the payment of the enhanced amount within one month, it is open to the 5th respondent to go ahead with the auction, and till such time the auction is announced, the petitioners may continue to function in the same place. As there is a possibility that the petitioners may challenge the auction notice and continue to function in the same place on account of any litigation or interim order, in order to avoid such circumstances, 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.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Secretary to Government,
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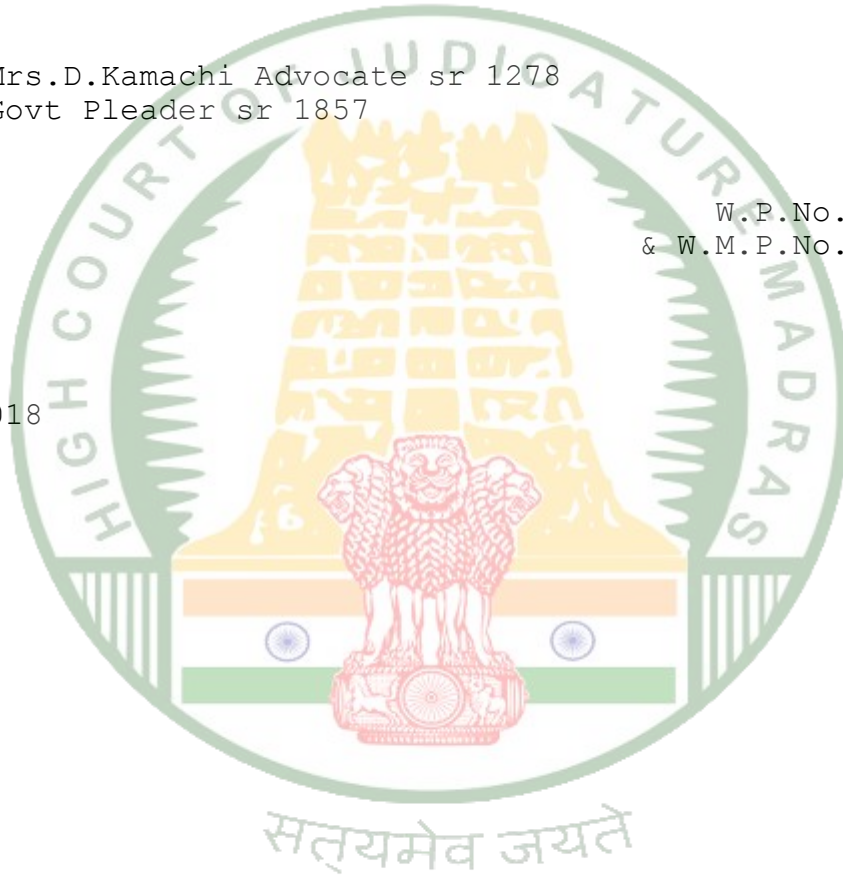
4. The District Collector,
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Thiruvannamalai.

5. The Commissioner,
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Thiruvathipuram - 604407,
Thiruvannamalai District.

+1 cc to Mrs.D.Kamachi Advocate sr 1278
+1 cc to Govt Pleader sr 1857

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