IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24..09..2018
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.30631 of 2017
&
W.M.P.Nos.33535 & 33536 of 2017

Uthagamandalam Viyabarigal Sangam,
Rep. by its Vice President,
K.Lakshmya
Son of L.Kanniah Chettiyar,
UMC Market, Ooty.

... Petitioner

-Versus-

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Municipal Corporation,
Fort St. George,
Chennai 600009.

2.The Commissioner,
Uthagamandalam.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 2nd respondent in Na.Ka.No.2733/95/A11 dated 09.10.2017 and to quash the same as illegal, incompetent and without jurisdiction and for a further direction to the 2nd respondent to fix a rate in consonance with G.O.Ms.No.92 (Municipal and Administration and Water Supply (MA4) Department dated 03.07.2007.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mrs.K.Bhuvaneswari, AGP for R1

Mr.P.Srinivas, Standing Counsel for R2

ORDER

Challenging the Auction Notification dated 09.10.2017 in Na.Ka.No.2733/95/A11 issued by the 2nd respondent Municipality, the petitioner which is a registered association known as "Uthagamandalam Viyabarigal Sangam" has come up with the present writ petition.

2. According to the petitioner association, its members are licensees under the respondent municipality for a long period and they have been paying license amount regularly to the respondent municipality. While so, all of a sudden, the respondent municipality, without issuing any notice to the members of the petitioner association has arbitrarily enhanced the license amount and called upon the licensees to renew the license by accepting the enhanced license amount, otherwise, to vacate the premises and handover the possession to the municipality. Even though the members of the petitioner association made representations to the respondent municipality objecting to the revision of license amount as it was exorbitant, the same have not been considered. While so, the respondent municipality has now issued the re-tender notification for leasing out the shops for a period of three years. It is this re-tender notification which is now under challenge in this writ petition.

3. The respondent municipality has filed its counter affidavit wherein, inter alia, it has been stated that the license amount has been revised in terms of G.O.Ms.92 dated 03.07.2007 as the license period got expired by efflux of time as early as on 02.07.2016 itself. A committee was formed for reconsideration of the rental rates and the committee after having considered the objections made by the lessees and the prevailing market rate, re-fixed the license amount and made an offer to the members of the petitioner. But, most of the members of the petitioner association had refused to accept the offer and hardly 62 lessees out of 1589 had expressed their willingness to accept the revised rent. Therefore, the respondent municipality has no other option except to issue the re-tender notification for leasing out the shops.

4. The learned counsel for the petitioner association submitted that the members of the petitioner association are

doing only petty business in the licensed premises. Now, all of a sudden rent for the above premises have been enhanced exorbitantly without giving a reasonable opportunity of hearing to the petitioners before such decision was taken. The members of the petitioner association who have been eking out their livelihood through their meager income derived from their petty business, are now under the threat of dispossession and if they are disposed, their entire livelihood would be put in peril.

5. Per contra, the learned counsel for the respondent municipality submitted after the expiry of the license period in the year 2016, as per G.O.Ms.No.92 dated 03.07.2017, a committee was formed to consider the re-fixation of rent and after having considered the objections of the lessees and the prevailing market rates, the committee has re-fixed the rent and made an offer to each of the lessee, but, most of the lessees had refused to accept the offer and therefore, the respondent municipality has issued re-tender notification.

6. I have considered the rival submissions carefully.

7. So far as the revision and re-fixation of the license amount is concerned, it is now well settled that the court cannot go into the issue and a Division Bench of this Court in P.Muthusamy vs. The State of Tamil Madu, rep. By its Secretary to Government, Municipal Administration and Water Supply Department and another reported in 2014 [5] MLJ 129, has held as follows:-

> "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.

23. The decision relied upon by the learned counsels appearing for the petitioners Labha Ram and Sons and Others v. State of Punjab (supra) cited above has no application to the facts involved in the present cases. In the said decision the existing licensees were asked to vacate in view of the creation of a new multi complex. 24. It is settled law that an instrumentality of a State should always endeavour by following the procedure by way of public auction or inviting tender, as held in P.N. Chinnasamy and Others v. Assistant Director of Town Panchayat, Coimbatore District and Others : (2011) 1 CTC 584 : LNIND 2011 MAD 102, S. Selvarani v. Commissioner, Karaikudi Municipality : (2005) 1 CTC 81 : LNIND 2004 MAD 1600 : (2005) 1 MLJ 394, C. Jayanthi v. Commissioner, Mettur Municipality, Salem District : 11 (2006) 5 CTC 236 : LNIND 2006 MAD 1770 : (2006) 4 MLJ 128, D. Kannan v. Commissioner of Municipal Administration, Chepauk CDJ 2010 MHC 1636 : LNIND 2010 MAD 759 and Ram and Shyam Company v. State of Haryana and Others : AIR 1985 SC 1147 : (1985) 3 SCC 267 : LNIND 1985 SC 188."

The said judgement was subsequently followed in W.A.No.689 to

691 of 2018 dated 27.04.2018 [M/Oriental Canvas Company v. The Assistant Revenue Officer, Zone-5, Greater Chennai Corporation, Chennai] by another Division Bench.

> "11 The grievance expressed by the appellants is that no proper, adequate and sufficient reasons have been given as to the manifold increase of the license amount in per sq.ft. 12 In the considered opinion of this Court, at this juncture, it cannot interfere with the decision taken in terms of the Committee recommended. However, taking into consideration, the submission made by the learned counsel for the appellants, that the representation submitted by the appellants may be considered and disposed of, this Court passes the following order:- The writ petitioners/appellants are at liberty to submit individual detailed representations as to the grievances, to the respondent within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the respondent is directed to give an opportunity of personal hearing to the appellants or their authorised representative and pass orders in accordance with law within a further period of four weeks thereafter and communicate the decision taken, to the appellants/writ petitioners and till such time, the respondent shall defer further decision in terms of the directions issued in the impugned common order dated 02.02.2018."

8. In view of the above said legal position, this court cannot interfere with the decision taken by the respondent municipality to revise the license amount as per the recommendations made by the Committee constituted in terms of the Government Order in G.O.Ms.No.92 dated 03.07.2007. However, coming to the revised rent, according to the learned counsel, the rent amount has been increased exorbitantly and the representations/objections made by some of the members of the petitioner association have not been considered by the 2nd respondent municipality and the member of the petitioners are poor people and are eking out their livelihood from the meager income from that business and they are not in a position to pay such a huge amount. In the said circumstances, this court is inclined to pass the following order:-

9. The members of the petitioner are at liberty to submit individual detailed representations as to their grievances, to the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the 2nd respondent is directed to give an opportunity of

personal hearing to the petitioners or their authorized representative and pass orders in accordance with law within a further period of four weeks thereafter and communicate the decision taken, to the respective lessees and till such time, the 2nd respondent shall defer further decision in auctioning the shops.

10. In the result, the writ petition is disposed of accordingly. No costs. Consequently, connected WMPs are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Secretary, Municipal Corporation, Fort St. George, Chennai 600009.

2.The Commissioner, Uthagamandalam.

+1 cc to M/s.V.Raghavachari Advocate sr 66069
+1 cc to the Government Pleader sr 66285

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and
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aa15/10/2018