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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.02.2018

DELIVERED ON : 18.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

and

THE HONOURABLE MRS.JUSTICE **R.THARANI**

W.A(MD)Nos.260 to 262 and of 2018

and

C.M.P(MD)Nos.1539 to 1541 of 2018

M.Krishnasamy .. Appellant in
W.A(MD)No.260 of 2018

N.Palaniappan .. Appellant in
W.A(MD)No.261 of 2018

M.Kadirvel .. Appellant in
W.A(MD)No.262 of 2018

Vs.

The Commissioner,
Karur Municipality,
Karur. .. Respondent in all W.As.

COMMON PRAYER: Writ appeals are filed under Clause 15 of the Letters Patent, against the orders, dated 29.01.2018, made in W.P (MD)Nos.1566, 1571 and 1584 of 2018.

Prayer in WP(MD). 1566/ 2018 :

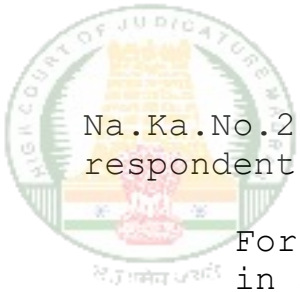
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records relating to the notice in Na.Ka.No.2196/2016/A6 dated 11.12.2017 on the file of the respondent quash the same.

Prayer in WP(MD). 1571/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the notice in Na.Ka.No.2196/2016/A6 dated 11.12.2017 on the file of the respondent, quash the same

Prayer in WP(MD). 1584/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records relating to the notice in



Na.Ka.No.2196/2016/A6 dated 11.12.2017 on the file of the respondent quash the same.

For Appellant
in all W.As.

: Mr.S.Doraisamy

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For Respondent
in all W.As.

: Mr.D.Raghu,
Standing Counsel.

COMMON JUDGMENT

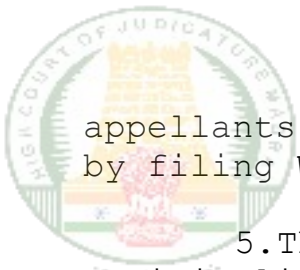
T.S.SIVAGNANAM, J.

These writ appeals filed by the writ petitioners, are directed against the orders, dated 29.01.2018, passed in W.P(MD) Nos.1566, 1571 and 1584 of 2018.

2.The said writ petitions were filed by the appellants, challenging the order passed by the respondent municipality, dated 11.12.2017. By the said order, the respondent municipality, calculated the rent/licence fee payable by the appellants so as to be entitled for renewal of their licence for a further period of nine years.

3.The order, dated 11.12.2017, was passed by the respondent municipality in compliance with the direction issued by the Writ Court in W.P(MD)Nos.14216, 14230 and 13588 of 2017, which were disposed of by a common order, dated 21.09.2017, in a batch of cases in W.P(MD)Nos.14214 of 2017, etc. batch. The said writ petitions were filed by the appellants and others, challenging a notice issued by the respondent Municipality, dated 04.07.2017 and for a consequential direction to renew the lease of the shops, owned by the respondent municipality, in possession of the appellants and others. The direction issued in the said writ petitions was after taking note of the interim orders passed in those writ petitions directing the appellants and others to deposit 50% of the enhanced rent immediately and in such of those cases, where deposit was not made in terms of the interim order issued, the Court, while disposing of the writ petitions, finally granted one more opportunity to deposit 50% of the enhanced rent and on such deposit, directed the municipality authorities to scrutinise the documents, which may be produced by the appellants and upon considering their objections shall fix or refix the lease rent, in accordance with law, within a time frame.

4.The respondent municipality passed the order, dated 11.12.2017, by referring to the directions issued in the batch of cases in the order, dated 21.09.2017. Though in the batch of cases, there were 37 writ petitioners, only twenty of them including the



appellants herein, challenged the proceedings, dated 11.12.2017, by filing W.P(MD)Nos.1566 to 1585 of 2018.

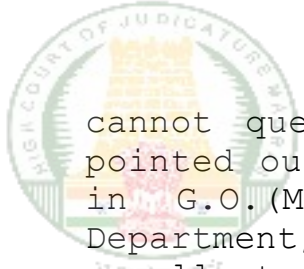
5.The grounds of challenge being that the respondent municipality has not followed the proper procedure and the report of the committee, which recommended for enhancement of lease rent/licence fee was not obtained nor furnished to the petitioners and their objections were not considered and the fixation was arbitrary.

6.The respondent municipality resisted the writ petitions contending that the lease/licence came to an end in June, 2016 after the appellants enjoyed the same for nine years and the appellants did not comply with the interim direction issued in the earlier writ petitions by depositing 50% of the enhanced amount and thereby violated the order passed by the Writ Court and therefore, the writ petitions were liable to be dismissed *in limini*.

7.The Writ Court after taking into consideration the submissions made on either side, held that the appellants cannot claim any legal right for continuing to be in possession of the shops and the direction given by the Writ Court to effect payment of 50% of the enhanced rent was a concession and a concession can never be claimed as a matter of right. By referring to the decisions of the **Hon'ble Supreme Court**, it was pointed out that showing any leniency or misplaced sympathy cannot be granted in violation of the rules and further such concession or misplaced sympathy should not violate the rights of the larger citizens, who all are otherwise vested with certain statutory or constitutional rights. Therefore, the Writ Court held that the appellants cannot take any undue advantage of the concession granted by the Court, by way of permitting the appellants to deposit 50% of the enhanced amount and directing the authorities to scrutinize the documents.

8.Taking note of the fact that the lease period expired in June, 2016 itself, it was held that the further occupation of the premises by the appellants is irregular and the attitude of the appellants by filing the writ petitions, was to circumvent the order, directing payment of enhanced rent. Further, it was held that the report of the committee which had recommended for increase in the rent payable, was enclosed along with the impugned order and no objections were submitted by the appellants and on the contrary, moved the Writ Court to quash the said proceedings. On the above grounds, the writ petitions were dismissed.

9.Mr.S.Doraisamy, learned counsel appearing for the appellants, while reiterating the stand taken before the Writ Court, submitted that the Writ Court was wrong in holding that the appellants have no vested right to continue in the premises and



cannot question the increase of rent, when the appellants have pointed out that the respondent has violated the Government Order in G.O.(Ms)No.92, Municipal Administration and Water Supply Department, dated 03.07.2007. Further, it is submitted that the appellants had deposited 50% of the enhanced amount and the Court ought to have seen that the enhancement was arbitrary as the original rent, which was Rs.788/- per month, was enhanced to Rs.4,000/- and this was interfered with in the earlier round of litigation and a direction was issued to get a report from the committee and prepare a calculation sheet and furnish the same to the appellants so as to enable them to file their objections.

10.Further, it is submitted that the report of the committee nor the calculation sheet were furnished and therefore, the appellants were justified in approaching the Court and the Writ Court erroneously dismissed the writ petitions.

11.Mr.D.Raghu, learned standing counsel appearing for the respondent municipality submitted that the directions issued by the Writ Court in the earlier batch of cases were scrupulously followed and the requisite annexures were enclosed along with the order, dated 11.12.2017 and the appellants, not only violated the condition directing payment of 50% of the enhanced amount, did not submit their objections in terms of the direction issued by the Court and also filed writ petitions challenging the said order and those writ petitions were rightly dismissed by the Writ Court.

12.Further, it is submitted that the lease/licence period came to an end in June, 2016 and after the expiry of the said period, the appellants have no right to continue in the premises. Further, it is submitted that the enhanced amount has been fixed, taking into consideration the principle to be followed, while fixing fair rent for a building, especially when the municipal shops are located in a very vantage location and except the three appellants all the other 34 writ petitioners, who had initially filed W.P(MD)Nos.14214 of 2017, etc. batch, have not questioned the enhancement. Therefore, it is submitted that the appeals may be dismissed and the orders by the Writ Court may be confirmed.

13.Heard the learned counsels appearing for the parties and perused the materials placed on record.

14.The undisputed facts being that the appellants have been continuing in occupation of the respective premises owned by the respondent municipality for nine years. The period of licence/lease came to an end in June, 2016. After the said date, the occupation of the appellants is deemed to be irregular and they have no vested right to be in possession of the property.

<https://hcservices.ecourts.gov.in/hcservices/>

15.The reliance placed on G.O.(Ms)No.92 is of little avail. The Government Order does not provide for a perpetual lease/



licence. At best, the directives issued in the said Government Order, can be construed as directory and not mandatory. This is so because, the action of the State in entering into contracts with private individuals, should satisfy the test of Article 14 of the Constitution of India. If the State fails in the test, then such contracts have to be held to be unreasonable and arbitrary. The Courts have held that those such decisions of entering or not entering into contract are in the nature of contractual rights, they are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination [See the order of this Court in **Punjai Puliyampatti Municipality Shopping Complex Lessee Welfare Association rep. by its President Mr.V.R.Thirumoorthy, having Office at No.313, Main Road, Punjai Puliyampatti, Erode District - 638 459 v. Commissioner of Municipalities Administration, Ezhiagam Annex Building, 6th Floor, Chepauk, Chennai - 600 005 and Another** reported in (2016)3 MLJ 698]. Further, in the matter of award of licence or contract, several factors have to be borne in mind by the State or the contracting body and one of the major factors being to get the best offer on the terms and conditions prescribed taking into account the economic and social interest of the country.

16. In the instant case, what is important is the economic interest of the respondent municipality, which has a duty to provide all facilities to the public, who are within its jurisdiction. Therefore, the Courts should be slow in interfering with such decision taken by the municipalities and local bodies, since augmentation of their income is paramount for public welfare.

17. The appellants would contend that what has been granted to them is a lease and not a licence. The contention of the appellants is unacceptable for the reason that merely because the word lease has been used, it will not convert a licence into a lease. In fact, such decision was rendered by the Hon'ble Division Bench of this Court in **M.Muthusamy and Others v. The Commissioner, Palani Municipality, Palani, Dindigul District [W.P (MD) Nos.17966 ot 17968 of 2017, decided on 21.09.2017]**. By applying the said decision to the facts of the case, it has to be held that what was granted to the appellants, was only a licence and not a lease. The licence is not transferable and it automatically terminates at the end of the licence period which in the appellants' case, came to an end in June, 2016. The continuance of the appellants for nine years itself was based on a concession given by the Government.

18. It is not clear as to why the Government has granted such concession as it is high time that the concession to be



withdrawn, since more than ten years have elapsed after the Government Order was passed. Several changes have occurred in the economic situation and necessarily G.O.(Ms)No.92, dated 03.07.2007, has to be held to be redundant and made inapplicable to the current situation. In fact, the said Government Order has been stayed by this Court in a writ petition, yet the Government has not had a rethinking in the matter. In any event, beyond the period of nine years, a licensee has no vested right to continue in possession.

19.The learned counsel appearing for the appellants referred to the decisions of the **Hon'ble Supreme Court** in **the Corporation of Calcutta v. Sm. Padma Debi and Others** reported in **AIR 1962 Supreme Court 151** and **Dewan Daulat Rai Kapoor and Others v. New Delhi Municipal Committee and Others** reported in **(1980)1 Supreme Court Cases 685** and the order of the Hon'ble Division Bench in **Dindigul Anna District Tax Payers Sangam rep. by its President, M.V.R.A.Soundararajan, No.116, Big Bazaar Street, Dindigul** reported in **1994-2-L.W.715**.

20.In our considered view, all the three decisions referred to by the appellants are wholly inapplicable to the facts and circumstances of the case, as those decisions pertain to fixation of the rent and annual value of the building, for the purpose of assessment of property tax. They have held that the appellants have absolutely no right to continue to remain in the premises beyond June, 2016 and the question of the appellants contending that the rent/licence fee cannot be fixed as determined by the respondent municipality, is a plea to be outrightly rejected.

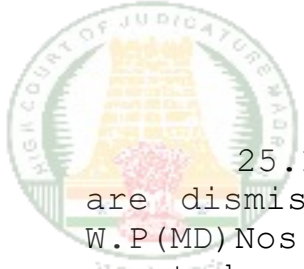
21.Identical contention was advanced in the case of **Punjai Puliampatti Municipality Shopping Complex Lessee Welfare Association rep. by its President Mr.V.R.Thirumoorthy, having Office at No.313, Main Road, Punjai Puliampatti, Erode District - 638 459 v. Commissioner of Municipalities Administration, Ezhiagam Annex Building, 6th Floor, Chepauk, Chennai - 600 005 and Another** reported in **(2016)3 MLJ 698** and the Court, after taking into consideration the various decisions, held that individual shop keepers do not have either a legal right or vested right to continue in occupation of the shops belonging to the municipality. It was further held that the paramount interest of the municipality cannot be put to peril by permitting the shopkeepers to continue in possession of the premises. Further, it was pointed out that law requires competitive bidding and therefore, public property is to be put into action by inviting tender so as to enable the municipality to obtain the higher bidder in a fair and transparent manner and only then, the public welfare of a particular town/panchayat can augment its revenue to the optimum level. With these observations, the appeals filed by the licensees were dismissed.



22.As noticed by the Writ Court, the order passed in W.P (MD)No.14214 of 2017, etc. batch, dated 21.09.2017 is a concession and a concession cannot be claimed as a matter of personal right nor a concession can violate the rule of law more particularly, Article 14 of the Constitution of India. If the interpretation given by the appellants is to be endorsed with a seal of approval, it would be approving a proposition that "once a municipal licensee always a municipal licensee". This can never be the interpretation as public property has to be distributed in a fair and transparent manner and the property in question being shops owned by the municipality, the income earned from them by the municipality, is the paramount consideration and to fetch the best price, the only fair method is to auction such properties by way of public auction/tenders.

23.It is not clear as to why only twenty of erstwhile licensees, including the appellants herein, had filed the writ petitions challenging the enhancement orders, when there were 37 erstwhile licensees in the first batch of cases. If the others have accepted the order, dated 17.01.2018, that itself would go to show that the enhanced rent/licence fee fixed by the respondent municipality was fair and reasonable. The appellants cannot dictate terms to the respondent municipality, merely because the respondent/landlord is a Government body, it cannot be asked to forgo commercial interest. The plea raised by the appellants would have been outrightly thrown out, had the respondent been a private landlord. Therefore, we see no reason to draw a distinction between a landlord being a municipality and a private landlord as to why the municipality should not take action to realise the best rental, so as to augment its income. Thus, the appellants' attempt is to squat on municipality property paying pittance and if the same is allowed to continue, it would be approving an action, which is against public interest and against the welfare of the respondent municipality.

24.We have made an observation that the interest of the municipality would be best served, only if the shops are brought for auction. However, the Writ Court gave an opportunity to the appellants to pay the enhanced rent and arrears without further delay and forthwith. Therefore, we do not propose to disturb such liberty granted by the Writ Court and it is open to the appellants to avail the opportunity and pay the enhanced rent and arrears, as demanded by the respondent municipality, vide order, dated 17.01.2018 and we fix an outer time limit of seven days from the date of receipt of a copy of this order and effect payment of the enhanced amounts by the appellants and upon failure to comply with the direction, the respondent municipality is directed to evict the shops from the premises in question and take immediate steps to notify the shops by way of public auction, so as to realise the best rental.



25. In the result, the writ appeals being devoid of merits, are dismissed, confirming the orders, dated 29.01.2018, made in W.P(MD)Nos.1566, 1571 and 1584 of 2018. The appellants are granted seven days time from the date of receipt of a copy of this order to pay the enhanced rent including arrears in full, failing which, the respondent municipality shall evict the appellants on the expiry of the seven days' period from the respective premises and bring the shops for public auction. No Costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Commissioner,
Karur Municipality,
Karur.

SMN/MRN

VB/SV/MMS/SAR1/22/05/2018/8P/2C

**COMMON JUDGMENT MADE IN
W.A(MD)Nos.260 to 262 and of 2018
and
C.M.P(MD)Nos.1539 to 1541 of 2018
18.04.2018**