



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) Nos.1566 to 1585 of 2018
and
WMP (MD) Nos.1653 to 1672 of 2018

M.Krishnasamy	... Petitioner in WP (MD) No.1566/2018
R.Chinnasamy	... Petitioner in WP (MD) No.1567/2018
N.Seeni Mohamad	... Petitioner in WP (MD) No.1568/2018
A.Balaiammal	... Petitioner in WP (MD) Nos.1569&1574/2018
S.Subbulakshmi	... Petitioner in WP (MD) No.1570/2018
N.Palaniappan	... Petitioner in WP (MD) No.1571/2018
N.Mohammed Kutti	... Petitioner in WP (MD) Nos.1572&1577/2018
R.Ramani	... Petitioner in WP (MD) No.1573/2018
R.Chandrasekaran	... Petitioner in WP (MD) No.1575/2018
A.Sarangapani	... Petitioner in WP (MD) No.1576/2018
R.Thirumudi	... Petitioner in WP (MD) No.1578/2018
V.Rathinam	... Petitioner in WP (MD) No.1579/2018
R.Madhavan	... Petitioner in WP (MD) No.1580/2018
S.Palanisamy	... Petitioner in WP (MD) No.1581/2018
K.Jagadeesh	... Petitioner in WP (MD) No.1582/2018
S.Vadivel	... Petitioner in WP (MD) No.1583/2018
M.Kadirvel	... Petitioner in WP (MD) No.1584/2018
Maheshwari	... Petitioner in WP (MD) No.1585/2018

-Vs-

The Commissioner,
Karur Municipality,
Karur.

... Respondent in all cases

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of 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 and quash the same.

For Petitioner : Mr.S.Dorai Samy (in all writ petitions)
For Respondents : Mr.D.Raghu
Standing Counsel (in all writ petitions)

The order dated 11.12.2017 issued by the respondent in



respect of the implementation of the order of this Court dated 21.09.2017 in a batch of Writ Petitions is under challenge in this Writ Petition.

2.The order impugned dated 11.12.2017 states that as per the directions of this Court dated 21.09.2017, the report of the committee was obtained, which was enclosed along with the impugned order and accordingly, 50% of the enhanced amount is to be deposited within a period of 15 days from the date of the order, failing which the lease granted in favour of the writ petitioners will be revoked and further legal action will be taken in accordance with law. Accordingly, the statement of accounts and the demand are provided in the impugned order.

3.The learned counsel appearing on behalf of the writ petitioners, Shri S.Duraisamy, strenuously contended that the respondent has not followed the procedures contemplated. In fact, the committee report has not been obtained and they are acting in violation of the earlier order of this Court passed on 21.09.2017.

4.Referring the order dated 21.09.2017, the learned counsel for the petitioner states that the respondent was directed to provide the copy of the report of the committee as well as the calculation sheet to the petitioner forthwith. Further, in view of final disposal of all those writ petitions, a direction was issued to deposit 50% of the enhanced rent, if not already remitted and thereafter to file their objections supported by whatever documents they have in their possession within a period of two weeks from the date of receipt of a copy of the order to the concerned authorities. This Court further directed the authorities, upon satisfaction of the remittance of the 50% of the amount by the petitioners, on scrutiny of the documents produced by the petitioners and upon considering their objections, shall fix or refix the lease rent in accordance with law within a period of two weeks thereafter.

5.Thus, the learned counsel for the petitioner is of the opinion that no such report of the committee as well as the calculation sheet was adhered to by the respondent.

6.This apart the petitioner states that they acquired a right to continue in the premises since they are promptly and punctually paying the monthly rent as applicable.

7.The learned Standing Counsel appearing on behalf of the respondent made a submission that the Writ Petitions are not maintainable. The learned counsel for the respondent referring the order dated 11.12.2017 has stated that the order itself was passed pursuant to the order of this Court dated 21.09.2017. It is further stated that a committee submitted the report and amount was calculated, pursuant to the recommendations of the committee and the copy of the report was also enclosed along with the impugned order.

However, the same is disputed by the writ petitioners.

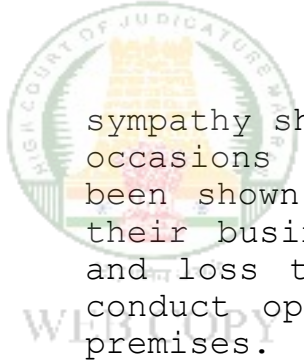
8. The learned counsel for the respondent further states that the lease period of nine years got expired in June 2016 and the enhanced rent was given with effect from 04.07.2017. Even as per the orders of this Court, the petitioners have not deposited 50% of the total enhanced amount with the respondent municipality. Thus, the petitioners themselves have violated the order of this Court and therefore, the Writ Petitions are to be rejected *in-limine*.

9. Considering the arguments as advanced by the learned Counsel for the petitioner as well as the respondent, this Court is of an opinion that the rights of the parties are to be ascertained at first instance. The petitioners are in occupation of the premises belong to the respondent municipality. The petitioners are lessees and continuing in the premises for more than 20 years. It is brought to the notice of this Court that some of the writ petitioners are in occupation for few decades. It is the practise that whenever the enhancement of the rent is proposed, the leaseholders are raising objection and initiating all steps to prevent the authorities from enhancing the monthly rent. It is informed that the premises in occupation by the petitioners is situated in the main locality and the writ petitioners are carrying on business and making profits. This being the factum of the case, there is no reason to object the enhanced rent proposed by the respondent.

10. It is the duty mandatory on the part of the competent authorities to ensure that the revenue of the State is properly and periodically enhanced and collected without any default. Public authorities should be prompt and punctual in ascertaining the public revenues and enhance the lease amount or monthly rent in commensuration with the market value of the particular property. All the public authorities are bound to be vigilant in respect of the lease of public premises and its maintenance, calculation of rent or lease amount etc.,. In respect of the present writ petition, the lease period of the writ petitioners expired in June 2016 itself. Thus, the writ petitioners have no legal right, whatsoever, to continue in the public premises. Once, the lease period is expired, it is the duty and the obligation on the part of the lessee to vacate the premises and hand over the same to the public authorities.

11. A fresh lease even granted by way of public auction under the provisions of the Act and rules and the procedures, all the public premises ought to have been leased out strictly by following the rules and the procedures prescribed. Undoubtedly, the extension of lease period in favour of the existing occupants is a concession.

12. This Court is of an opinion that any extension granted beyond the period of the lease and after its expiry is a concession and the lessee cannot claim any legal right for continuation. A concession can never be claimed as a matter of right. Leniency or



sympathy shown by the competent authorities or by the Courts on some occasions can never be misused. Such concession or leniency have been shown to the existing leaseholders enabling them to continue their business in the particular premises, to avoid inconvenience and loss to the business. The competent authorities are bound to conduct open auction, for the purpose of leasing out the public premises. Cogent facts and circumstances of the present writ petitions on hand, shows that after expiry of the lease period in June 2016, the writ petitioners earlier filed WP(MD)Nos.14214 to 14248 and 13588 of 2017 and this Court passed orders allowing the writ petitions to remit 50% of the enhanced amount. Such an order itself was a concession. Contrarily, the writ petitioners have taken a lead from and out of the order passed by this Court and attempted to create further cause of action so as to avoid the payment of enhanced rent. Such an attitude of the writ petitioners are to be deprecated. The writ petitioners certainly have attempted to create cause of action from and out of the order earlier passed by this Court, which is certainly in the nature of concession. The Hon'ble Supreme Court of India time and again held that showing any leniency or misplaced sympathy cannot be granted in violation of 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. By showing some sympathy, the rights of other citizens are violated. Further the same will have certain adverse consequences in respect of upholding the rule of law. Thus, the writ petitioners cannot take any undue advantage of the concession granted by this Court, by way of permitting the writ petitioners to deposit 50% of the enhanced amount and thereafter permitting the respondent to scrutinize the documents produced by the petitioners including the objections.

13. In respect of the present writ petitioners, the lease period expired in June 2016 itself. Now further occupation of the premises is undoubtedly irregular. However, the respondent considered the case of the writ petitions and fixed the enhanced rent with effect from 04.07.2017. The learned counsel for the respondent brought to the notice of this Court that the demanded amount has not been deposited by the writ petitioners and they have moved the present writ petitions in order to circumvent further payment of enhanced rent.

14. The earlier order of this Court dated 21.09.2017 categorically states that the municipality is directed to provide copy of the report of the committee as well as the calculation sheet to the petitioners. In this regard, the learned Counsel appearing for the respondent Municipality states that the committee has submitted the report and the report is enclosed along with the impugned order. Instead of submitting any such objections on the report, the writ petitioners have preferred to move the present writ petitions. In other words, even the contention of the learned counsel is taken into consideration, the committee report has not been served to the petitioners, such objections ought to have been



raised before the respondent. Instead of raising such objections before the respondent, present writ petitions are moved.

15. The writ against such an order directing the writ petitioners to deposit 50% of the amount within a period of 15 days cannot be directly entertained, because grievance of the writ petitioners is that the report has not been served to the writ petitioners. In this regard, the writ petitioners have not even submitted any representation to the respondent but, have directly filed the writ petition, challenging the said order dated 11.12.2017. Thus, doubt arises in respect of payment of enhanced rent fixed by the respondent by the writ petitioners.

16. The earlier order of this Court passed on 21.09.2017, permitting the writ petitioners to deposit 50% of the enhanced amount itself is a concession. Such concession can never be claimed as a matter of right. The learned counsel appearing on behalf of the writ petitioners states that earlier order has not been complied with. However, the same is disputed by the respondent. May that it be, this Court is of an opinion that earlier order is certainly a concession and the writ petitioners cannot take any advantage from and out of such concession granted by the Courts. Otherwise, the writ petitioners have no legal right, after expiry of lease period i.e., June, 2016.

17. Under these circumstances, if the writ petitioners genuinely have the intention to continue in the public premises in their occupation, they should pay the entire enhanced rent and arrears of enhanced rent without any further delay and the same should be paid forthwith. If the said amount demanded by the respondent are not paid, then it is left open to the respondent to evict the writ petitioners by following procedures and conduct fresh auction in respect of the public premises by following the procedures contemplated under the law. It is made clear that the respondents need not wait any further and they are at liberty to proceed in accordance with law.

18. With the observations, these Writ Petitions are dismissed. However, no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar



To

The Commissioner,
Karur Municipality,
Karur.

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+ 1 CC TO Mr.D.RAGHU, ADVOCATE IN SR No. 44872
+ 1 CC TO Mr.S.DORAISAMY, ADVOCATE IN SR No. 45122

MYR/TA

TE/SV-MMS/SAR-4 : 13/02/2018 : 6P/4C

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