



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2018

CORAM:

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P. (MD) No.19234 of 2018

and

W.M.P. (MD) .Nos.17076 and 17077 of 2018

S.Pandiyarajan

.. Petitioner

Vs.

The Commissioner,
Sivakasi Municipality,
Sivakasi,
Virudhunagar District.

.. Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order in Na.K.No.201/2016/A4 dated 23.07.2018 and quash the same as illegal and consequently directing the respondent to re-fix the monthly rent in accordance with law.

For Petitioner : Mr.M.Kannan

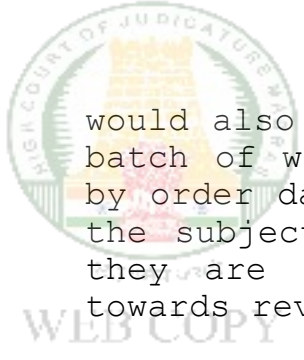
For Respondent : Mr.N.Dilipkumar

O R D E R

The petitioner was a lease holder under the respondent municipality and running a Cool Drinks shop in Stall No.7 in the Bus Stand, Sivakasi, Virudhunagar District. According to the petitioner, he paid rent at the rate of Rs.1,912/- per month without any default till date. The respondent municipality by proceedings, dated 23.07.2018 enhanced the monthly rent for the shop under occupation of the petitioner from Rs.12,285/-. According to the petitioner, the basis of such steep enhancement has not been disclosed and officials of the municipality has not followed the Government/PWD guidelines and norms for fixing the rent.

2. According to the learned counsel for the petitioner, the rent has been fixed without constituting a committee, which is mandated by various instructions issued by the Government and no notice had also been given to the petitioner in this regard before the rent was enhanced. He would further submit that a batch of writ petitions are pending before this Court under the same issue.

3. The learned counsel for the respondent municipality would submit that the issue is no more res integra, in view of the decision of the Hon'ble Division Bench of this Court rendered recently on 09.08.2017 in a Batch of Writ Appeals in W.A.(MD) Nos.1058 to 1086 of 2017. The learned counsel for the respondent



would also submit that earlier, the Single Judge of this Court in a batch of writ petitions in W.P.(MD).Nos.9333 to 9342 of 2017 etc., by order dated 10.07.2017, held that the licensee cannot hold on to the subject premises when new auction takes place and in case, if they are not agreeing with the offer made by the municipality towards revised rent payable by shop owners.

4. The learned counsel would brought to the attention of this Court to the operative portion of the order passed by the Hon'ble Division Bench as found in Para Nos.2 to 5, which are extracted hereunder.

"2.The learned Senior Counsel for the appellants would submit that the issue is with respect to the fixation of rent alone. Such fixation cannot be arbitrary, apart from being unilateral. Therefore, the orders impugned will have to be set aside.

3.The learned counsel for the respondent would submit that what has been given to the appellants only a way of offer by way of concession. The appellants are erstwhile licensees and thus, do not have any vested right. For making an offer, there is no question of hearing the case of the appellants. The rent has been fixed by taking into consideration of the relevant materials and as per the decision of Fee Committee. The question of Public interest as against the private interest has to be seen. The revenue augmented will have to be used for public activities. The auction is fixed tomorrow i.e., on 10.08.2017. Already 16 shops have been auctioned. The upset price was exceeded and it was accordingly confirmed in favour of 16 new licensees. They have paid the auction amount which is beyond the upset price fixed. Hence, no interference is required in the order of the learned Single Judge.

4. As rightly held by the learned Single Judge, the appellants do not have any vested right and their period of licence already got over. They did not have any say in the fixation of rent. The rent fixed forms part of an offer. It is for the appellants to accept or to leave it. The auction is fixed tomorrow i.e., on 10.08.2017. Therefore, it is for the appellants to take part in the said auction. After all, the ultimate interest is that of the respondent, which is a public authority catering to the needs of general public. It is nothing but a commercial activity intended to augment more revenue. Therefore, we do not find any reason to interfere with the order passed by the learned Single Judge. Accordingly, the writ appeals are dismissed.

5.However, considering the facts and circumstances of the case, still the auctions are confirmed, the appellants are permitted to continue in



the respective shops subject to payment of old rent along with arrears, if any. Liberty is given to the appellants to take part in the auction. No Costs. Consequently, connected miscellaneous petitions are also closed."

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5. As regards the decision of the Single Judge of this Court is concerned, the learned counsel brought to the attention of this Court to para Nos.24 to 28 which are extracted hereunder:

"24. The reliance placed by the learned counsel for the petitioners reported in AIR 1977 SC 302, 1993(2) SCC 520 and 1998 (4) SCC 368 arise out of the cases relating to fixation of property tax by the respective municipalities. Hence, they have no application to the facts of this case. A single Judge of this Court in a batch of Writ Petitions in W.P. (MD).Nos.22040 of 2016 etc., dated 07.04.2017 issued directions to fix the fair rent by following Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act. In view of the judgments of the Division Bench and Single Judges of this Court referred to supra, with great respect, I am not able to follow the view taken by the Hon'ble Single Judge made in W.P.(MD). No.22040 of 2016 etc.

25. In the case on hand, it is the specific case of the respondent municipality that the license period in respect of all petitioners came to an end on 31.03.2016. It is to be noted that in the affidavit filed in support of the Writ Petitions, no averment has been made, when the shops were brought for public auction and when they were inducted as licensees of the shops. It is specifically stated by the respondent municipality that the petitioners have been in possession of the shops for decades. Since, no material has been produced to show that they are entitled for renewal of licence for 9 years as per G.O.Ms.No.92, this Court is not able to accept the contention raised by the petitioners.

26. Further, the respondent has contended that the Rajapalayam Municipality proposed to implement new schemes for the welfare of the public at the cost of 183.78 crores and its contribution comes to Rs.21.42 crores. It is further stated that the present annual income from the shops of the respondent municipality is around Rs.22,10,268/- and if it is put into public auction, the municipality is expected to get income of Rs.1,25,36,000/-.

27. The Hon'ble Apex Court as well as this Court have rightly observed that the object of letting out the shops is to collect more revenue for the respondent municipality, therefore, the public property is to be put into auction by inviting tender



so as to enable the municipality to obtain the highest offer in a fair and transparent manner and then only, the respondent municipality could augment its revenue to the optimum level. Further, the interest of the respondent municipality cannot be jeopardized by permitting the petitioners to continue in possession of the premises for perpetuity.

28. Keeping in mind the ratio laid down in the above decisions and the facts of this case, this Court does not find any reason to quash the order impugned in the writ petitions. In that view, all the writ petitions are liable to be dismissed and they are, accordingly, dismissed. No Costs. Consequently, connected miscellaneous petitions are closed."

6. Therefore, the learned counsel for the respondent would submit that the issue, as raised in the present writ petition, is squarely covered by the decision of this Court as set out above.

7. This Court considered the submissions made on behalf of the petitioner as well as the submissions made on behalf of the respondents. From the above decisions, it is very clear that the issues involved in this writ petition is squarely covered by the decision rendered by the Honourable Division Bench as above mentioned. In view of the decision of the Hon'ble Division Bench of this Court and the decision of the learned Single Judge of this Court as cited supra, this Court cannot take a different view in this matter. Once, the Hon'ble Division Bench taken a particular decision, this Court is bound by the said decision. In the above said circumstances, this Court is unable to entertain this writ petition.

8. In the said circumstances, the writ petition is devoid of merits and the same is dismissed. No Costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar(Judicial)

/True Copy/

Sub Assistant Registrar(CS-II)

PJL

+1cc to Mr.N.Dilip Kumar, Advocate in SR No.83617

+1cc to Mr.M.Kannan, Advocate in SR No.83487