

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.19638 to 19641 of 2003

A.M.Jaffer
Shop No.5 & 6
Municipal Beef Shop
Mettupalayam ...Petitioner in
W.P.19638 & 19639/2003

E.Mohammed Ismail
Shop No.2
Municipal Beef Shop
MettupalayamPetitioner in
W.P.19640/2003

A.Abdul Malick
Shop No.3
Municipal Beef Shop
Mettupalayam ...Petitioner in
W.P.19641/2003

Vs.

1.The Mettupalayam Municipality, Rep. by
The Commissioner
Mettupalayam

2.Mettupalayam Municipality, Rep. By
The Chairman
Mettupalayam

... Respondents in all W.Ps.

WEB COPY

Common Prayer: These writ petitions have been filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the 2nd respondent herein, pertaining to Item No.20, 21, 22 & 23 of the Resolution dated 25.04.2003 and the consequential communication bearing Na.Ka.No.1/2003/A1 dated 09.06.2003, issued by the 1st respondent herein and quash the same insofar as it pertains to the petitioner

and direct the respondents herein to adopt an uniform basis of enhancement for the rent payable for the shops under their control.

For Petitioner : M/s.Srinath Sridevan
(in all W.Ps)

For Respondents : Mrs.K.Bhuvaneswari, AGP
(in all W.Ps)

COMMON ORDER

These writ petitions have been filed by the petitioners under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the 2nd respondent herein, pertaining to Item No.20, 21, 22 & 23 of the Resolution dated 25.04.2003 and the consequential communication bearing Na.Ka.No.1/2003/A1 dated 09.06.2003, issued by the 1st respondent herein and quash the same insofar as it pertains to the petitioner and direct the respondents herein to adopt an uniform basis of enhancement for the rent payable for the shops under their control.

2.The petitioners are the tenants and in occupation of the Municipal shops. Their licence for the said shops was granted much earlier. However, the present writ petitions are filed challenging the Resolution for consequential increase in the rent and for renewal of lease for another three years. As per G.O.Ms.No.147/MAWS dated 30.12.2000, the persons occupying the shops are permitted to renew the licence upon making the applications to Municipality and upon the enhancement of rent, of atleast 15% above the previous rental. This issue has already been dealt by this Court in W.P.(MD) No.3535 of 2009 and W.P.(MD)No.3831 of 2009 (O.A.Nowshad Farooq vs. The Commissioner on 30 April 2009). The relevant paragraphs read as follows:

10.The department of Municipal Administration and Water Supply Department of the Government of Tamil Nadu have issued the order in G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007. In the said Government Order, it was prescribed that while granting lease of municipal property, the Municipality has to follow the following procedure:

(i) Initially all the municipal properties of the Municipality shall be leased out by public auction.

(ii) The lease should be for a period of three years, at a time. On the expiry of the consolidated period of three years, the lease would be renewed automatically. It could be renewed upto nine years and the lease amount would be raised by 15%, once in three years.

(iii) The lease amount would be reassessed after a period of nine years. While granting the lease beyond nine years, preference would be given to the existing lessees for extension of lease for a further period of nine years on payment of the revised rent on the basis of the market rate. In case the lessee fails to accept the terms and conditions of such extension, the property would be let out through public auction.

11. Subsequently, the Government issued order in G.O.Ms.No.181, Municipal Administration and Water Supply Department, dated 19.09.2008. In the preamble to the said Government order, it was recorded that the conduct of public auction every year from December to March causes unnecessary problem to the officials, especially, those Municipalities and panchayats, where there are large number of public properties to be given on licence. In such circumstances, the Government have issued the order dated 19.09.2008.

12. The Government order in G.O.Ms.No.181, Municipal Administration, and Water Supply Department, dated 19.09.2008 permits the grant of lease licence for a period of three years instead of the existing practice of one year. However, the Government Order is prospective in nature, with effect from the financial year 2009-2010.

13. The Government Order nowhere says that the benefit of the licence for a period of three years was applicable also to the existing licencees and thereby, license would be renewed for a further period. There is no such condition incorporated in the Government Order, which gives a right to the existing licencees for an automatic renewal.

14. The Government Order in G.O.Ms.No.181,

Municipal Administration, and Water Supply Department, dated 19.09.2008 was issued only to tide over the difficulties experienced by the local bodies in the conduct of public auction every year. It was only to minimise the difficulties that the Government have directed the local bodies to grant the licence for a period of three years, instead of the existing system of granting the privilege for a period of one year. The Government Order clearly says that it is only from the financial year 2009-2010. When there is nothing in the Government Order, which gives a right to the existing licencees to demand an automatic renewal of the licence for a further period, it cannot be said that the licencees are entitled for an automatic renewal of the licence, subject to the condition of revision of licence fee.

3.As per the decision cited supra, nothing survives in this writ petition for further adjudication after a lapse of 15 years and these writ petitions are liable to be dismissed.

4.Accordingly, these writ petitions stand dismissed. The Municipality is granted liberty to conduct fresh auction as per the relevant G.O's issued by the Municipal Administration and Water supply Department and the shops shall be let in to the successful bidders in accordance with law. No costs. Consequently, connected miscellaneous petition if any stands closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Mettupalayam Municipality, Rep. by
The Commissioner, Mettupalayam

2.Mettupalayam Municipality, Rep. By
The Chairman
Mettupalayam

+1cc to M/S.K.BHUVANESWARI, Advocate SR.No. 55942

W.P.Nos.19638 to
19641 of 2003

A.SK(07/08/2019)