

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 38213 of 2004

and

W.P.M.P.s 45741 of 2004 & 21 of 2015

A.Tajudeen

... Petitioner

Vs

1. The Commissioner of Municipal
Administration,
Chepauk,
Chennai-600 005.

2. Trichirappalli Corporation,
rep. by its Executive Authority,
The Commissioner,
Municipal Office Road,
Cantonment,
Trichirappalli.

3. The Assistant Commissioner,
Trichirappalli Corporation,
Ponmalai Division,
Trichy-4.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent herein relating to the impugned order bearing Na.Ka.No.A1/7809/2002/Pon dated 21.01.2004 and Na.Ka.No.A1/5171/03/Pon dated nil and quash the same and consequently forbear the respondents from either in anyway dispossessing the petitioner or demanding or collecting the arrears of rent or auctioning the property as claimed in the proceedings.

For Petitioner : Mr.Sankara Narayanan

For Respondents : Mr.J.Ramesh,
Addl. Govt. Pleader for R1
Mr.P.Srinivas for R2 & R3

O R D E R

This Writ Petition has been filed challenging the impugned order of the 3rd respondent and quash the same and consequently forbear the respondents from either in anyway dispossessing the

petitioner or demanding or collecting the arrears of rent or auctioning the property as claimed in the proceedings.

2. The case of the petitioner is that he is the tenant of then Trichirappalli Corporation premises bearing No.3, Madurai Road, Trichirappalli. Originally, the lease amount was low and after the Municipal become Corporation, the lease amount was raised. Ultimately, during the year 1998, the rent was refixed by the Corporation at Rs.618/- per month and the rents have been regularly paid without any default. Subsequently, in the year 2001, the 2nd respondent issued a notice for renewing the lease for a period of 3 years from 01.04.2001, the petitioner has to apply to the Corporation for extension of lease and also further stated that within 15 days of notice, he has to appear before the 2nd respondent Corporation with all relevant documents. Pursuant to the said notice, the petitioner appeared before the 2nd respondent Corporation and submitted all the necessary papers. Thereafter, in the month of September 2001, the rent was refixed at Rs.773/- per month (i.e.) 25% over and above the then existing rent of Rs.618/-. The said enhancement was carried out based on the G.O.Ms.No.147, (Municipal Administration and Water Supply) department, dated 30.12.2000. The petitioner has also paid 25% of the enhanced rent right from 01.04.2001 onwards and continuously paid the same without any default and the lease period commencing from 01.04.2001 came to end during the month of March 2004. While being so, the 3rd respondent issued another proceedings dated 28.08.2003 and served notice to the petitioner stating that the 3rd respondent had fixed the rent for the above said premises from 01.04.2001 @ Rs.18,000/- per month and demanded the rent retrospectively from 01.04.2001 on the difference amount claiming a huge amount of arrears of Rs.4,82,356/- and directed to settle the entire amount on or before 15.09.2003. Aggrieved by the exorbitant demand, the petitioner approached this Court by way of filing Writ Petition in W.P. Nos.25437 and 26453 of 2003 etc. on various grounds and this Court by an order dated 23.09.2003 set aside the order passed by the 2nd respondent on the ground of violation of principles of natural justice and granted the liberty to issue notice and pass appropriate orders as per rules. Thereafter, the adjudication was conducted and after adjudication, the 3rd respondent by its orders dated 21.04.2004 sought for objection from the petitioner, if any, on the revised calculation of rent with effect from 01.04.2001 by fixing rent of Rs.18,000/- for the 1500 sq.ft. of so-called occupied premises with the total calculation of arrears of rent. In fact, the petitioner is in possession of 300 sq.ft., but the authorities without verifying the measurement had fixed the rent at Rs.18,000/- as if the petitioner is in possession of 1500 sq.ft. Hence, the impugned order is illegal in view of the fact that in the notice, they have referred G.O.Ms.No.147 dated 31.12.2000, wherein they have

stated that the resolution of the Corporation was rescinded by the Government order as stated above. Immediately, after receipt of the proceedings, the petitioner has forwarded a detailed objection dated 08.03.2004 to the 2nd respondent. However, without considering the objections made by the petitioner, the 3rd respondent passed an order of enhancing the rent from Rs.773/- to Rs.18,000/- and the petitioner was directed to pay a sum of Rs.8,26,894/- within a week. Against which, the present Writ Petition has been filed by the petitioner.

3. The learned counsel appearing for the petitioner would submit that initially, the rent, which was fixed is enhanced to Rs.773/- after following the norms prescribed in G.O.Ms.No.147, dated 30.12.2000. The Municipal Corporation after passing the resolution fixed the rent at Rs.773/- from the old rent at Rs.618/- from the year 2001 onwards. When the petitioner continuously paying the enhanced rent as per the said G.O., however, without giving opportunity to the petitioner, the 3rd respondent has enhanced the rent from Rs.773/- to Rs.18,000/-, which is exorbitant and unsustainable one. Accordingly, he prayed for appropriate orders.

4. Mr.P.Srinivas, learned counsel appearing for the 3rd respondent would submit that while entertaining the Writ Petition, this Court has granted interim stay. Thereafter, the petitioner has not paid any amount to the Municipality. Further, he has also stopped the payment of rent to the Corporation and for several years, he did not pay the rent and continuously occupied two shops and now, he has converted the shops for doing lodging business. Hence, the action of the petitioner by converting the shops to lodging business is a clear violation of license condition imposed in the license agreement executed in favour of the petitioner and the same is unsustainable one. Therefore, he prayed to dismiss the Writ Petition.

5. Mr. J.Ramesh, learned Addl. Government Pleader appearing for the State would submit that as per G.O.Ms.No.147, every three years, the revised rent has to be refixed and the revised period is valid upto 9 years. Thereafter, the property is to be brought to open auction. In the present case, the petitioner is occupying the shops right from the year 2004 onwards continuously without paying the enhanced rent, which is clear violation. Further, after expiry of the period of 5 years, the petitioner is not entitled to extend the lease period for further period of five years. Accordingly, he prayed for appropriate orders.

6. On perusal of the records, it reveals that the petitioner is in occupation of the premises from the year 1994 onwards and thereafter, they are continuously occupying the premises. Thereafter, the State Government in order to refix the rent for

all the shops constructed by the local body issued a G.O.Ms.No.147, dated 30.12.2000. As per the above said G.O., particularly, in paragraph 4, sub-para 3, the license will be granted for the further period of 3 years as per the existing market rental value with the enhanced rent at 15%. Accordingly, the 2nd respondent Corporation by its order dated 28.08.2003 issued notice to the petitioner and revised the rent from Rs.773/- to Rs.18,000/- and fixed the differential amount of Rs.4,82,356/-. Aggrieved by the said order, the petitioner has filed the Writ Petition in W.P.Nos.25437/2003, 26453/2003 etc. seeking to remand back the matter for violation of principles of natural justice. Thereafter, after conducting further adjudication, the present impugned order is passed. It appears that the petitioner is occupying the premises right from the year 1994 onwards till 2001 without meagre enhancement. In the year 2000, the petitioner has paid only a sum of Rs.773/- as rent and the petitioner also not produced any records to show that the periodical rent was increased from time to time. However, he has filed the Writ Petition before this Court for violation of principles of natural justice and no opportunity was given the petitioner and no records was produced before this Court stating that the said rent is exorbitant one. It also appears that while entertaining the Writ Petition, this Court has granted absolute interim stay. Thereafter, the petitioner has filed a petition in W.P.M.P.No.21 of 2015 with a prayer to direct the respondent to disclose their bank account bank and allow the petitioner to deposit the rent or to receive the rent in person or through cheque or money order, an amount of Rs.9,276/- being the periodical rent for the period from April 2013 to March 2014 and April 2014 to March 2014 and for the future period till the disposal of the Writ Petition and the said interim prayer was not allowed and the same is pending along with this Writ Petition.

7. The petitioner has filed a Writ Petition claiming the benefit in terms of G.O.Ms. No.147, dated 30.12.2000, however, subsequently, the Municipal Administration and Water Supply Department has issued another G.O.Ms.No.92, M.A. & W.S. 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 lease 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."

8. Subsequently, the Government issued another Government 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 license.

9. Furthermore, the Division Bench of this Court in Writ Appeal Nos. 928 to 938 of 2002 dated 04.02.2010 has held as follows :-

"15. For discharging its civic responsibilities, Municipality will have to augment its revenue only from proper property tax, toll and rent from its shopping complex. Holding that claim of lessee for extension by lease by enhancement of rent by 15% of previous rent is liable to be rejected, in AIR 1998 Madras 217 (A.Sathar Vs. The District Collector, Coimbatore), the Division Bench of this Court held as under :-

"2.The extension granted earlier by the Panchayat, to the appellant would not mean that the appellant is entitled to continue in possession of the premises in question for ever by paying ridiculously low rent. We are of the view that the extension of the lease to the appellant is against the interest of the panchayat. As already noticed the rental income from the properties owned by the Panchayat is one of the sources of income to the Panchayat. Therefore, the interest of the Panchayat cannot be jeopardised by permitting the appellant to continue in possession of the premises in question at the enhanced rate of 15 per cent as prayed for. There are absolutely no merits in this Writ Appeal and the same is dismissed."

16. In (2003) 3 MLJ 691 (M.Palanisamy and others Vs. Sriramapuram Town Panchayat, rep. by its Executive Officer, Sriramapuram, Dindigul District and others), the Division Bench of this Court held that rule does not recognise any right in any person, who has been successful at one auction to claim a right to remain in the premises for ever by merely agreeing to pay 15% more than the rate at which the lease rental was being paid for the earlier three year period. We

find no substance in the contentions raised by the Appellants, since what is offered to the Appellants is only an offer by way of concession enabling them to continue the shops in which they were the licensees.

17. Earlier, by the interim order dated 10.04.2002 in W.A.M.P.Nos.1815 to 1825/2002 in W.A.Nos.928 to 938/2002, First Bench of this Court granted interim stay on condition that appellants to pay Rs.28/- per sq.ft. It is stated that from the year 2000 onwards, appellants are paying the rent only at the rate of Rs.28/- per sq.ft. and not Rs.45/- per sq.ft. levied by 2nd respondent Municipality for the year 2000-2003. Learned Counsel for respondent submitted that for the year 2004-2007 and 2007-2010 appellants have to pay the enhanced rent. Appellants have not made out any substantial ground warranting interference with the order of learned single Judge. When dismissing all the Writ Appeals, Appellants are directed to pay rent at the rate of Rs.45/- per sq.ft.

18. In the result, all the Writ Appeals are dismissed. Consequently, W.A.M.P.Nos.1815 to 1825/2002 are closed. No costs. Appellants are directed to pay difference in arrears of rent within a period of four weeks from the date of receipt of copy of this judgment, in default, it is open to the 2nd respondent Municipality to take appropriate action to recover the arrears of rent from the appellants. In future, 2nd respondent Municipality is also at liberty to deal with the shops in accordance with law by bringing it in public auction, if the law so provides."

10. In view of subsequent developments, after expiry of 9 years period, the lease amount would be re-assessed and preference may be given to the existing lessee on payment of revised rent on the basis of the market value. In case, the lessee fails to accept the terms and conditions, such leased property would be let out for public auction. The issue involved in the present case, admittedly, the petitioner has occupied the premises in the year 1994 and he did not accept the revised rent in the year 2003, in which he has filed a Writ Petition before this Court in the year 2004.

11 On considering the subsequent events and subsequent Government Orders, after lapse of 25 years, I do not find any rights accrued to the petitioner to continue for unlimited period as lessee. As per G.O.Ms.No.92, after expiry of 9 years, the Municipality has to re-assess the value in terms of the market value and bring the property for public auction in order to find out new lessees to improve the income of Municipality.

12. Further, this Court in view of Writ Petition Miscellaneous Petition in W.P.M.P.No.21 of 2015 filed by the petitioner, it is also admitted that the petitioner has not paid

any amount for the subsequent periods. So, in view of the above, there was a huge loss to the Municipality and further, it appears that the petitioner has converted the above shops as lodge and earning huge amount. If it is true, the petitioner has to be vacated for violation of condition for altering the said shops. Therefore, I am of the view that the petitioner is not entitled to alternative renewal of his lease on the basis of the Government Orders and after lapse of 25 years, the petitioner is not entitled for renewal. Therefore, I do not find any merit in the Writ Petition. Accordingly, the Writ Petition stands dismissed and a liberty is granted to the Corporation to recover the rent including the penal amount, if any and bring the property for public auction. No costs. Consequently, the connected Writ Petition Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Commissioner of Municipal
Administration,
Chepauk,
Chennai-600 005.
2. The Executive Authority/Commissioner,
Trichirappalli Corporation,
Municipal Office Road,
Cantonment, Trichirappalli.
3. The Assistant Commissioner,
Trichirappalli Corporation,
Ponmalai Division, Trichy-4.

+1 CC to Sankaranarayanan, Advocate sr 56210.

+1 CC to Mr.P.Srinivas, Advocate sr 38213.

+1 CC to Govt. Pleader sr 5646

W.P. 38213 of 2004
and

W.P.M.P.s 45741 of 2004
& 21 of 2015

CA(CO)

SP(19/08/2019)