

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.Nos.4345, 4348, 4349, 4351, 4353,
4355, 4357, 4360, 4361, 4363, 4366, 4369,
4392, 4395, 4398 and 4399 of 2019

and

W.M.P. No.4875, 4877, 4879, 4881, 4882,
4885, 4886, 4891, 4883, 4884, 4896, 4897, 4899,
4903, 4892, 4893, 4894, 4895, 4888, 4890,
4904, 4905, 4909, 4913, 4933, 4934, 4945,
4948, 4950, 4953, 4937 and 4938 of 2019

A.G. Rajenderan	....	Petitioner	in W.P. No.4345	of 2019
S. Haroon Rashid	....	Petitioner	in W.P. No.4348	of 2019
R. Santhi	....	Petitioner	in W.P. No.4349	of 2019
P. Kaveri	....	Petitioner	in W.P. No.4351	of 2019
S. Dhakshayeeni	....	Petitioner	in W.P. No.4353	of 2019
V. M.Sulthan	....	Petitioner	in W.P. No.4355	of 2019
Mohamed Gani Ambalam	....	Petitioner	in W.P. No.4357	of 2019
Adaikalasamy	....	Petitioner	in W.P. No.4360	of 2019
G.M.Venkatesh	....	Petitioner	in W.P. No.4361	of 2019
K. Dhanalakshmi	....	Petitioner	in W.P. No.4363	of 2019
C.A. Rahim	....	Petitioner	in W.P. No.4366	of 2019
J.Varalakshmi	....	Petitioner	in W.P. No.4369	of 2019
T.K. Govindharajan	....	Petitioner	in W.P. No.4392	of 2019
R. Uma	....	Petitioner	in W.P. No.4395	of 2019
K. Kanakaraj	....	Petitioner	in W.P. No.4398	of 2019
R. Santhi	....	Petitioner	in W.P. No.4399	of 2019

Vs.

The Commissioner,
Cuddalore Municipality,
Cuddalore (Post) and District. ... Respondent in all W.P.s

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records of the respondent pertaining in his proceedings bearing No.Na.Ka. No.14703/2016/A2, dated 31.07.2018 quash the same and to direct the respondent to consider the petitioners representation dated 31.08.2018 and to determine the new monthly rent without retrospective effect to

the shop Nos.2, Assessment No.843; Shop No.17, Assessment No.858; Shop No.10, Assessment No.460; Shop No.15, Assessment No.466; Shop No.12, Assessment No.463; Shop No.13, Assessment no.464; Shop No.25, Assessment No.393; Shop No.3, Assessment No.829; Shop No.73, Assessment No.441; Shop No.16, Assessment No.467; Shop No.8, Assessment No.459; Shop No.27, Assessment No.395, Shop No.67, Assessment No.435; Shop No.30, Assessment No.442; Shop No.14, Assessment No.465 and Shop No.11, Assessment No.462 as per the prevailing guideline of the locality after granting a fair opportunity of being heard to the petitioner respectively.

For Petitioner in all W.P.s : Ms.G. Devi

For Respondent in all W.P.s : Mr.A.S.Thambusamy

COMMON ORDER

By consent of learned counsel on both sides, these writ petitions are taken up for final disposal at the stage of admission itself.

2. The learned counsel for the petitioner submitted that in all these writ petitions, the petitioner(s) challenges the notice issued by the sole respondent. In and by the said notice, the third respondent called upon the petitioner to pay the enhanced revised rent retrospectively, with effect from 01.07.2016 failing which, it was stated that the lease in favour of the respective petitioners will stand cancelled.

3. According to the petitioners, they are small time vendors carrying on business in the lease hold premises measuring approximately 100, 200, 400 sq. ft. respectively. The petitioners are carrying on the business in their respective lease hold premises for several years. It is also stated that the petitioners were paying the lease rent amount to the Municipality from time to time without any default. In fact, the Municipality has enhanced the lease rent at the rate of 15% in every 3 years, which was also paid by the petitioners without raising any objections. However, by issuing the present notice, the Municipality is attempting to revise the existing lease rent retrospectively from 01.07.2016, besides enhance the lease rental amount at an exorbitant rate.

4. According to the petitioners, such a proposal made by the respondent to enhance the lease rent is arbitrary, illegal and it would gravely prejudice the petitioners in carrying on their business. Therefore, the petitioners are come forward with these writ petitions.

5. The learned counsel appearing for the respondent / Municipality would vehemently opposing the writ petitions by contending that what is sought to be assailed by the petitioner is not a periodical enhancement of the lease rent, which would be resorted to by the respondent once in three years. On the contrary, the respondent seeks to revise the lease rent and such a revision is being made once in 10 years. Such revision is necessitated due to increase in the market value of the property and other factors, such as commercial exploitation of the area etc. Further, unless such revision is effected, the Municipality would find it very difficult to maintain the lease hold premises and therefore, also the learned counsel for the respondent would justify the action of the respondent Municipality to revise the lease hold rent.

6. Heard both sides.

7. It is seen from the record that earlier in batch of cases in W.P. No.28293 of 2018 and etc. have been filed before this Court, challenging the identical notice for revision of the lease hold rent. This Court by order dated 21.12.2018, while upholding the action of the respondent in revising the rent specifically held that such revision should not have been made with retrospective effect and to that extent the writ petitions were allowed by this Court. As against the order, dated 21.12.2018, there was no further appeal filed by the petitioners or respondents in batch of cases in W.P. No.28293 of 2018 etc. and it attained a finality.

8. By placing reliance on the above said order passed by this Court, the learned counsel for the petitioner vehemently contended that the present enhancement itself is exorbitant and the attempt to collect the enhanced rent with retrospective effect would adversely affect the business of the petitioners, besides such an enhancement with retrospective effect is arbitrary.

9. I find much force in the submission of the learned counsel for the petitioner. As held by this Court in the order dated 21.12.2018, the respondent is empowered to revise the lease hold rent, taking note of several factors such as commercial exploitation of the area, prevailing market value of the property locational advantages etc. However, such enhancement cannot be made with retrospective effect. As rightly pointed out by the learned counsel for the petitioner, the enhancement with retrospective effect would adversely affect the petitioner, who are small businessmen and they could not afford to pay such an huge amount towards arrears. This Court

also take note of the fact that the lease in favour of the petitioners are in force and they are also paying the lease rent periodically without any default.

10. Having regard to the above fact, this Court feels that the enhancement of the lease rent by way of revision, sought to be made by the respondent with retrospective effect cannot be sustained. However, it is made clear that the petitioners have to pay the lease rent, as demanded by the respondent in the notices, which are impugned in these writ petitions, with prospective effect.

11. Therefore, in the light of the said order and submission so made by the learned counsel for the petitioner, all these writ petitions are partly allowed to the extent that demand made by the respondent to pay the difference lease rent from 01.04.2016 to 31.03.2018 is quashed and the respondent is granted liberty to issue fresh notice for re-fixing the amount from 01.04.2018 till the petitioner continues as a lessee in the subject matter of the shop. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

vsi2

To
The Commissioner,
Cuddalore Municipality,
Cuddalore (Post) and District.

+32ccs to Mr.V.Raghupathi, Advocate SR.No.14348

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SKV(CO)
GMY(10/04/2019)