

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.Nos.9839, 9846 & 9868 of 2019

and

WMP.Nos.10432, 10438 & 10466 of 2019

K.Ganesh ... Petitioner in W.P.No.9839 of 2019

K.Ganesh ... Petitioner in W.P.No.9846 of 2019

Sargunam ... Petitioner in W.P.No.9868 of 2019

Vs.

The Commissioner,
Cuddalore Municipality,
Bharathi Road,
Cuddalore - 607 001. ... Respondent in all W.P.Nos.

COMMON PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARI, calling for the records and quash the notice issued by the respondent in Na.Ka.No.14703/2016/A2, dated 31.07.2018.

For Petitioner : Mr.D.Baskar (in all W.P.s')

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

COMMON ORDER

The petitioners have filed these Writ Petitions praying to issue a WRIT OF CERTIORARI calling for the records and quash the notice issued by the respondent in Na.Ka.No.14703/2016/A2, dated 31.07.2018.

2.By consent of the both the parties the writ petitions are taken up for final disposal.

3.According to the learned counsel for the petitioners that the respondent passed an impugned order demanding the enhancement of the lease amount with effect from 01.07.2016. He further submits that the lease period was granted for nine years and the same was expired on

31.03.2018. The respondent Municipality has passed an impugned order by increasing the lease amount as Rs.10,000/- per month with retrospective effect from 01.07.2016. Some of the leasees connected to the similar matter have approached this Court, challenging the very same demand notice made by the Municipality with retrospective effect. This Court by its order dated 21.12.2018 in W.P.No.28293 etc., batch of 2018 has partly allowed the writ petitions by upholding that the respondent Municipality cannot demand to pay the arrears of rent with retrospective effect. To that extent, these Writ Petitions are to be allowed and the present writ petitions are also covered by the order passed by this Court.

4.The learned counsel appearing for the respondent Municipality would submit that the respondent has also agreed the facts of the case and not disputed the present cases on hand and also the covered order passed by this Court.

5.This Court considered that the order in W.P.No.28293 etc., batch of 2018 dated 21.12.2018 is squarely applies to this case and also considered that it is useful to extract the relevant paragraph Nos.13 to 16 as under:

"13.So far as the last contention of the petitioners was that, already the respondent Municipality has renewed lease period upto 2019, and the petitioners are also paying the lease amount upto 2018, it is not open to the Municipality to direct the petitioners to pay the revised rent retrospectively from 01.07.2016, and so far as the part of the order directing the petitioner to revise the lease amount from 01.07.2016 is liable to be set-aside.

14.I find some force in the argument of the learned counsel for the petitioners. From a perusal of the records, in most of the cases, the lease had been renewed in the year 2016 for the period up to 31.03.2018, by revising the lease amount and the petitioner is also paying the revised lease amount. Now, after renewing the lease and also asking the petitioners to pay the revised lease amount, it is

not open to the respondent direct them to pay the revised lease amount retrospectively from the 01.07.2016. Even G.O.Ms.No.92 Municipal Administration and Water Supply Department dated 03.07.2007, is not authorizing the respondent to collect the lease amount retrospectively. In the said circumstances, I am of the view that the respondent can revise the lease amount only prospectively and not retrospectively from the year 2016.

15.The impugned notice is only an offer made by the respondent-Municipality to the petitioners for paying the revised lease amount, and it is for them to accept or not. There is no compulsion on the part of the petitioners to accept the same. If the petitioners are not willing to accept the offer, it is always open to the Municipality to bring the properties for public auction. In the said circumstances, I find no merits in the contention in the writ petitions.

16.Accordingly, the writ petitions are partly allowed with a direction to the respondent-Municipality to revise the lease amount only prospectively from the year 2018. No costs. Consequently, connected miscellaneous petitions are closed."

6.In the light of the above covered order passed by this Court the impugned order is quashed and the writ petitions are partly allowed. It is make it clear to the petitioners to pay the difference amount as demanded by the respondent Municipality for enhancement of the lease amount as per impugned order from 01.04.2018 to 31.03.2019, within a period of four weeks from the date of receipt of a copy of this order.

7.Therefore, this Court has no hesitation to set aside the impugned order dated 31.07.2018, only in so far as demanding retrospectively with effect from 01.07.2016. It is always open to the respondent Municipality to proceed in accordance with law, if the petitioners are not agreed to accept the above said lease amount from 01.04.2019.

8. Accordingly, the writ petitions are partly allowed with the above direction. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

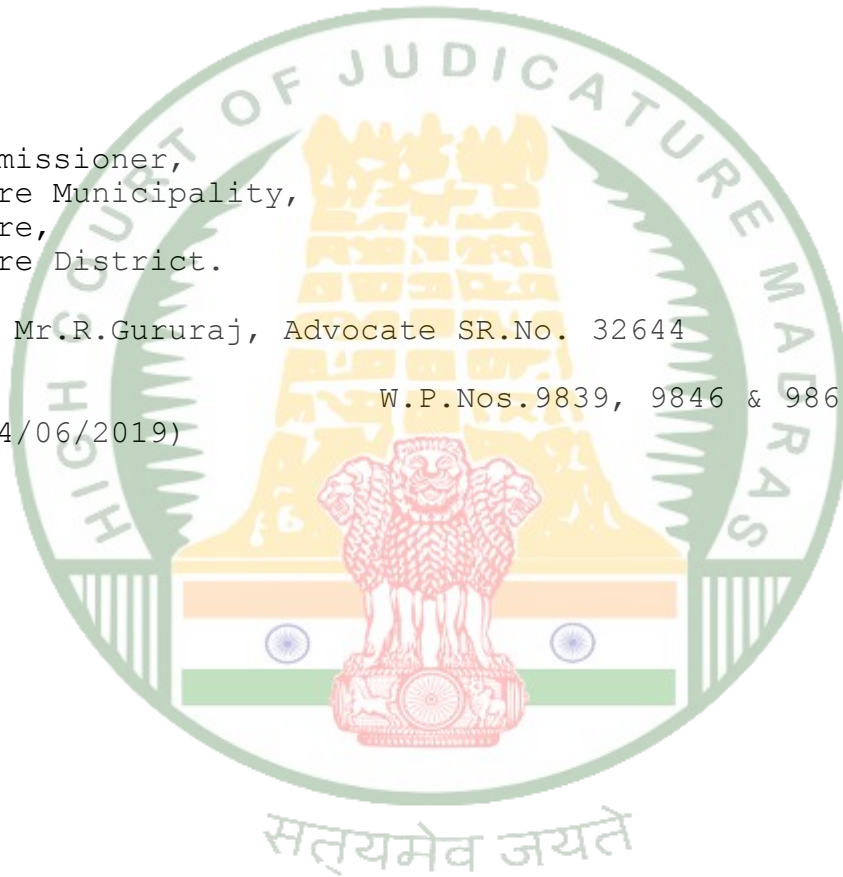
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To

The Commissioner,
Cuddalore Municipality,
Cuddalore,
Cuddalore District.

+1cc to Mr.R.Gururaj, Advocate SR.No. 32644

W.P.Nos.9839, 9846 & 9868 of 2019

A.SK(24/06/2019)



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