

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P. Nos.23715 and 23716 of 2016 and
M.P.Nos.20321 to 20324/2016 and WMP.No.37/2019

W.P.No.23715/2016 :

R.Muthukrishnan ... Petitioner

-vs-

1. The Commissioner,
Salem Corporation, Salem.
2. The Assistant Commissioner,
Suramangalam Ward Office,
Salem Corporation, Salem. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the imugned proceedings issued by the 2nd respondent in K1/4248/2015 dated 22.03.2016 served on 08.06.2016 and the subsequent Auction Notification through Daily Thanthi Newspaper Advertisement dated 03.07.2016 and to quash the same insofar as the Hotel premises allotted to the petitioner is concerned (Hotel Aryas at New Bus Stand) and consequently, directing the respondents to abide by the conditions as per G.O.Ms.No.29, Municipal Administration and Water Supply Department, dated 16.02.1995.

W.P.No.23716/2016 :

M.Muthu ... Petitioner

-vs-

1. The Commissioner,
Salem Corporation,
Salem.
2. The Assistant Commissioner,
Suramangalam Ward Office,
Salem Corporation, Salem. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the imugned proceedings issued by the 2nd respondent in K1/4248/2015

dated 22.03.2016 served on 10.06.2016 and the subsequent Auction Notification through Daily Thanthi Newspaper Advertisement dated 03.07.2016 and to quash the same insofar as the Hotel premises allotted to the petitioner is concerned (Hotel Arthi at New Bus Stand) and consequently, directing the respondents to abide by the conditions as per G.O.Ms.No.29, Municipal Administration and Water Supply Department, dated 16.02.1995.

Both W.Ps.

For Petitioner : Mr.G.Sankaran

for M/s.R.N.Amarnath

For Respondents : Mr.S.Sathish,

Standing Counsel

COMMON ORDER

There are two Writ Petitions filed questioning the correctness of the impugned Proceedings dated 22.03.2016 served on the petitioners on 08.06.2016 and 10.06.2016 respectively by the Assistant Commissioner, Suramangalam Ward Office, Salem Corporation, Salem, the 2nd respondent herein and the subsequent Auction Notification given in Daily Thanthi Newspaper on 03.07.2016 and to quash the same insofar as the hotel premises allotted to the petitioners are concerned.

2. Learned Counsel appearing for the petitioners stated that the erstwhile Salem Municipality constructed a New Bus Stand in the year 1992-1993 and the said bus stand was put to use from 1995. When the hotels were constructed within the bus stand, although public auction was held, the lease was not taken by anyone. In the meanwhile, a proposal was forwarded by the respondent Corporation to the State Government based on the same, the Government issued G.O. (D) No.142, MAWS Department, dated 02.08.1994 for allotment of the hotel premises in favour of the petitioners for monthly rent of Rs.35,750/-. Accordingly, the hotel premises-in-question were allotted to the petitioners by the orders of the Government in G.O.(D).No.142 dated 2.8.1994. After handing over the skeleton structure with four walls as hotel premises, the petitioners converted the same into hotel by providing basic requirements of Kitchen, Dinning Hall, separate counters by incurring huge expenditures. Thereafter, the respondent Corporation passed a Resolution No.450 dated 07.10.1994 allotting the hotel premises in favour of the petitioners to implement the orders passed in G.O.(D) No.142, dated 02.08.1994. Subsequently, the Government also issued yet another G.O.Ms.No.29 MAWS Department dated 16.02.1995 extending the lease period for a period of three years from 11.10.1994 and further extension of 3 years by accepting 15% enhanced lease rent as per the orders passed by the Hon'ble Supreme Court of India. The said Government Order also has further referred to the fact that the petitioners have incurred

huge expenditure of more than Rs.5 Lakhs for the purpose of improving the hotel buildings, therefore, the place in question cannot be equated with others for collection of increased rate of monthly rent because a mere site has been improved as a hotel by the petitioner.

3. The learned Counsel for the petitioners further stated that when the respondent Corporation has been collecting the monthly rent of Rs.1,21,435/- till 2016, they have revised the monthly rent on the basis of G.O.Ms.No.92, MAWS Department, dated 03.07.2007. Contrary to the criteria in para 4(3) of the G.O.Ms.No.147, MAWS Department dated 30.12.2000 which has not been properly followed. If it is followed, the petitioners cannot find fault with the respondents and the respondents also cannot have any grievance for getting the reasonable rent from the petitioners.

4. The learned Counsel for the petitioners also stated that the case of the petitioners cannot be considered as normal case by forcing the petitioners to take part in the public auction for the reason that the respondents themselves have come forward to give the petitioners liberty to meet out the expenditure for constructing the hotels in the New Bus Stand, Salem and after making the petitioner to incur heavy investment to complete the construction, by developing as a hotel the Salem Corporation themselves have come forward to fix the monthly rent even without following the formula mentioned in paragraph 4(3) of G.O.Ms.No.147, MAWS Department dated 30.12.2000, demanding four times more rent.

5. Intervening at this stage, the learned Standing Counsel for the respondent Corporation stated that it is not factually correct to say that the respondent Corporation is seeking four times more rent than the existing monthly rent and they have also reduced 25% in the monthly rent from the previous monthly rent and also reduced the Caution Deposit from Rs.30,00,000/- to Rs.20,00,000/-. Instead of such concession given to the petitioners, they have come to this Court with these writ petitions. Moreover, when the hotels-in-question were brought in public auction, one took part in the auction offering higher amount than the petitioners and after sometimes, he has also withdrawn from the proceedings. Therefore, the petitioners cannot refuse to pay the amount mentioned in the proceedings dated 22.03.2016.

6. Having heard the counsel appearing on either side, it could be seen from the records available before this Court that the erstwhile Salem Municipality constructed a new bus stand in the year 1992-93 and after the said bus stand was put to use from the year 1995, hotel premises were constructed within the bus stand to cater to the needs of the public and thereby, the same were let out by conducting public auction. On being successful in auction, the petitioners were handed over with a

skeleton structure with four wall having an extent of 2146 sq.ft. After taking possession thereof, the petitioners had converted the same into hotel by providing basic requirements of Kitchen and Dining Hall by incurring huge expenditure. Subsequently, the Government, vide G.O.(D).No.142, Municipal Administration & Water Supply Department, dated 02.08.1994, allotted the said hotel premises in favour of the petitioners for a period of one year. The respondent Corporation also passed a Resolution No.450, dated 07.10.1994, allotting the said hotel premises in favour of the petitioners pursuant to the above said G.O. passed by the Government. Finally, the State Government, by referring to the fact that the petitioners had incurred expenditure of more than Rs.5 lakhs for developing the hotel, passed another G.O.Ms.No.29, Municipal Administration & Water Supply Department, dated 16.02.1995, extending the lease period for a period of three years from 11.10.1994. Therefore, as canvassed by the learned counsel for the petitioner, the petitioners cannot be equated with other lessees. Moreover, when the allotment of hotel located in the bus stand belongs to the respondent Corporation, such allotment is governed by the conditions mentioned in G.O.(D).No.142, dated 02.08.1994, and G.O.Ms.No.29, dated 16.02.1995, prescribing the increase of 15% of rent for every three years. Admittedly, the petitioners also stated to have complied with the said condition for payment of lease rent without any deviation for all these years, therefore, this Court, taking note of the fact that the matters are pending from 2016, is inclined to direct the respondent Corporation to consider the fixation of fair rent of the petitioners hotels following the formula mentioned in paragraph 4(3) of G.O.Ms.No.147, MAWS Department, dated 30.12.2000. It is needless to mention that since the petitioners have been considered by the respondents as special case for the reason that they have incurred heavy expenditure for putting up the construction of the hotels, the respondent Corporation, taking note of the same, are directed to provide an opportunity of personal hearing to the petitioner before passing the final orders. The petitioners shall also pay 25% more than the previous monthly rent till the reasonable fair rent is fixed.

7. With the above observation and direction, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Salem Corporation,
Salem.

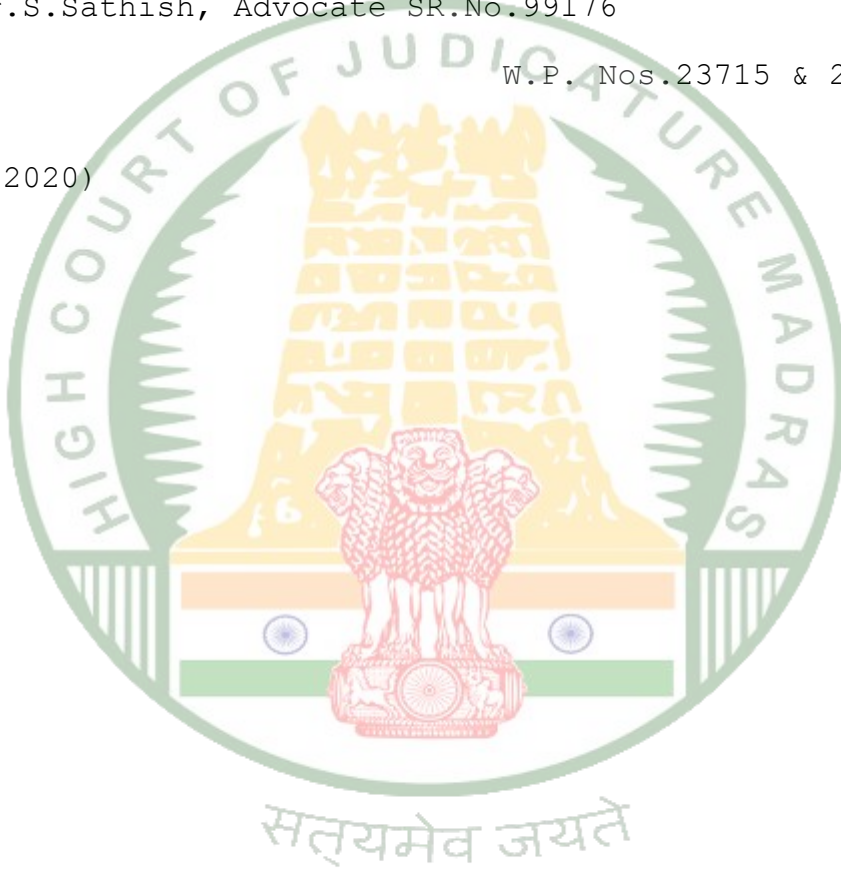
2. The Assistant Commissioner,
Suramangalam Ward Office,
Salem Corporation, Salem.

+2cc to Mr.R.N.Amarnath, Advocate SR.No.99168

+1cc to Mr.S.Sathish, Advocate SR.No.99176

W.P. Nos.23715 & 23716/2016

VSN II (CO)
GMY (25/02/2020)



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