

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.2000/2018 & CMP.No.15872/2018

Mani .. Appellant / Writ Petitioner

Versus

The Commissioner
Arni Municipality
Thiruvannamalai District. .. Respondent / Respondent

Prayer:- Writ Appeal filed under Clause 15 of the Letter Patent against the order of this court passed in WP.No.17796/2018 dated 16.07.2018.

W.P. 17796/2018:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorari to call for the records of the respondents impugned order in Na.Ka. No. 1408/2016/A3 dated 03.03.2017 issued to the Petitioner herein and quash the same.

For Appellant : Mr.B.S.Ramesh
For Respondent : Mr.E.Manoharan, AGP

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

By consent, the writ appeal is taken up for final disposal and is disposed of by this judgment. Mr.E.Manoharan, learned Additional Government Pleader accepts notice on behalf of the respondent.

2 The appellant is the writ petitioner and he has filed WP.No.17796/2016 praying for issuance of a writ of certiorari calling for the records relating to the impugned proceedings dated 03.03.2017 on the file of the respondent and to quash the same.

3 It is the case of the appellant/writ petitioner that he was running a small shop admeasuring to an extent of 150 sq.ft. [10x15] and the monthly license amount/rent of his shop is at Rs.1006/- and the license is valid up to 31.03.2019. The

appellant/writ petitioner, to his shock and surprise, had received the impugned notice dated 03.03.2017 from the respondent, arbitrarily increasing the monthly lease/license amount from Rs.1006/- to Rs.48000/- and according to the appellant/writ petitioner, such an arbitrary increase is per se unsustainable and relevant norms and regulations have not been followed and fairness has not been exhibited by the respondent while increasing the lease/license amount exorbitantly and hence, prayed for interference. The said writ petition was entertained.

4 The learned Single Judge, in paragraph No.4 of the impugned order dated 16.07.2018, had taken note of various orders passed by this Court and observed that the lessees/licensees have no right to seek extension of lease in perpetuity and the provisions of the Tamil Nadu Buildings [Lease and Rent Control] Act, as amended, have no application in fixation of license fee. The learned Judge has also taken note of the fact that in respect of increase in license amount done by other Local Bodies, challenge was made in a batch of writ petitions in WP.No.12706/2017 batch etc and vide common order dated 22.11.2017, similar contention put forth on behalf of the licensees, was rejected and the writ petitions came to be dismissed. The learned Judge, having found that the above cited decisions would squarely applicable to the facts of the present case, has dismissed the writ petition vide impugned order dated 16.07.2018 and aggrieved by the same, the present writ appeal is filed.

5 The learned counsel for the appellant/writ petitioner would contend that admittedly, the appellant/writ petitioner is a small vendor and is in possession of 10x15 sq.ft/ of space in which, he is running his business and through the income earned, he is eking out his livelihood and all of a sudden, the lease/license amount sought to be increased nearly three times and before doing so, the respondent/Municipality ought to have put the appellant/writ petitioner on notice and without doing so, they have done it. It is the further submission of the learned counsel that without adhering to the relevant norms and regulations, such arbitrary increase was done and therefore, the learned Judge ought to have quashed the impugned proceedings and allowed the writ petition and prays for setting aside the impugned order, dismissing the writ petition.

6 The Court heard the submission of Mr.E.Manoharan, learned Additional Government Pleader appearing for the respondent and perused the materials placed before this Court.

7 Though the appellant/writ petitioner claims that he is a lessee, he is only a licensee and he claims to have become a licensee in the year 2002.

8 The primordial grievance expressed by the appellant/writ petitioner is that increase in lease/license amount nearly three times, is per se arbitrary and the same is against the relevant norms and regulations. In the considered opinion of the Court, the said submission lacks substance and merits for the reason that in the decision reported in 2014 [5] MLJ 129 [P.Muthusamy Vs. State of Tamil Nadu rep.by its Secretary to Government, Municipal Administration and Water Supply Department, Chennai and another], the scope of G.O.Ms.No.92, Municipal Administration and Water Supply [Finance IV] Department dated 03.07.2007 as well as the challenge to the quantum of fixation of rent, came up for consideration. A Division Bench of this Court, after taking note of the rival submissions, in paragraphs No.22 and 24, has observed as follows:-

'22.The resolution has been passed after making detailed discussion and it was also passed as a consequence of the earlier order dated 14.12.2012 by which rent was fixed. Since the said rent so fixed was not paid, the respondent-Municipality was made to pass the impugned resolution. Therefore, it cannot be said that the impugned resolution has been unilaterally passed and as such, the said decision is in accordance with the Government Orders passed, which confer the power on the respondent-Municipality to take action towards the eviction from the shops in the event of non payment of rent payable. The extraction of the related paragraphs of the resolution would clearly show that relevant materials have been taken into consideration while passing the same. The respondent-Municipality has got its own duty and obligation to perform. Appointments will have to be made to the public office and salaries will have to be paid. Money will have to be spent towards the welfare measures. The assessment made also indicates that the proposed auction would bring more money. The best way to get the maximum revenue is by way of public auction. This will also create a level playing field enabling others to participate along with the petitioners/licensees. Therefore, we do not find any arbitrariness in the action of the respondent-Municipality. The reliance made by the petitioners on the communication dated 12.03.2009 cannot be accepted since it cannot overreach the Government Orders which speak about removal when conditions are not complied with. The fact that the Commissioner of Municipal Administration directed the respondent-Municipality to fix the market rent as the rent payable based

upon the Government Orders which in turn was complied with would also show that there is no quarrel with the position that the market rent shall be the basis for the fixation of the rent payable by the licensees. In any case, the petitioners, being the defaulters, cannot contend that they should be allowed to continue forever. As the orders impugned have been passed by taking into consideration of the relevant materials, we do not find any room for interference.

.....

24. It is settled law that an instrumentality of a State should always endeavour by following the procedure by way of public auction or inviting tender, as held in P.N.CHINNASAMY AND OTHERS V. THE ASSISTANT DIRECTOR OF TOWN PANCHAYAT, COIMBATORE DISTRICT AND OTHERS ((2011) 1 CTC 584), S.SELVARANI V. THE COMMISSIONER, KARAUKUDI MUNICIPALITY ((2005) 1 CTC 81), C.JAYANTHI V. THE COMMISSIONER, METTUR MUNICIPALITY, SALEM DISTRICT ((2006) 5 CTC 236), D.KANNAN V. THE COMMISSIONER OF MUNICIPAL ADMINISTRATION, CHEPAUK (CDJ 2010 MHC 1636) and RAM AND SHYAM COMPANY V. STATE OF HARYANA AND OTHERS ((1985) 3 Supreme Court Cases 267)."

9 It is to be remembered at this juncture that the appellant/writ petitioner is only a licensee and he cannot claim extension of lease/license on the very same quantum of license fee/lease amount. Though it was opened to the respondent-Municipality to go for a tender-cum-auction as to the license of the said shop in terms of the above cited Government Order in G.O.Ms.No.92 dated 03.07.2007, they were given an opportunity to pay the increase in license fee for the purpose of extending the license and however, the appellant/writ petitioner was not inclined to accept the same.

10 It is well settled position of law that in order to augment/earn more revenue, tender-cum-auction is the best mode and it is also to be remembered at this juncture that any increase or augmentation of the revenue would benefit the local body and it is also in public interest. In the considered opinion of the Court, the learned Judge has taken note of the earlier decisions and on correct appraisal of the facts, had rightly reached the conclusion to dismiss the writ petition and this Court, on an independent application of mind to the entire materials, is of the view and considered opinion that there is no error apparent or infirmity in the reasons assigned in the impugned order.

11 In the result, the writ appeal is dismissed confirming the order dated 16.07.2018 made in WP.No.17796/2018. No costs. Consequently, the connected miscellaneous petition is also dismissed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

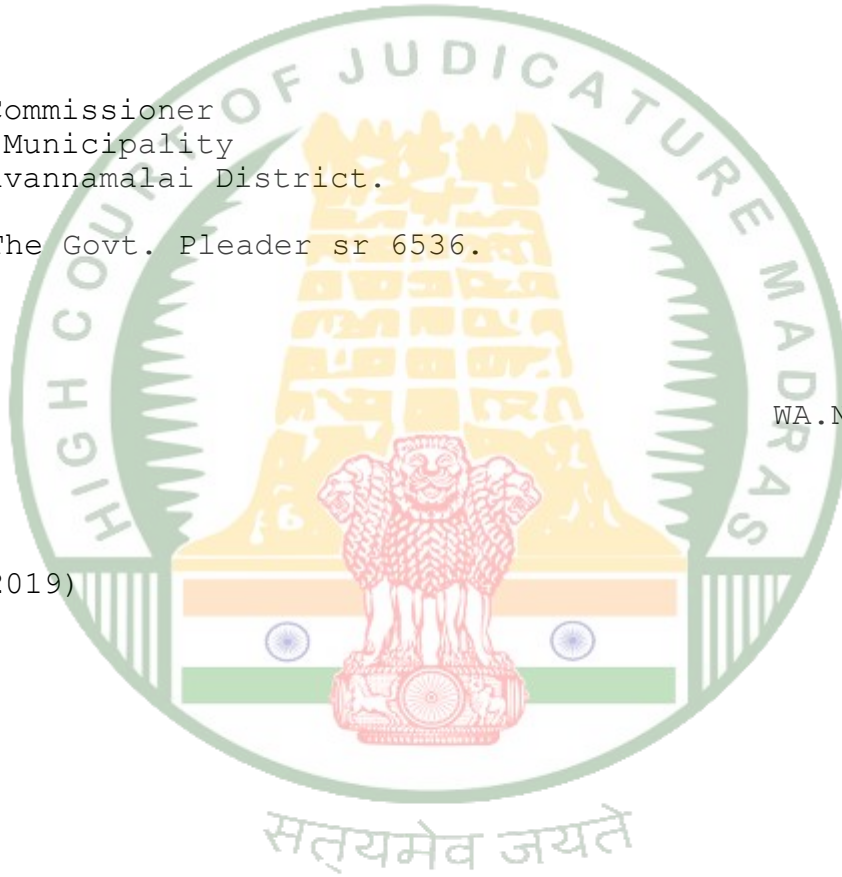
AP
To

The Commissioner
Arni Municipality
Thiruvannamalai District.

+1 CC to The Govt. Pleader sr 6536.

WA.No.2000/2018

EV(CO)
SP(22/02/2019)



WEB COPY