IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.07.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.13746 of 2019
and W.M.P.No.13825 of 2019

T.Selvakumari ...Petitioner

Vs

1.The District Collector,
Kancheepuram District,
Kancheepuram.

2.The Director of Town Panchayat,
Directorate of Town Panchayats,
Kuralagam, Chennai-600 108.

3.Executive Officer,
Madambakkam Town Panchayat,
Chennai-126 ... Respondents

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certioararified Mandamus quashing the impugned notice dated 21.03.2019 vide Na.Ka.No.918/2019 and directing the 3rd respondent to furnish statement of account pertaining to the rents paid by the petitioner.

For petitioner : Mr.Jaganathan.S

For R1 R2 : Mr.N.Inbanathan
Additional Government Pleader

O R D E R

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. The petitioner herein is the successful bidder for the shop No.9 phase-II, Pathuvanchery, Madambakkam village, which is under the control of the third respondent. She has quoted Rs.7900/- rent per month and had taken possession of the shop as per the order dated 25.07.2016. The term of lease was three years and it is due to expire on 24.07.2019. Meanwhile, the third respondent has caused notice demanding Rs.64,748/- as rental arrears. According to the petitioner the said demand of Rs.64,748/- is erroneous and contrary to the lease agreement. The third respondent in his counter has submitted a Memo of Calculation has below:-

Sr. No.	Period	Petitioner paid amount	Basic, Rent, VAT, GST and Hike rent	Outstanding Amount
1.	August 2016 to Novermber 2016	Rs.36,182/- (including VAT 14.05%)	No GST	Nil
2.	December 2016 to March 2016	Rs.36.182/- (including VAT 14.05%)	No GST	Nil
3.	April 2017 to July 2017	Rs.36.182/- (including VAT 14.05%)	No GST	Nil

Sr. No.	Period	Petitioner paid amount	Basic, Rent, VAT, GST and Hike rent	Outstanding Amount
4.	August 2017 to March 2019	Rs.1,58,000 /- (Only Base Rent, without VAT or GST) for 20 months	(A) 5% Hike Rent with 18% GST from August 2017 to March 2018 (8 months) (B) 5% Hike Rent with 18% GST from August 2018 to July 2018 (8 months) (C) 5% Hike Rent with 18% GST from August 2018 to March 2019 (8 months)	Base Rent:7,900 + 395 (5% hike) 8295X8: Rs.66,360/- GST: Rs.11,945/- Base Rent:7,900 + 395 (5% hike) 8295X4: Rs.33,180/- GST: Rs.5972/- Base Rent:8295 + 415 (5% hike) 8710X8: Rs.69,680/- GST: Rs.12,542/- Breakup Rent:66,360 GST: 11,945 Rent:33,180 GST :5,972 Rent:69,680 GST :12,542 Grand Total:1,99,679 Already

3. From the above Memo of Calculation, it appears that the third respondent has hiked the rent every year by 5% and added 18% GST and now demand a sum of Rs.41,679/-, after giving credit of Rs.1,58,000/- by the petitioner.

4. The learned counsel for the petitioner would contend that as per the lease agreement, the respondent cannot hike the rent every year. Even according to G.O.Ms.No.92 dated 03.07.2007 of the Municipal Administration and Water Supply Department, there can be hiked by 15% for every three years of block and not 5% every year. Therefore, the Memorandum of Calculation stated in the counter is erroneous.

5. This Court is totally in agreement with the petitioner submission in this regard. While the auction notice as well as the agreement clearly indicates that the monthly rent of Rs.7900/- per month for a period of three years unilaterally, the third respondent cannot hike the rent at the rate of 5% every year. G.O.Ms.No.92 dated 03.07.2007 contemplates hike of rent by 15% every block of three years only, if the successful bidder in the auction opt for extension of lease for further period of three years. Even that is restricted to a maximum period of 9 years.

6. In such circumstances, the petitioner herein if interested to continue his contract, shall given an undertaking to pay the enhanced rent by hike of 15% from what he is paying presently. Further, the petitioner cannot seek extension for paying the statutory due payable under GST, whatever he is liable to pay he has to pay within a period of one week. On such payment of GST and if the petitioner is interested to renew the lease with an undertaking that he will pay the enhanced rent by 15%, the same may be considered positively and appropriate orders be passed.

7. If the petitioner fails to pay the arrears towards GST or to make a request for renewal with enhanced rent, the third respondent is entitled to evict the petitioner herein on the expiry of lease period i.e., 25.07.2019.

8. With the above observations, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1.The District Collector,
Kancheepuram District,
Kancheepuram.

2.The Director of Town Panchayat,
Directorate of Town Panchayats,
Kuralagam, Chennai-600 108.

3.Executive Officer,
Madambakkam Town Panchayat,
Chennai-126

+1cc to Mr.S.Jaganathan, Advocate SR.No.60869

+1cc to Government Pleader SR.No.60691

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PM(CO)
GMY(14/08/2019)