

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.06.2019

PRONOUNCED ON : 01.07.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.14474 of 2019

and

W.M.P.Nos.14485, 14486 and 14489 of 2019

1.S.Singaraj  
2.William Stephen  
3.S.V.Sekar  
4.E.Somasundaram  
5.D.Natarajan  
6.S.Ramar  
7.D.Iruthiaraj  
8.D.Dakshinamurthy  
9.D.Murugan  
10.S.Ponambalam  
11.V.Ramachandiran  
12.R.Muthu  
13.D.Natarajan  
14.M.Jeyaraj  
15.R.Paranthaman  
16.S.Anandhan  
17.S.KRishnamurthy  
18.Abdul Raufkhan  
19.Selvakannan  
20.V.Karunanithi  
21.M.Selvaganesh  
22.N.K.Nagarajan  
23.S.Gunasekaran  
24.Rathinammal  
25.G.Arunachalam

...Petitioners

WEB COPY  
Vs

1.The Secretary to Government,  
Municipal Administration and  
Water Supply Department,  
Fort St. George,  
Chennnai - 600 009.

2.The Municipal Commissioner,  
Cuddalore Municipality,  
Cuddalore.

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of certiorarified mandamus calling for the records relating to the impugned order/Notices bearing Na.Ka.No.14703/2016/A2 dated 31.07.2018 consequently impugned notice bearing Na.Ka.No.14703/2018/A2, dated 21.03.2019 issued to the petitioners on the file of the second respondent and quash the same as illegal, incompetence and without jurisdiction and further direct the second respondent to fix the rent at market rate.

For petitioner : Mr.V.Ramamurthy  
for M/s.D.Kamachi

For 1<sup>st</sup> Respondent : Mr.D.Suriyanarayanan,  
Additional Government Pleader

For 2<sup>nd</sup> Respondent : Mr.A.S.Thambuswamy

ORDER

The petitioners herein are the lessees under the second respondent Municipality. The order of the second respondent enhancing the lease rent for the shops in their occupation is under challenge in this writ petition.

2.The main contention of the petitioners herein is that, they are in occupation of the shops leased out to them by the second respondent for quite long time. They are regularly paying the rent and periodically, the rent is also enhanced as per G.O.Ms.No.92 Municipal Administration water supply dated 03.07.2007. While so, without giving opportunity; without proper constitution of Monitoring Committee; without authority of law and in violation of constitution provisions, the respondents have hiked the lease rent by 6 to 10 times more.

3.The learned counsel for the petitioners would contend that the fixation of the present lease rent and demand made by the respondents under the impugned order, is not in accordance with the guidelines issued by the Hon'ble Supreme Court and as per G.O.Ms.No.147 Municipal Administration and Water Supply Department dated 30.12.2000 and G.O.Ms.No.92 Municipal Administration and Water Supply Department dated 03.07.2007.

4.The learned counsel for the second respondent appearing for the second respondent would submit that the contention of

the petitioner is incorrect. Pursuant to the proceedings of the Director Municipal Administration dated 31.07.2018, a Monitoring Committee was constituted for Cuddalore, Chidambaram, Tambaram and Pallavaram Municipality to make personal inspection; measure the shops; assess the market value and fix the rent in consonance with the Government Orders. Accordingly, the Monitoring Committee inspected the shops and recommended hike of rent based on the prevailing market value. Thereafter, all the lessees were informed about the proposal.

5.The lessees including the petitioners gave their representations objecting the increase of rent and they requested to hike the rent @ 15% once in three years and some of the shop owners also filed writ petitions against the increase of rent based on the recommendation of the Monitoring Committee which in turn, has visited the premises and fixed the rent as per the market value. In a batch of writ petitions in W.P.Nos.28293, 28502 of 2018 etc., this Court on 21.12.2018, upheld the revised lease amount but directed the respondent Municipality to revise the lease amount prospectively from the year 2018.

6.Therefore, the learned counsel appearing for the second respondent would submit that the Monitoring Committee was constituted as per the direction of the High Court and only on their recommendation, the rent has been fixed after hearing the objection of the petitioners. Due to escalation of price and cost of maintenance, the request of the petitioners to collect the old rent with 15% increase once in three years is not possible and even G.O.Ms.No.92 dated 03.07.2007 does not contemplates perpetual renewal of lease with 15% increase of rent every three years. The said concession of the existing lease holder is only for maximum period of nine years and after the expiry of nine years, the rent has to be fixed after making re-assessment of the market value. Hence, the learned counsel for the second respondent pray for dismissal of the writ petition.

7.G.O.Ms.No.92 dated 03.07.2007 under Clause 4 clearly restricts renewal of lease after the first open tender to be restricted only for a maximum period of 9 years subject to enhancement of rent @ 15% once in every three years and thereafter, the local body is bound to re-fix the rent and go for open tender. In this case, in accordance with the High Court direction, the respondents have constituted Monitoring Committee and they in turn, have made visit to the petitioners premises and have recommended rent based on the market value. Thereafter, objections has been called for including the petitioners herein have submitted their objections. The copy of the objections is produced by the learned counsel for the second respondent by way of typed set of papers. Only after affording

opportunity, the impugned order has been passed and therefore, this Court finds no error in it. Therefore, the petitioners cannot contend that the impugned order is in violation of procedure and Government Orders.

8.The objection of the petitioners is that, enhancement of rent 6 to 10 times higher and therefore, the Municipality has to enhance only 15% at the end of every three years. The privilege of renewing the lease is subject to maximum period of nine years. While so, the petitioners who are in occupation for more than 9 years, without revision of rent based on current market value cannot request for further renewal based on G.O.Ms.No.92 dated 03.07.2007 which is only for period of 9 years.

9.As pointed out by the learned counsel for the second respondent, when a batch of writ petition was filed, challenging the enhancement of rent based on the recommendation of the Monitoring Committee, the learned single judge of this court has upheld the same with direction that the enhanced rent will be applicable prospectively from the year 2018. When that was challenged before the Division Bench, the writ appeal was dismissed. While dismissing the writ appeal, the division bench has observed as below:-

"4.The appellant's case was raised upon Government Order in G.O.Ms.No.92 Municipal Administration, Water Supply Department dated 03.07.2007 and it was contended that there was no basis for increasing the lease rent/licence fee that too enormously and the appellant was not informed as to how the enhanced lease rent/licence fee was computed. The learned Single Bench in our view, rightly dismissed the writ petition and while doing so took note of the decision of the Division Bench decision in the case of P.Muthusamy vs. State of Tamil Nadu reported in (2014) 5 MLJ 129 and other decision. In fact, the learned writ Court was considerate and directed that the revision of rent shall be perspective from 2018. Merely accepting respondent/municipality is the owner of the premises, that does not mean that they cannot demand fair rent at market rate especially when the municipal premises are situated in important places in various cities and towns.

5.The Division Bench of this Court has held that the power to be exercisable in terms of G.O.Ms.No.92 dated 03.07.2007 is

discretionary and the respondent/  
municipality cannot be compelled to renew  
the fee/ licence periodically. Furthermore,  
in all the decisions it has been held that  
the power exercisable in terms of  
G.O.Ms.No.92 dated 03.07.2007 leads to  
arbitrariness and ultimately amounts to  
illegality."

In the light of the above said division bench judgment, this  
writ petition is bound to be dismissed.

10.In the result, the writ petition is dismissed. No costs.  
Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Secretary to Government,  
Municipal Administration and  
Water Supply Department,  
Fort St. George,  
Chennai - 600 009.

2.The Municipal Commissioner,  
Cuddalore Municipality,  
Cuddalore.

+lcc to the Government Pleader, S.R.No.54929

+lcc to Mr.D.Kamchi, Advocate, S.R.No.54561 (27/08/2019)

सत्यमेव जयते

W.P.No.14474 of 2019

BS (CO)

RRS (13/08/2019)

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