

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.3.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

WRIT APPEAL NOS.2602 TO 2605 & 2607 OF 2018 & 787 TO 791 OF 2019
CMP.NOS.21246, 21250, 21252, 21269 & 21269 OF 2018 & 6223, 6225,
6229, 6231 & 6239 OF 2019

M/s.Sree Annapoorna, Sree
Gowrishankar Hotels Private
Limited rep.by its Joint
Managing Director D.Srinivasan

...Appellant/Petitioner in
all the WAs

Vs

The Assistant Commissioner, Central
Zone, Coimbatore Corporation,
Coimbatore.

...Respondent/Respondent in
all the WAs

Prayer:-

APPEALS under Clause 15 of the Letters Patent against the
common order dated 07.6.2018 passed respectively in W.P.Nos.5197
to 5200 & 4862 of 2018 and 26874, 26872, 26007, 26006 and 26873
of 2014.

Prayer in WP.Nos.5197 to 5200 & 4862 of 2018:-

Writ Petition filed under Article 226 of the Constitution of
India, praying for issuance of a Writ of Certiorari to call for
the records and quash the impugned proceedings in
Na.Ka.No,4934/2017/A2(M), dated 26.12.2017 by the respondent
insofar as the petitioner's shop No.20, 21, 25, 27 and 26
respectively is concerned.

Prayer in WP.Nos.26006, 26007 and 26872 to 26874 of 2014:-

Writ Petitions filed under Article 226 of the Constitution
of India, to issue a Writ of certiorarified mandamus or any
other appropriate writ, order or direction in the nature of a
Writ, calling for the records on the files of the respondent in
its impugned proceedings made in Na.Ka.No.10119/12/A1(M) dated
17.07.2014 in so far as the petitioners shop Nos.21, 21, 25, 26
and 27 respectively is concerned quash the same further direct

the respondent to consider and pass orders on the representation made by the petitioner dated 22.07.2014 and pass such further or other orders.

For Appellant : Mr.T.R.Rajagopalan, SC for
Ms.P.Veena Suresh
For Respondent : Mr.K.Magesh

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM,J)

We have heard Mr.T.R.Rajagopalan, learned Senior Counsel appearing on behalf of Ms.Veena Suresh, learned counsel on record for the appellant and Mr.K.Magesh, learned Standing Counsel accepting notice for the respondent Corporation.

2. These appeals are directed against the common order dated 07.6.2018 made in WP.No.26006 of 2014 etc. cases.

3. The said batch of writ petitions were filed by the appellant herein - a large food chain having hotels, eating establishments, sweet stalls and lodging houses in and around Coimbatore District.

4. The appellant filed the first set of writ petitions namely WP.Nos. 26006, 26007 and 26872 to 26874 of 2014 challenging the proceedings of the respondent dated 17.7.2014 and to direct the respondent to consider their representation dated 22.7.2014. They filed the second set of writ petitions namely W.P.Nos.4862 and 5197 to 5200 of 2018 seeking to quash the proceedings of the respondent - Corporation dated 26.12.2017, which were intimations given to them demanding enhanced rent in respect of shops, bearing shop Nos.20, 21 and 25 to 27 respectively, licensed to the appellant and owned by the respondent Corporation in Gandhipuram Central Bus Stand Commercial Complex, Coimbatore.

5. The sum and substance of the challenge before the learned Single Judge was with regard to increase in rental charges in respect of the shops, which were licensed to the appellant. Admittedly, the appellant is a large hotel chain. It is not known as to why the respondent Corporation granted licence to them in respect of five shops when the object of renting the shops owned by the Local Body by way of lease or licence is to augment the income.

6. Be that as it may, the question would be as to whether the appellant can challenge the demand of increased rental. The answer to this question has to be in the negative for the reason

that the right, which has been granted to the appellant, is only a licence. There is no vested right accrued to the appellant to claim that they could not be called upon to pay the increased licence charges, which is colloquially termed as 'rent' by the respondent Corporation. Considering the location of the premises and other factors, the respondent Corporation issued notices calling upon the appellant to pay the increased licence fee. However, the appellant immediately rushed to this Court by filing the writ petitions and stated that the increase in licence fee was arbitrary and illegal, that a sudden hike of the same by 100% was without any reason and that they should be heard in the matter.

7. Unfortunately, the appellant lost sight of the fact that they were granted only licenses and that there is no vested right in them to stay in the premises. If the appellant is of the view that the licence fee demanded by the respondent Corporation is on the higher side, they are always at liberty to vacate the premises and hand over vacant possession to the respondent.

8. The respondent - Corporation filed a counter affidavit in the writ petitions. However, a copy of the same was not enclosed in the typed set of papers. Today, a copy of it has been handed over to us by the learned Standing Counsel for the respondent Corporation. All that the counter says is that the increased rental was effected by the Council of the respondent - Corporation by taking into consideration the Government Order in G.O.Ms. No.62 dated 03.7.2007.

9. In several decisions of this Court, it had been held that the said Government Order in G.O.Ms.No.62 dated 03.7.2007 could not be held to be mandatory since the paramount consideration would be to augment the revenue of the Local Body.

10. The learned Senior Counsel appearing on behalf of the appellant submits that in the decision in the case of P.Muthusamy Vs. State of Tamil Nadu [reported in 2014 (5) MLJ 129], a Division Bench of this Court declined to interfere with the revision of licence fee/rent on the ground that the licencees were given sufficient opportunity to put forth their objections whereas the appellant has not been granted an opportunity.

11. It is to be noted that in the said decision, the Division Bench of this Court held that there is no vested right for a licensee to continue to be in occupation for ever. Therefore, the plea raised by the appellant is thoroughly misconceived. Furthermore, the appellant was informed about the decision of the Council of the respondent Corporation in

Resolution No.80 dated 20.6.2014, which was intimated by notice dated 17.7.2014. This was challenged by the appellant by filing the first set of writ petitions and based on the interim order granted, the appellant was paying the old licence fee plus 50% of the enhanced fee. Therefore, it cannot be stated that the appellant was not put on notice about the increase in rental.

12. Let us assume a situation where the appellant's landlord was a private party and not a municipal corporation. If such is the case, none of the grounds canvassed by the appellant can be put forth questioning the demand of increased rental. Merely because the respondent Corporation is a Local Body constituted under the Statute, that would not entitle the appellant to convert a transaction, which is in the private law field into a matter as if it arises under a public law field.

13. We are of the considered view that the learned Single Judge is perfectly right in rejecting the relief sought for by the appellant. The appellant cannot place themselves in the place of small traders, who had approached this Court by filing several writ petitions and all those writ petitions were rejected and the enhancement of the license fee/rental was upheld by the various Division Benches of this Court as well as the Madurai Bench of this Court. We find no good ground to interfere with the impugned order.

14. Accordingly, the above writ appeals are dismissed. No costs. Consequently, the connected CMPs are also dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Rs

To

1. The Assistant Commissioner, Central Zone,
Coimbatore Corporation, Coimbatore.

+5cc to Ms.P.Veena Suresh, Advocate, S.R.No.22894 to 22898
+1cc to Mr.K.Magesh, Advocate, S.R.No.21919

WA.No.2602 of 2018
etc. cases

SSV(CO)
CS/08/04/2019