

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 10.01.2019
CORAM
THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

WA.No.2492 of 2018
and C.M.P.No.20226 of 2018

B.Ragunandhan

...Appellant

Vs

The Commissioner,
Municipal Corporation,
Brough Road, Erode,
Erode District.

...Respondent

PRAYER:- Writ Appeal filed under clause 15 of the Letter Patents prays to set aside the order of this Court in W.P.No.1997 of 2017.

WP.No.1997 of 2017 : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the entire records relating to the impugned order passed by the respondent in his proceedings Na.Ka.No. A2/281/2013 dated 31.12.2016 and quash the same

For Appellant : Mr.N.Chinnaraj
For Respondent : Mr.Rajamathivanan
Standing Counsel

JUDGMENT

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

The appellant is the writ petitioner. The appellant / writ petitioner filed W.P.No.1997 of 2017, praying for issuance of writ of Certiorari and Mandamus to call for the entire records relating to the impugned order of the respondent namely the Commissioner, Corporation of Erode dated 31.12.2016 in and by which, the license period was enhanced subject to the condition that the appellant/writ petitioner should pay the new license fee of Rs.97,060/- per month.

2.It is the case of the writ petitioner / appellant that the original license fee was Rs.30,573/- per month and he was paying it regularly and without affording any opportunity or whatsoever, there was a manifold increase of the license amount to the tune of Rs.97,060/- per month, with consequential demand

for arrears and since unfair procedure has been adopted by the respondent, the appellant / writ petitioner came forward to file the above said writ petition for setting aside the said impugned order.

3.The writ petition was entertained and respondent has filed the counter affidavit stating among other things that since license for particular shops, under the control of Erode City Municipality, were due for renewal, the work of fixing the rents for the shops was undertaken and a Committee was also constituted consisting of the City Engineer, Executive Engineer, Assistant Executive Engineer, Assistant Commissioner (Admin), Assistant Commissioner (Revenue) and Assistant Revenue officer, Junior Engineer Zone II and Bill Collector Zone 4 and the Committee had gone into all the aspects and also taking into consideration the Public Works Department rates, has fixed the rate at Rs.23/- per sq.ft., in respect of the shops located on the First Floor of the Bus Stand and in respect of the shops located on the Ground Floor, the rate was fixed at Rs.37/- per sq.ft. Since the appellant/writ petitioner was in possession of the shops having plinth area of 4220 sq.ft in which he was running computer center, in terms of G.O.(Standing) No.92, Municipal Administration and Water Supply Department dated 03.07.2007, he was given an offer to pay the increased license amount of Rs.97,060/- with the security deposit of Rs.5,98,383/- and the Profession tax of Rs.2,346/- for the license period between 01.07.2016 to 31.03.2019 subject to other conditions and the appellant/writ petitioner was not interested in accepting the said communication and came forward to file the writ petition.

4.It is the further stand of the respondent that the appellant/writ petitioner was in arrears of Rs.30,573/- upto 30.06.2016 for 3 months and subsequent to the period from 01.07.2016 till the date of filing of the counter affidavit on 22.02.2017, he was liable to pay a sum of Rs.11,10,048/- and on receipt of demand, he paid the sum of Rs.2,00,000/- and balance outstanding amount is Rs.9,10,048/- as on date. Therefore, the respondent prayed for the dismissal of the writ petition.

5.The learned Judge has taken note of the order dated 13.03.2017 made in W.P.No.24313 of 2016 and the writ appeal preferred against the said order and also extracted the observation made in paragraph No.5 of the order passed in the writ petition and found that the relief sought for by the appellant/writ petitioner cannot be considered and dismissed the writ petition except referring some issues to the Division Bench.

6.The learned counsel appearing for the appellant/writ

petitioner by drawing the attention of this Court to the impugned proceedings of the respondent dated 31.12.2016, would submit that the original license amount was Rs.30,573/- and was increased to a sum of Rs.97,060/- without any rhyme or reason and that apart, no opportunity was afforded to the appellant / writ petitioner as to the reason for enhancement of the license amount and he would further urge that he has remained as licensee and he paid the license amount properly and he has definitely not in a position to pay such exorbitant license and hence prays for interference.

7.Per contra, the learned Standing Counsel appearing for the respondent would submit that G.O.(Standing) No.92 is in the nature of benevolence and though it is open to the respondent / Corporation to go for public auction for grant of license of the shop, taking into consideration of the contents of the Government Order, an opportunity was given to the appellant/writ petitioner to pay the enhanced license amount by extending the license period ; but he failed to avail the benevolence. That apart, he is also in huge arrears of license amount and after disposal of the writ petition, they merely locked the shop premises and kept the key with him and as on date, he is not carrying any business and he would further urge that the reasons assigned by the learned Judge for dismissing the writ petition are factually and legally justifiable and prays for dismissal of the writ appeal.

8.This Court has considered the rival submissions and also perused the materials placed before it.

9.As per G.O.(Standing) No.92 of Municipal Administration and Water supply Department dated 03.07.2007, once license period had expired, the renewal of license can be granted for a period of further 9 years subject to the payment of the revised license amount based upon the market value. Counter of the respondent would also disclose that for revising the license amount in terms of market rate, the Committee consisting of City Engineer, Executive Engineer, Assistant Executive Engineer, Assistant Commissioner (Admin), Assistant Commissioner (Revenue) and Assistant Revenue officer, Junior Engineer Zone II and Bill Collector Zone 4, was formed and they, having taken into consideration the rates of Public Works Department, has fixed the license fee at the rate of Rs.23/- per sq.ft in respect of First Floor of the Erode city bus stand and insofar as the shops located in the Ground Floor of the Bus stand is concerned, it was fixed at Rs.37/- per sq.ft and therefore, the duly constituted Committee has gone into the issue and rightly fixed the quantum of the license amount. It is also to be pointed out at this juncture that G.O.(Standing) No.92, Municipal Administration and Water Supply Department dated 03.07.2007 is

in the nature of benevolence and the Court in umpteen number of judgements had indicated that the said Government order may not require legal scrutiny for the reason that best way to earn / augment the revenue in respect of a public property is to go for a public auction ; but in terms of the said Government order, the Local Body are merely extending the license period for a further period of 9 years subject to the increase of the license amount.

10. In the considered opinion of this Court, the Government Order itself is not in consonance with the settled legal position.

11. A Division Bench of this Court in the decision reported in 2014 (5) MLJ 129 (P. Muthusamy Vs. the State of Tamil Nadu rep. By its Secretary to Government) has also considered the scope of the said Government Order and it is relevant to extract paragraph no. 21, 22, 24 of the same:

21. The object of letting out the shops is to collect more revenue for the respondent-Municipality, which is meant to be used for welfare measures. The Government orders, as narrated above, are very specific about the purpose of auction followed by lease/licence. Since the transactions are commercial in nature, the petitioners, being licensees, cannot insist that the rent, which as they think, just and proper alone is liable to be paid. Since the licence is to be granted by the respondent - Municipality, while making offer, the said authority can impose its own terms in accordance with law. While accepting the said offer, the petitioners cannot insist that the condition attached therein cannot be imposed. A perusal of the Government Orders referred to above as well as the orders impugned make it clear that the rent has been fixed based upon the prevailing market value and not otherwise. What has been given by way of extension to an existing licensee was only a concession. The subsequent extension has been made during the pendency of the writ petitions. The said decision was made in view of the undertaking given by the licensees. An undertaking was given in connection with the payment as well as on the withdrawal of the writ petitions. The Government orders also state that in the event of non compliance of the conditions imposed including the payment of appropriate rent, a licensee is liable to be removed.

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. Assistant Director of Town Panchayat, Coimbatore District and Others (2011) 1 CTC 584 : LNIND 2011 MAD 102, S. Selvarani v. Commissioner, Karaikudi Municipality(2005) 1 CTC 81 : LNIND 2004 MAD 1600 : (2005) 1 MLJ 394, C.Jayanthi v. Commissioner, Mettur Municipality, Salem District (2006) 5 CTC 236 : LNIND 2006 MAD 1770 : (2006) 4 MLJ 128, D. Kannan v. Commissioner of Municipal Administration, Chepauk CDJ 2010 MHC 1636 : LNIND 2010 MAD 759 and Ram and Shyam

Company v. State of Haryana and Others AIR 1985 SC 1147 : (1985) 3 SCC 267 : LNIND 1985 SC 188.

12.The Division Bench in the above cited decision has taken into consideration, various pronouncements of the Hon'ble Supreme Court of India and observed that the instrumentality of the State should always endeavour by following the procedure by way of public auction or inviting tender. In the considered opinion of this Court, all Local Bodies should have made every endeavour to go for public auction for the reason that it was definitely inviting competition and earn / augment more revenue for the local body which can be used for public purpose and however, for the reasons best known to them, the Municipal Administration and Water Supply Department of the Government of India based on G.O.(Standing) No.92, are going on extending the license period once in 9 years, by immediate increase of the license amount. Insofar as the case on hand is concerned, the appellant / writ petitioner was afforded with an opportunity to pay the increased license amount for the period between 01.07.2016 to 31.03.2019 and he chooses to make a challenge to the said proceedings on the ground that the increase of the license amount by the respondent / local body was not at all fair.

13.In the considered opinion of this Court, the increase of the license amount has been done in a fair and appropriate manner and the procedures adopted for doing so, has been explained in Paragraph No.5 of the counter affidavit filed by the respondent in the writ petition. It is also a well settled position of law that the licensee cannot ask for renewal as a matter of right and it is for the local body to increase the license amount by adopting fair procedures for the purpose of increasing the revenue.

14.This Court in the light of the reasons assigned above is of the considered view that there is no merit in the writ appeal and in the result, the writ appeal is dismissed confirming the order dated 20.12.2017 in W.P.No.1997 of 2017 and it is always open to the respondent / Erode City Municipality Corporation to get possession of the premises in question from the appellant/writ petitioner as well as the recovery of arrears of license amount in accordance with law. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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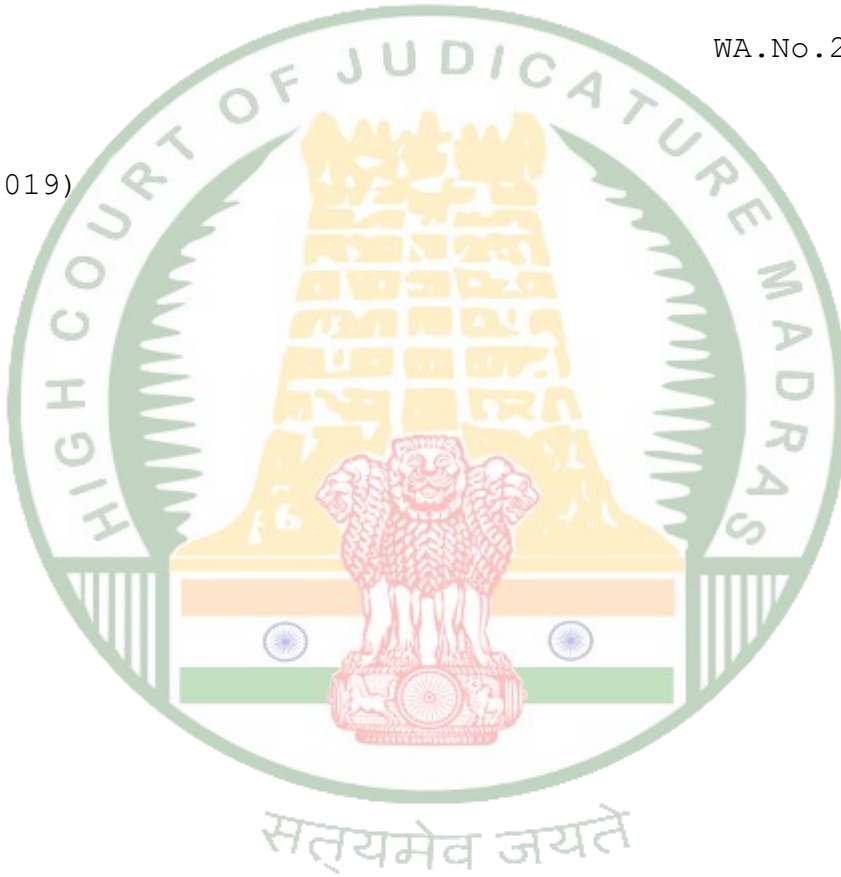
The Commissioner,
Municipal Corporation,
Brough Road, Erode,
Erode District.

+1cc to Mr. M.Rajamathivanan, Advocate, S.R.No. 2891

+2cc to Mr. S.Vigneswaran, Advocate, S.R.No. 3765

WA.No.2492 of 2018

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