

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.29765 of 2018
and
W.M.P.No.34731 of 2018

- 1 S.Rajasekar
S/o.Subramaniam,
No.29/111 Old Fort Mettu Street,
Dharapuram 638 656,
Thirupur District ... PETITIONER
- Vs.
- 1 Tamil Nadu Government
Rep.by its Secretary Fort St. George
Secretariat Chennai-600 009
- 2 The Secretary
Government of Tamil Nadu,
Municipal Administration and
Water Supply Department
Fort St.George Chennai - 600 009.
- 3 The Commissioner
Dharapuram Municipality,
Dharapuram 638 656
Thiruppur District ... RESPONDENTS

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records in Na.Ka.No.4932/2016/A3 dated 02.08.2018 on the file of the 3rd respondent and quash the same.

For Petitioner : Mr.A.K.Sridharan

For Respondents 1 &2 : Mr.B.Anand, G.A.

For Respondent No.3 : Mr.P.Srinivas

O R D E R

According to the petitioner, petitioner is a lessee in respect of shop No.1 at N.N.Pettai, Dharapuram under the third respondent from the year 2007. Lease period of the petitioner has been extended from time to time from 2007 till 31.3.2016. Further, on the request of the petitioner, lease period of the petitioner has been extended from 1.4.2016 to 31.3.2019 for a period of 3 years as per Na.Na.No.1819/2016/A3, dated 17.10.2016 on a monthly rent of Rs.463/- and service tax at Rs.69/-. Petitioner has paid the rent regularly till October, 2018. The third respondent by his notice, dated 2.8.2018 vide Na.Ka.No.4932/2016/A3 asked the petitioner to pay monthly rent of Rs.2800/- with retrospective effect from 1.4.2016 to 31.8.2018 and service tax at Rs.95,816/- towards security deposit and towards additional security deposit of Rs.33,600/- for 2018-19 within a period of 15 days on receipt of the notice. Challenging the aforesaid notice, the petitioner has filed the present writ petition before this Court.

2. The learned counsel for the petitioner would submit that the respondent cannot demand its lease amount and additional security deposit with retrospectively from 1.4.2016 and hence, the impugned order passed by the respondent is liable to be quashed.

3. The learned Standing counsel appearing for the third respondent Municipality would submit that the aforesaid notice has been issued to the petitioner on the instruction issued by the Commissioner, Municipal Administration on the basis of recommendation issued, difference lease amount has been refixed by the Commissioner, Municipal Administration. Therefore, the third respondent has rightly demanded difference lease amount retrospectively. Therefore, there is no force in the contention of the petitioner to interfere with the impugned order.

4. The learned Additional Govt. Pleader appearing for the respondents 1 and 2 reiterated the stand of the respondent Municipality that the impugned notice for refixing the lease amount is in consonance with the instruction issued by the Commissioner of Municipal Administration.

5. Heard the learned counsel appearing for the petitioner, learned Additional Govt. Pleader appearing for the respondents 1 and 2 and the learned counsel for the third respondent and perused the materials available on record.

6. According to the petitioner, the respondent Municipality cannot demand payment of difference lease amount with retrospectively. The petitioner is a lessee under the

respondent Municipality from the year 2007 and subsequently, lease amount has been enhanced by the respondent Municipality. According to the learned Standing counsel for the respondent Municipality, the enhancement of lease amount is as per the G.O.Ms.No.92, Municipal Administration, dated 3.7.2007. The lease period expired on 31.3.2016. On the request of the petitioner, the lease period has been renewed from 1.4..2016 to 31.3.2019 on payment of the difference lease amount under the G.O.. The learned Standing counsel appearing for the respondent Municipality would further submit that as per the instruction issued by the Commissioner, Municipal Administration, the demand has been made by the respondent Municipality retrospectively. In a similar Batch of cases in R.ASHOK KUMAR VS. THE MUNICIPAL COMMISSIONER, CUDDALORE MUNICIPALITY, CUDDALORE (W.P.No.28293 of 2018), this Court by order, dated 21.12.2018 held as under:

"14. I find some force in the argument of the learned counsel for the petitioners. From a perusal of the records, in most of the cases, the lease had been renewed in the year 2016 for the period up to 31.03.2018, by revising the lease amount and the petitioner is also paying the revised lease amount. Now, after renewing the lease and also asking the petitioners to pay the revised lease amount, it is not open to the respondent direct them to pay the revised lease amount retrospectively from the 01.07.2016. Even G.O.Ms.No.92 Municipal Administration and Water Supply Department dated 03.07.2007, is not authorizing the respondent to collect the lease amount retrospectively. In the said circumstances, I am of the view that the respondent can revise the lease amount only prospectively and not retrospectively from the year 2016.

15. The impugned notice is only an offer made by the respondent-Municipality to the petitioners for paying the revised lease amount, and it is for them to accept or not. There is no compulsion on the part of the petitioners to accept the same. If the petitioners are not willing to accept the offer, it is always open to the Municipality to bring the properties for public auction. In the said circumstances, I find no merits in the contention in the writ petitions.

16. Accordingly, the writ petitions are partly allowed with a direction to the respondent-Municipality to revise the lease amount only prospectively from the year 2018.

No costs. Consequently, connected miscellaneous petitions are closed."

7. The aforesaid order is apply to the facts of the present case. Therefore, considering the facts of this case and the decision cited supra, this Court has no hesitation to quash the impugned proceedings. It is made clear that from 1.4.2019, it is for the Municipality to proceed in accordance with law for grant of lease.

8. In fine, the impugned proceedings passed by the third respondent in Na.Ka.No.4932/2016/A3 dated 02.08.2018 is quashed in so far as demanding difference lease amount with retrospectively. Consequently, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vaan

To

- 1 The Secretary
Tamil Nadu Government
Fort St. George,
Secretariat Chennai-600 009
- 2 The Secretary
Government of Tamil Nadu,
Municipal Administration and Water Supply Dept.,
Fort St.George Chennai - 600 009.
- 3 The Commissioner
Dharapuram Municipality,
Dharapuram 638 656, Thiruppur District

+1cc to Mr.P.Srinivas, Advocate, S.R.No.22963
+1cc to Mr.A.K.Sridharan, Advocate, S.R.No.22208
+1cc to the Government Pleader, S.R.No.23201

W.P.No.29765 of 2018
and W.M.P.No.34731 of 2018

SV(CO)
CS/24/04/2019