



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.7235 of 2019

and

W.M.P(MD).Nos.5794 and 5795 of 2019

A.Rosemary

... Petitioner

Vs

The Kodaikanal Municipality,
Rep., by its Commissioner,
Kodaikanal,
Dindigul District.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned Notice in Na.Ka.No.6724/2016/A13 dated Nil.11.2017 signed on 22.11.2017 and the consequential order in Na.Ka.No.6724/2016/A3 dated Nil.03.2019 signed on 14.03.2019 on the file of the respondent pertaining to the petitioner's shop namely Shop No.1, Tax Assessment No.80001, Moonjikkal Bus Stop, Kodaikanal and quash the same as illegal.

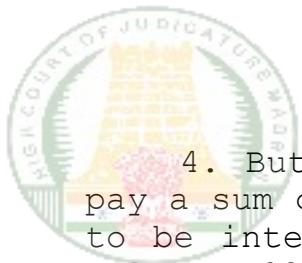
For Petitioner : Mr.S.Rajasekar
For Respondent : Mr.T.S.Mohamed Mohideen
standing counsel

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Standing Counsel appearing for the respondent Municipality.

2. By consent of both parties this writ petition is taken up for final disposal at the admission stage itself.

3. The petitioner is running a Medical Shop in the premises belonging to the respondent Municipality. The petitioner has been a tenant under the respondent for several years. Therefore, the time has now come to redetermine the rent payable by the writ petitioner. The petitioner cannot insist that she will pay only 15% more than the existing rent and continue to be in occupation. Therefore, I cannot fault the redetermination exercise undertaken by the respondent.



4. But then, the impugned order calling upon the petitioner to pay a sum of Rs.11,040/- (Rupees Eleven Thousand and Forty only) has to be interfered with, on two grounds. It is not in dispute that only on 22.11.2017, the rent was revised. But, this revision came into effect from 01.04.2017. Such a retrospective revision has been frowned upon and held to be illegal by the Hon'ble Division Bench of this Court in W.P(MD).Nos.1474 to 1481 of 2018 dated 08.03.2018. Hence, the respondent committed an illegality by making a demand for the period from 01.04.2017 to 22.11.2017.

5. It is not in dispute that the respondent has not enclosed a calculation sheet. This Court is unable to discern the basis for enhancing the rent from Rs.4,461/- (Rupees Four Thousand Four Hundred and Sixty One only) to Rs.11,040/- (Rupees Eleven Thousand and Forty only). The respondent will have to issue a formal communication calling upon the petitioner to give her consent for the proposed redetermination. The respondent also will have to enclose the calculation sheet. The petitioner should be given an opportunity to respond. Thereafter, the Municipality can always pass appropriate orders.

6. The learned counsel for the petitioner, on instructions, submitted that till the exercise as indicated above is undertaken, the petitioner would pay the old rent plus 50% of the differential amount.

7. Recording the undertaking made by the petitioner, the Writ Petition stands allowed and the order impugned in this writ petition is quashed. The respondent Municipality shall conclude the exercise of refixing the petitioner's rent within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS)

// True Copy //

Sub Assistant Registrar(CS)

To,
The Commissioner
kodaikanal municipality
kodaikanal
Dindugul District.

+1cc to Mr.T.Lajapathi Roy, Advocate in SR No.57504
+1cc to T.S.Mohammed Mohideen, Advocate in SR No.56852