

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.Nos.13450 of 2005 and 14809 of 2008
and W.M.P.No.14729 of 2005
and M.P.No.1 of 2015
and W.M.P.No.2544 of 2019

The Town Club, Tiruppattur Town,
Vellore District - 635 601.
Rep. by its Secretary
Mr.A.Duraipandian

...Petitioner in W.P.No.13450 of 2005

The Town Club,
Rep. by its Secretary
Mr.A.Duraipandian

Tirupattur Town,
Vellore District - 635 601....Petitioner in W.P.No.14809 of 2008
(substituted in the place of Petitioner as per
order dated 26.08.14 by this Court in M.P.No.1/2014)

vs.

1.The District Collector,
Vellore District.

2.The Tahsildhar,
Tiruppathur.

....Respondents in both WPs

Prayer in W.P.No.13450 of 2005: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari to call for the records of second respondent herein in Na.Ka.No.4435/01/B1 dated 09.02.2005 and Na.Ka.4435/01/B1 dated 22.03.2005 of the second respondent herein relating to an extent of 0.32 acres of land in S.No.339/34 in Block No.14, Town Ward No.1, Tiruppattur Town and Taluk, Vellore District 635 601, and quash the same.

Prayer in W.P.No.14809 of 2008: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari Mandamus to call for the records relating to the proceedings dt. 15.6.08 in Na.Ka.B1.31581/2003 of the 1st respondent herein, and quash the same.

For Petitioner in both WPs : Mr.ARL.Sundaresan, SC for
M/s.AL.Ganthimathi

For Respondents in both WPs : Mr.A.Kumar,
AAG, Assisted by
Mr.R.S.Selvam for R1 & R2
Government Advocate

COMMON ORDER

W.P.No.13450 of 2005 has been filed challenging the order dated 09.02.2005 as well as the order dated 22.03.2005 passed by the second respondent. Since, the petitioner has complied with the order dated 09.02.2005 calling upon the petitioner to pay a sum of Rs.2,51,145/- towards arrears of rent, the said order is not being considered by this Court. This Court is now concerned only with the order dated 22.03.2005 passed by the second respondent informing the petitioner that the arrears of rent has been refixed at Rs.10,42,902/- for the petitioner's leased premises at Block No.14, Town Ward No.1, Tirupattur Town and Taluk, Vellore District - 635 601.

W.P.No.14809 of 2008 has been filed challenging the impugned order of the first respondent dated 15.06.2008. According to the first respondent, the petitioner has not complied with the order dated 17.03.2006 passed by the Division Bench of this Court in W.A.No.333 of 2006.

2.Since the issues involved in both the writ petitions are one and the same, these writ petitions are disposed of by a common order.

3.Heard Mr.ARL.Sundaresan, learned Senior Counsel for the petitioner and Mr.A.Kumar, learned Additional Advocate General appearing for the respondents.

4.The learned Senior counsel for the petitioner submitted that arbitrarily, without any notice the second respondent has refixed the arrears of rent at Rs.10,42,902/- under the impugned order dated 22.03.2005. He drew the attention of this Court to the earlier order dated 09.02.2005 passed by the second respondent wherein the second respondent refixed the rent at Rs.2,51,145/-. According to him, pursuant to the directions of the Division Bench of this Court in W.A.No.333 of 2006, the petitioner has paid the rent to the respondents in accordance with the order dated 09.02.2005 though with some delay.

5.It is the case of the petitioner that the respondents have also accepted the payments made by the petitioner in accordance with the earlier order dated 09.02.2005 passed by the second respondent demanding a sum of Rs.2,51,145/- as arrears of rent in accordance with the orders passed by the Division Bench of this Court in W.A.No.333 of 2006. But according to him, arbitrarily based on an alleged audit objection, the second respondent has refixed the arrears of rent at Rs.10,42,902/- by the impugned order dated 22.03.2005 without issuing any prior show cause notice to the petitioner and without any basis.

6.Per contra, Mr.A.Kumar, learned Additional Advocate General representing the respondents would submit that the petitioner is a defaulter in the payment of rent to the respondents. According to him, only after the Division Bench of this Court directed the petitioner to pay the rent as per the demand dated 09.02.2005 made by the respondents, the petitioner paid the said sum of Rs.2,51,145/- that too belatedly not within the stipulated time by the Division Bench of this Court. Further, he would submit that a sum of Rs.10,42,902/- has been demanded by the respondents under the impugned order dated 22.03.2005 based on audit objections on the ground that the rent paid by the petitioner is meagre and not in accordance with the market rent.

7.He also drew the attention of this Court to the impugned order dated 22.03.2005 and submitted that the payments received from the petitioner amounting to Rs.80,793/- has been disclosed and the balance amount out of the total sum of Rs.10,42,902/- is payable by the petitioner for the period from 01.04.1998 to 31.03.2004 towards the arrears of rent.

8.According to him, a copy of the audit objection was also furnished to the petitioner along with the impugned order and therefore, the respondents have not violated the principles of natural justice before passing the impugned order.

Discussion:

9.A categorical stand has been taken by the petitioner that without any show cause notice, the second respondent has refixed the rent under the impugned order dated 22.03.2005. Though, the respondents have sent a notice dated 04.03.2005 to the petitioner, calling upon them to furnish the accounts for the payments made by them for the past 10 years and called upon the petitioner to produce the same on 16.03.2005 to the second respondent, the second respondent in the said notice, has not disclosed the hike which they proposed to make. However, under the impugned order dated 22.03.2005 even without giving an

opportunity to the petitioner, the second respondent has refixed the arrears of rent for the period from 01.04.1998 to 31.03.2004 as Rs.10,42,902/-.

10.As observed earlier in the notice dated 04.03.2005, the sum of Rs.10,42,902/- being the alleged arrears of rent has not been mentioned. If the said amount was mentioned in the notice dated 04.03.2005, the petitioner would have been given an opportunity to raise all objections available to them with regard to the refixation of arrears of rent based on audit objections at Rs.10,42,902/-. Even in the audit objection report which was enclosed along with the impugned order dated 22.03.2005, the basis for such drastic enhancement of rent has not been disclosed. Without disclosing the details of refixation for arrears of rent, the second respondent has arbitrarily refixed the arrears of rent at Rs.10,42,902/- under the impugned order dated 22.03.2005 which in the considered view of this Court is illegal and violates the principles of natural justice.

11.Even though, the learned Additional Advocate General submits before this Court that the rent has been refixed only based on G.O.Ms.No.460, Revenue Department dated 4.06.1998, the said G.O. is neither reflected in the impugned order nor in the audit objection report enclosed along with the impugned order.

12.In the considered view of this Court, the petitioner ought to have been given sufficient opportunity by the respondents before refixing the arrears of rent that too when the rent has been enhanced drastically than what was paid by the petitioner earlier.

13.Insofar as W.P.No.14809 of 2008 is concerned, it is the contention of the petitioner that they have complied with the directions of the Division Bench of this Court passed in W.A.No.333 of 2006 though belatedly. However, it is the contention of the learned Additional Advocate General for the respondents that they have not complied with the directions of the Division Bench in W.A.No.333 of 2006. According to him, the second respondent has rightly terminated the lease granted to the petitioner. The petitioner on the other hand contends that pursuant to an interim order dated 24.06.2008 passed in M.P.No.1 of 2008 in W.P.No.14809 of 2008 has paid the arrears of rent and complied with the earlier order passed by the second respondent dated 09.02.2005.

14.Since there are disputed questions of fact with regard to whether the petitioner has complied with the directions of the Division Bench of this Court passed in W.A.No.333 of 2006 or not and further, the petitioner having not been provided with sufficient opportunity to place all objections with regard to

the termination of lease, this Court is of the considered view that principles of natural justice has been violated by the second respondent before passing of impugned orders.

15. For the foregoing reasons, the impugned orders passed in Na.Ka.4435/01/B1 dated 22.03.2005 and Na.Ka.B1.31581/2003 dated 15.06.08 are hereby quashed and in view of the bifurcation of Districts, both the matters are remanded back to the District Collector, Tirupathur, the jurisdictional authority for fresh consideration and the District Collector, Tirupathur shall pass final orders in accordance with law with regard to the refixation of arrears of rent payable by the petitioner and with regard to the termination of tenancy after giving sufficient opportunity to the petitioner including granting them the right of personal hearing within a period of two months from the date of receipt of a copy of this order.

16. With the aforesaid directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

pam

To

1. The District Collector,
Tirupathur District.

2. The District Collector,
Vellore District.

3. The Tahsildhar,
Tiruppathur.

+1 cc to the Government Pleader sr8564

+2 cc to M/s.A.L.Gandhimathi Advocate sr8507 & 8509/2020

W.P.Nos.13450 of 2005
and 14809 of 2008

aa09/03/2020

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