

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.Nos.24565 & 24566 of 2017

and

M.P.Nos.25924, 25925, 25927 & 25928 of 2017

- 1.U.Rajkumar
- 2.M.Udayakumar
- 3.M.Mohanam
- 4.C.Baskaran
- 5.P.Karunakaran
- 6.C.Moorthy
- 7.V.Karthick Raj
- 8.M.Palani
- 9.K.Renu
- 10.K.Balasubramani
- 11.R.Abdul Shakil
- 12.S.Sivaraman
- 13.P.Margabandu
- 14.G.Velu
- 15.D.Kushal Chand Jain
- 16.S.Velayutham
- 17.G.Anandan
- 18.S.Prem Boori
- 19.P.Ganapathi Raj
- 20.P.Sampathiraj
- 21.S.Moulana
- 22.M.Saravanan

... Petitioners in W.P.No.24565/2017

- 1.M.Damodaran
- 2.C.A.Abdul Malic
- 3.M.Jainabbee
- 4.M/s.M.R.Stores,

rep by G.Mohammed Elyas,
S/o Abdul Gafoor,
Shop No.16, D-Block, Nethaji Market,
Vellore - 632 004.

- 5.S.Sadiq Basha
- 6.K.Muyeen Basha
- 7.H.S.Kamaal
- 8.V.T.Selvarajan
- 9.S.Rajendran

10.K.Kumari
11.R.Mohamed Ali
12.R.Krishnan
13.D.Venkatesan
14.K.Mani

... Petitioners in W.P.No.24566/2017

Vs.

1.The Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St.George, Chennai - 600 009.

2.The Director of Municipal Administration,
Municipal Administration Department,
Ezhilagam, Chepauk, Chennai - 600 005.

3.The Commissioner,
The Corporation of Vellore,
Vellore District. ... Respondents in all WPs

Prayer: W.P.No.24565 of 2017 filed under Article 226 of the Constitution of India for issuing a writ of certiorari calling for the records relating to the impugned notice bearing Na.Ka.No.19267/16/A1 dated 04.04.2017 in respect of the petitioners' shop Nos.4 & 5 at Infantry Road, Shop Nos.10 & 7 at M.P.S. Center, Shop No.61 at M.P.S. South 1st Floor Back side, Shop No.9 at Bangalore Road, Shop Nos.2 & 3 at Katpadi Road, Shop Nos.7 & 4 at Venkateshwara School, Shop No.35 at M.P.S. South 1st Floor, Shop Nos.44 & 48/1 at M.P.S. South 1st Floor Back side, Shop Nos.31/1, 32 & 33, H-Block, Nethaji Market, Shop No.60, M.P.S. South 2nd Floor Back Side, Shop No.41, M.P.S. North 1st Floor, Shop No.64, M.P.S. South 2nd Floor Back side, Shop Nos.62 & 65 at M.P.S. South 2nd Floor, Shop No.56 at M.P.S. North 1st Floor Back side, Shop Nos.30, 31, 46 & 56 at M.P.S. Center (i.e.) totally 26 shops situated at Vellore on the file of the 3rd respondent and quash the same.

Prayer: W.P.No.24566 of 2017 filed under Article 226 of the Constitution of India for issuing a writ of certiorari calling for the records relating to the impugned notice bearing Na.Ka.No.19267/16/A1 dated 04.04.2017 in respect of the petitioners' shop No.6 at Infantry Road, Shop Nos.8 & 9 at M.P.S. South, Shop Nos.12, 16, 17, 18 & 21 at D-Block, Nethaji Market, Shop No.49, M.P.S. South 1st Floor Back side, Shop Nos.23, 29, 48, 68 & 83 at F-Block, Nethaji Market, Shop No.50, at M.P.S. North 1st Floor Back side (i.e.) totally 15 shops situated at Vellore on the file of the 3rd respondent and quash the same.

For Petitioners : Ms.D.Kamachi
(in both W.Ps)

For Respondents : Mrs.K.Bhuvaneswari,
(in both W.Ps) Additional Government Pleader (R1 & R2)
Mrs.P.Santhi, Standing Counsel (R3)

C O M M O N O R D E R

The petitioners have filed the Writ Petition in W.P.No.24566 of 2017 to issue a writ of certiorari calling for the records relating to the impugned notice dated 04.04.2017 in respect of the petitioners' shop Nos.4 & 5 at Infantry Road, Shop Nos.10 & 7 at M.P.S. Center, Shop No.61 at M.P.S. South 1st Floor Back side, Shop No.9 at Bangalore Road, Shop Nos.2 & 3 at Katpadi Road, Shop Nos.7 & 4 at Venkateshwara School, Shop No.35 at M.P.S. South 1st Floor, Shop Nos.44 & 48/1 at M.P.S. South 1st Floor Back side, Shop Nos.31/1, 32 & 33, H-Block, Nethaji Market, Shop No.60, M.P.S. South 2nd Floor Back Side, Shop No.41, M.P.S. North 1st Floor, Shop No.64, M.P.S. South 2nd Floor Back side, Shop Nos.62 & 65 at M.P.S. South 2nd Floor, Shop No.56 at M.P.S. North 1st Floor Back side, Shop Nos.30, 31, 46 & 56 at M.P.S. Center (i.e.) totally 26 shops situated at Vellore on the file of the 3rd respondent and quash the same.

2.W.P.No.24566 of 2017 has been filed by the petitioners to issue a writ of certiorari calling for the records relating to the impugned notice dated 04.04.2017 in respect of the petitioners' shop No.6 at Infantry Road, Shop Nos.8 & 9 at M.P.S. South, Shop Nos.12, 16, 17, 18 & 21 at D-Block, Nethaji Market, Shop No.49, M.P.S. South 1st Floor Back side, Shop Nos.23, 29, 48, 68 & 83 at F-Block, Nethaji Market, Shop No.50, at M.P.S. North 1st Floor Back side (i.e.) totally 15 shops situated at Vellore on the file of the 3rd respondent and quash the same.

3.In both the Writ Petitions, the petitioners are challenging the impugned notice dated 04.04.2017 passed by the 3rd respondent enhancing the prevailing rent of the leased out Shops contending their right to continue in possession of the Shops as a lessee as per the G.O.Ms.No.92, Municipal Administration and Water Supplies Department, dated 03.07.2007 and to run the business.

4.When the Writ Petitions were taken up for hearing, Mrs.D.Kamachi, learned counsel appearing for the petitioners, in both the Writ Petitions, submitted that the issue involved in the present Writ Petitions are covered by the decision of the Hon'ble Division Bench of this Court dated 01.08.2018 made in

W.A.Nos.1020 to 1026 of 2018 and 1090 to 1093 of 2018, wherein the Hon'ble Division Bench held as follows:

"7. Neither in the counter affidavit filed before us nor in the counter affidavit filed in the Writ Petition, the Commissioner, Vellore Municipal Corporation has stated that the present occupants were put on notice of the proposed increase and an acknowledgement was obtained. Even though the letter dated 30.11.2016 does not contain a positive direction to the Corporation to hear the present occupants, while determining the rent for the future period by taking into account the present market value and the market conditions, we are of the considered opinion that inasmuch as the Government letter gives priority or a preference to the present occupants to pay the higher rent as determined by the Committee and continue to occupy the property in question. It would be in the interest of justice and fair play that the present occupants should be heard before refixation of the rent by the committee.

8. The learned Senior Counsel appearing for the 5th respondent has also no objection for such a course being adopted. The counsel for the appellants also would submit that they are ready to participate in the process of fixation of the higher rent in accordance with G.O.Ms.No.92, Municipal Administration & Water Supplies Department, dated 03.07.2007, read with the Government letter in Na.Ka.No.15316/2016/A3 dated 30.11.2016.

9. In the light of the above consensus reached between the parties, these Writ Appeals will stand allowed, the order of the learned Single Judge as well as the impugned notices of enhancement of rent will stand set aside. There will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

10. The Committee formed by the Commissioner, Vellore Municipal Corporation, consisting of the Commissioner as its Chairman and four other members, is directed to determine the rent afresh as on 01.07.2016. The process of refixation shall be completed at the earliest at any rate within a period of 6 months from the date of receipt of a copy of this order, after giving an opportunity of hearing to the present occupants/appellants before us. Such re-fixation shall take effect from 01.07.2016. Upon such re-fixation, the appellants may choose either to continue in occupation by paying the rent as fixed by the Committee or to vacate and handover the possession of the property to the local body.

11.It is brought to our notice that the appellants have been paying 50% of the enhanced amount as per the interim orders passed during the pendency of the Writ Petitions. They shall continue to pay the same till such time, the Committee takes a final decision as per our direction supra. If rent fixed by the Committee is lower than the rent that is already paid by the respective allottees the differential amount will be adjusted towards the future payment in the event of the appellants opting to pay the higher rent in continue the possession. If the rent fixed is more than the amount paid the appellants shall pay the balance amount along with arrears in order to enable them to continue in possession."

5.Mrs.P.Santhi, learned Standing Counsel appearing for the 3rd respondent submitted that since the issues involved in the present Writ Petitions are covered by the decision of the Hon'ble Division Bench of this Court, the same order can be passed in these Writ Petitions also.

6.In view of the submissions made by the learned counsel on either side, since the issue involved in the above Writ Petitions are covered by the decision of the Hon'ble Division Bench dated 01.08.2018 in W.A.Nos.1020 to 1026 of 2018 and 1090 to 1093 of 2018, cited supra, following the same, I pass the following order:

"(i)In the light of the consensus reached between the parties, the Committee formed by the Commissioner, Vellore Municipal Corporation, is directed to determine the rent afresh as on 01.07.2016. The process of re-fixation shall be completed, at the earliest, within a period of four weeks from the date of receipt of a copy of this order, after giving an opportunity of hearing to the present occupants/petitioners. Such re-fixation shall take effect from 01.07.2016. Upon such re-fixation, the petitioners shall choose either to continue in occupation by paying the rent as fixed by the Committee or to vacate and hand over the possession of the property to the local body.

(ii)It is also brought to the notice of this Court that the petitioners have been paying 50% of the enhanced amount as per the interim orders passed during the pendency of the Writ Petitions. They shall continue to pay the same till such time the Committee takes a final decision as per the direction of this Court. If the rent fixed by the Committee is lower than the rent that is already paid by the respective allottees, the differential amount will be adjusted towards the future payment in the event of the petitioners opting to pay the

higher rent to continue in possession of the shops. If the rent is more than the amount paid, the petitioners shall pay the balance amount along with the arrears in order to enable them to continue in possession."

7. With these observations, the Writ Petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

va

To

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai - 600 009.
2. The Director of Municipal Administration,
Municipal Administration Department,
Ezhilagam, Chepauk, Chennai - 600 005.
3. The Commissioner,
The Corporation of Vellore, Vellore District.

+1cc to Mr.D.Kamachi, Advocate, S.R.No. 25208

+1cc to the Government Pleader, S.R.No. 75024

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W.P.Nos.24565 & 24566 of 2017
and M.P.Nos.25924, 25925,
25927 & 25928 of 2017

GN(30/07/2020)

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