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IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WA.Nos.366, 367, 793, 953 and 955 of 2021
and CMP.Nos.1454, 1455, 1456, 1457, 4252, 4255,
5811, 5813, 5814, 5815 of 2021

Reserved on	Delivered on
23.03.2021	17.04.2021

WA.Nos.1057 to 1080, 1082, 1084, 1085 and 1086/2021 [28 CASES] &
CMP.Nos.6851, 6853, 6859, 6860, 6817 to 6822, 6840, 6847, 6848,
6773 to 6775, 6777 to 6783, 6785 to 6789, 6791, 6792, 6795 to
6800, 6802 to 6805, 6810, 6812, 6814, 6816, 6823 to 6827, 6830
to 6833, 6835, 6838 & 6839/2021

Reserved on	Delivered on
01.04.2021	17.04.2021

P.MALLIGA	... APPELLANT in WA No.366 of 2021
K SIVAMANI	... APPELLANT in WA No.367 of 2021
P.C.DAKSHINAMOORTHY	... APPELLANT in WA No.793 of 2021
R.PALANISAMY	... APPELLANT in WA No.953 of 2021
R.CHANDRASEKARAN	... APPELLANT in WA No.955 of 2021
A.MUSTAFA	... APPELLANT in WA No.1057 of 2021
A.PERIYASAMY	... APPELLANT in WA No.1058 of 2021
K.PARAMESWARAN	... APPELLANT in WA No.1059 of 2021
P.C.DAKSHINAMOORTHY	... APPELLANT in WA No.1060 of 2021
C.ESWARA MOORTHY	... APPELLANT in WA No.1061 of 2021
M.DEVARAJ	... APPELLANT in WA No.1062 of 2021



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K.DINESH KUMAR

S.NIRMALA DEVI

P.C.DAKSHINAMOORTHY

N.NAGALAKSHMI

K.MURUGANANDAM

C.K.KUZANDASAMY

P.C.DAKSHINAMOORTHY

C.THANGAVEL

P.DEVARAJ

T.C.RAJENDRAN

K.SIVAMANI

M.BALASUBRAMANIAN

P.P.CHINNASAMY

C.K.KUZANDISAMY

K.SHANMUGAM

K.SIVAMANI

K.JAGAN

C.SELVARAJ

C.ESWARA MOORTHY

K.CHENNIAPPAN

K.RAJESWARI

A.MUSTAFA

... APPELLANT in WA No.1063 of 2021

... APPELLANT in WA No.1064 of 2021

... APPELLANT in WA No.1065 of 2021

... APPELLANT in WA No.1066 of 2021

... APPELLANT in WA No.1067 of 2021

... APPELLANT in WA No.1068 of 2021

... APPELLANT in WA No.1069 of 2021

... APPELLANT in WA No.1070 of 2021

... APPELLANT in WA No.1071 of 2021

... APPELLANT in WA No.1072 of 2021

... APPELLANT in WA No.1073 of 2021

... APPELLANT in WA No.1074 of 2021

... APPELLANT in WA No.1075 of 2021

... APPELLANT in WA No.1076 of 2021

... APPELLANT in WA No.1077 of 2021

... APPELLANT in WA No.1078 of 2021

... APPELLANT in WA No.1079 of 2021

... APPELLANT in WA No.1080 of 2021

... APPELLANT in WA No.1082 of 2021

... APPELLANT in WA No.1084 of 2021

... APPELLANT in WA No.1085 of 2021

... APPELLANT in WA No.1086 of 2021

Versus

The Commissioner
Erode City Municipal Corporation,
Erode.

.. Respondents in all
W.As.



Common Prayer in WA.Nos.366, 367, 793, 953, 955, 1057 TO 1080, 1082, 1084, 1085 AND 1086 of 2021:-

Writ Appeal filed under clause 15 of the Letters patent against the Common order dated 23.12.2020 made in WP.No.15586, 15826, 14088, 17287, 15900, 15487, 15441, 15637, 15825, 15492, 15579, 15446, 15582, 15821, 15440, 15592, 15630, 15823, 15633, 15583, 15606, 15484, 19790, 15598, 15625, 15602, 15828, 15576, 15442, 15494, 15573, 15443, 15487 of 2020.

Common Prayer in WP.No.15586, 15826, 14088, 17287, 15900, 15487, 15441, 15637, 15825, 15492, 15579, 15446, 15582, 15821, 15440, 15592, 15630, 15823, 15633, 15583, 15606, 15484, 19790, 15598, 15625, 15602, 15828, 15576, 15442, 15494, 15573, 15443, 15487 of 2020.

Common Prayer :

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records to the Respondent herein vide Na.Ka.No.A1/3744/2020, dated 17.09.2020 and quash the same.

For Appellants:

W.A.Nos.366, 367 and 793 of 2021

and

W.As.1057 to 1080,1082,
1084,1085,1086 of 2021

: Mr.Srinath Sridevan

W.A.Nos.953 and 955 of 2021

: Mr.AR.Sundaresan
Senior Counsel,
assisted by
Mrs.A.L.Gandhimathi

For Respondent

in all the Writ Appeals

: Mr.S.R.Rajagopal,AAG
assisted by
Mr.Raja Mathivanan
Standing counsel

COMMON JUDGMENT

M.SATHYANARAYANAN, J.

By consent, all these writ appeals are taken up and disposed of by this common order, as the issue involved and to be adjudicated is one and the same. The subject matter of present round of litigation is the cancellation of leases granted to the appellants, who are carrying on/running their business in the



shops located in 'A' complex in Erode City Municipal Corporation Bus Stand at Erode.

2. Facts leading to the present round of litigation have been narrated in detail and in extenso in the impugned common order, which is the subject matter of challenge in these writ appeals and therefore, for the sake of brevity, it is not necessary to restate the facts once again.

2.1. It is the case of the appellants/ writ petitioners that there were 65 shops in the Erode City Municipal Corporation Bus Stand Complex and the petitioners are running tea stalls, eateries and other small business for over four decades and thereby serving the bus passengers, who are coming to the bus stand. The appellants /writ petitioners also provide employment to very many persons and that apart, persons employed by them for running their business also depend upon the income eked out and generated out of running the business / employment. The leases, which were originally granted, was extended from time to time in the light of G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007 and the period of lease would expire on 31.03.2025. It is also the case of the writ petitioners/appellants that they spent lakhs and lakhs of rupees by repairing and renovating the shops allotted to them and for that purpose, they also availed loans from banks.

2.2. It is also pointed out by the appellants/writ petitioners that on account of the onset and outbreak of Covid-19 Pandemic, business and commercial activities in the country came to a stand still from March 2020 onwards and now only there is post withdrawal on account of various notifications issued under the provisions of the Disaster Management Act and therefore, business and commercial activities are limping back to normalcy and at this juncture, like a bolt from the blue, a communication dated 17.09.2020 came to be served stating that a decision has been taken to demolish the dilapidated old structure and to construct a new complex under Erode Smart City Scheme and necessary resolution also came to be passed and accordingly, the leases granted, which are in subsistence till 31.03.2025, are cancelled with effect from 31.12.2020 and the appellants/writ petitioners were called upon to vacate and deliver vacant possession and also to remit the arrears of lease rentals. The writ petitioners, challenging the legality of the said notices had filed the writ petitions.

2.3. The writ petitions were entertained and in W.P.No.14088 of 2020, the respondent/Corporation has filed a counter affidavit stating among other things that there are around 65 shops in the Erode Bus Stand Complex running Tea stall and other eateries for the past 40 years and serving the bus passengers



who are coming to Erode Bus Stand and the leases granted to them are also extended from time to time. The petitioners recently entered into lease with the respondent/Corporation on 01.07.2016 and as per the arrangement, the leases subsist for a period of 9 years and it expire on 31.03.2025. It is further stated that the shop owners are regularly abiding the rules and regulations of the respondent/Corporation and apart from lock-down periods, they have been paying rents and some concessions were also extended to them. The respondent/Corporation also took a stand that the petitioners and other shop owners are very well aware of the proposal initiated by the Government for demolition of the dilapidated old structure and to construct a new building under Erode Smart City Scheme and a fair decision has been taken to demolish the building in the light of the stability report given by Kongu Engineering College and for the purpose of putting a new shopping complex under Erode Smart City Scheme, the Commissioner of Municipal Administration (CMA) had also accorded sanction, vide order dated 14.08.2020 for an estimate of Rs.28.87 Crores.

2.4. It is further averred in the counter affidavit that in the light of the terms and conditions of the Tender Notification and Public Auction, lease agreement entered into between the respondent /corporation and the petitioners, though three months time was granted, which was also extended, the petitioners did not choose to vacate and handover possession and since a fair decision has been taken in public interest to demolish the dilapidated old structure housing the shops in 'A' Complex and to construct a new structure under Erode Smart City Project/Scheme, it cannot be faulted with and prays for dismissal of the writ petitions.

2.5. The learned Single Judge, after taking note of the averments made in the affidavits, counter affidavit and other materials available on record, held as follows in the impugned common order dated 23.12.2020 made in W.P.Nos.14088 of 2020 etc., batch:

(i) The lease period was renewed from the year 2019 for a further period of 3 years upto 2022 and as per the terms and conditions of the Tender Notification and Public Auction dated 23.01.2019 for the period 2019-2022, it has been made clear that as and when the Corporation wants to make any developments or improvements to the property, the lessee has to handover the property without imposing any pre-condition.

(ii) The resolution passed by the Board of Directors of Erode Smart City Limited was placed before the Commissioner of Municipal Administration, Chennai, who vide proceedings dated 14.08.2020, had accorded sanction for modernisation of Erode Bus



(iii) The Commissioner of the respondent/Corporation, vide proceedings dated 14.08.2020, took a decision to go ahead with the construction of additional parking facilities and Mini Bus Shelter in the ABD Area and also improvement works around the Erode Bus Terminal in the ABD Area of Erode Smart City.

(v) In the light of the said report, which has been given by an expert and independent body, the Court cannot embark upon enquiring the correctness or otherwise or interfere with the findings of the expert body in such technical matters, unless the Report on the face of it is absurd or suffers from illegality.

(vii) the learned Judge found that the writ petitioners/appellants/lessees are bound by the terms and conditions of the Public Auction and Tender Notification for the year 2019-2020 and the same was made clear even at the time of renewing the lease in the year 2019 and the notification also made it clear that the lessee will have to handover possession as and when the respondent/Corporation requires it for carrying out any development or improvement.

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(ix) The decision taken to demolish the dilapidated old structure and to go for fresh construction by availing the benefits under Smart City Scheme cannot be faulted with for the reason that every citizen in this country is expecting for a change and improvement of infrastructure.

(x) The decision to go for modernisation under Erode Smart City Scheme cannot be interfered with unless it suffers from arbitrariness, irrationality, bias and malice.

2.6. The learned Judge has also placed reliance upon the following decisions:

(i) Shimnit Utsch India Pvt. Ltd. & Anr. v. West Bengal Transport Infrastructure Development Corporation & Ors. [(2010) 6 SCC 303] ;

(ii) APM Terminals B.V. v. Union of India and Another [(2011) 6 MLJ 176; and

(iii) Centre for Public Interest Litigation v. Union of India and Others [(2016) 3 MLJ 516].

2.7. The learned Judge has also taken note of the scope of judicial review by applying Wednesbury principle which has been considered and approved by the Hon'ble Supreme Court in catena of decisions.

2.8. As regards infraction or violation of the principles of natural justice, the learned Judge, while answering the question as to whether the petitioners ought to have been given opportunity to give explanation with regard to the decision taken by the respondent/Corporation, had taken note of the judgement of the Division Bench of this Court in Dhanasekari and Others v. Union Territory of Puducherry [(2020) 6 CTC 1] as well as the judgement rendered by the Hon'ble Supreme Court of India in MS Dharampal Satyapal Ltd v. Deputy Commissioner of Central Excise Gauhati & Others [(2015) 8 SCC 519] and culled out the principle that requirements of natural justice will depend upon the circumstances of each case and it cannot be imprisoned within a straight jacket formula.

2.9. The learned Judge has also applied Useless Formality Theory and found that there are cases where adherence of principles of natural justice will be a mere completion of a ritual of hearing without any possibility of change in the decision of the case already taken and no useful purpose would be served in providing such opportunity and then compliance with the principles of natural justice will become an useless formality. Therefore, the decision taken by the



respondent/Corporation to go ahead with the demolition of the dilapidated old structure and to construct new complex under Erode Smart City Scheme cannot be faulted with and citing the said reasons, had dismissed all the writ petitions, vide common order dated 23.12.2020. The petitioners/appellants, aggrieved by the same, had filed these writ appeals.

3. Mr.Srinath Sridevan, learned counsel appearing for the appellants/writ petitioners would submit that the respondent/Corporation by invoking G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007 had extended the period of lease and the present term of lease is expiring on 31.03.2025 and further pointed out that on account of the various notifications issued under the provisions of Disaster Management Act, the shops in which the appellants are lessees were ordered to be closed down and now only business activities are limping back to normalcy and the appellants had spent considerable time to recoup the business from close down for nearly one year and started earning some money for them as well as for their workers employed by them and the respondent/Corporation took a decision to terminate the lease with effect from 31.12.2020 for the purpose of demolition of old dilapidated structure and to construct new complex under Erode Smart City Scheme and the said decision is a totally unfair and unreasonable one. It is further submitted by the learned counsel appearing for the appellants/writ petitioners that in the light of the admitted fact that the appellants/writ petitioners had complied with all the terms and conditions of lease and had remitted lease rentals without any default and some concessions were given to them by the respondent/Corporation by reducing the said amount, the decision of the respondent/Corporation terminating the lease for the purpose of demolition of the alleged dilapidated structure with a decision to go for fresh construction under Erode Smart City Scheme cannot said to be sound and fair decision especially in the light of ongoing crisis due to Covid-19 Pandemic.

4. The learned counsel appearing for the appellants has further submitted that the findings rendered by the learned Single Judge as to the application of Useless Formality Theory is also unsustainable for the reason that the appellants are in possession of the shops as lessees for very many decades and their businesses were ordered to be closed down atleast from March 2020 in view of various notifications issued under Disaster Management Act by the Central and State Government and their leases were also renewed and it expire on 31.03.2025 and before cancellation of leases, they should have been afforded with reasonable opportunity of submitting explanation and personal hearing and such a valuable indefeasible right cannot be whittled down by applying Useless Formality Theory,



especially in the light of the fact that the impugned proceedings of termination passed by the respondent/Corporation visits the appellants/writ petitioners with grave civil consequences.

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5. The learned counsel appearing for the appellants/writ petitioners in the light of the submissions made prays for setting aside the impugned common order passed in the writ petitions as well as the impugned order passed by the respondent/Corporation and prays for allowing of these writ appeals. The learned counsel appearing for the appellants also made an alternative plea that if the appellants/writ petitioners are granted one year time till 31.03.2022, they may vacate and deliver vacant possession of the shops in their possession and in the interregnum, they may be permitted to run their businesses and recoup some money to set off the losses incurred by them due to shut down on account of Covid-19 Pandemic. The learned counsel appearing for the appellants/writ petitioners has placed reliance upon the following decisions:

(i) John v. Rees [(1969) 2 The Weekly Law Reports 1294]

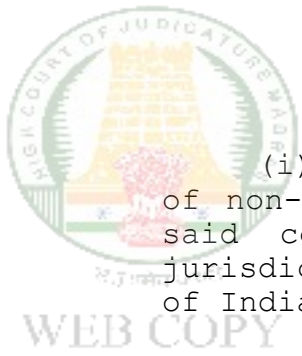
(ii) Canara Bank v. Aswathy [(2005) 6 SCC 321]

(iii) Umanath Pandey v. State of Uttar Pradesh & Another [(2009) 12 SCC 40]

(iv) Dharampal Satyapal v. Deputy Commissioner of Central Excise [(2015) 8 SCC 519]

6. Mr. AR. L. Sundaresan, learned Senior Counsel assisted by Mrs. A. L. Gandhimathi, learned counsel appearing for the appellants in W.A. Nos. 953 and 955 of 2021, apart from reiterating the submission made by Mr. Srinath Sridevan, learned counsel appearing for some of the appellants would submit that though the subsequent representations submitted by the petitioners have been considered and rejected, vide communication of the respondent/Corporation dated 10.02.2021, it was only a post decision for the reason that a decision has already been taken to evict the petitioners/appellants from the shops in question and reasons are invented to put in place/sustain such a stand and that apart, the structure housing the appellant's shops are also structurally sound and as such, there is no need or necessity to go for demolition of the shops on the alleged pretext/ground of dilapidated structure.

7. Per contra, Mr. S. R. Rajagopal, learned Additional Advocate General assisted by Mr. M. Rajamathivanan, learned Standing Counsel appearing for the respondent/Corporation made the following submissions:



(i) The renewal of leases till 31.03.2025 is in the nature of non-statutory contracts and the terms and conditions of the said contracts cannot be interfered with by invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

(ii) In terms of the Impugned Notice dated 17.09.2020, the appellants/writ petitioners were granted three months time till 31.12.2020 and they have not vacated and that apart the pending legal proceedings had resulted in the dismissal of the writ petitions, vide common order dated 23.12.2020 made in W.P.Nos.14088 of 2020 etc., batch and thereafter, four months time had elapsed and therefore, fair and sufficient time has been given so as to enable the appellants/writ petitioners to vacate and deliver vacant possession of the shops in question.

(iii) The decision has been taken by the respondent/Corporation to demolish the shops in 'A' Complex of the Erode City Municipal Corporation Bus Stand and 35 lessees had already vacated and in the light of the terms and conditions of the Public Auction / Tender Notification dated 23.01.2019 for the year 2019-2022, as and when the shops are required, the lessees have to vacate and deliver vacant possession and as such, it is not open to the petitioners to contend otherwise.

(iv) In the light of the report given by an independent expert body, namely Kongu Engineering College that 'A' Complex of Erode City Municipal Corporation Bus Stand requires immediate demolition and since necessary sanction has been accorded and also by utilizing the funds provided under Erode Smart City Scheme, the policy decision taken in right, earnest and public interest cannot be reviewed by this Court in exercise of its power of judicial review and hence, prays for dismissal of these writ appeals with costs.

8. This Court paid it's best attention to the rival submissions and also perused the entire materials available on record.

9. The following questions arises for consideration:

(1) Whether the appellants/writ petitioners are having indefeasible right to continue as lessees in respect of the shops in their occupation, which are ordered to be demolished and reconstructed under Erode Smart City Project/Scheme?

(2) Whether the appellants/writ petitioners are entitled to pre-decisional hearing?

(3) To what relief, the appellants/writ petitioners are entitled to?



Question No.(1)

10. It is an admitted fact that the appellants/writ petitioners were lessees of various shops in 'A' Complex of Erode City Municipal Corporation Bus Stand at Erode and their leases have been extended from time to time in terms of G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007. In terms of the last renewal of lease on 01.07.2016, the leases subsist in their favour for a period of 9 years and it expires on 31.03.2025.

11. The scope of G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007 came up for consideration before the Division Bench of this Court in the decision in P.Muthusamy v. State of Tamil Nadu [2014 (5) MLJ 129]. In the said decision, it has been held that Municipality/Local Body is entitled to augment its financial resources by cancelling the existing licenses and put into Auction the shops.

12. In Tamil Nadu Municipal Shop Merchants Association v. State of Tamil Nadu [AIR 2000 Mad 393], it has been held that leases/licences of Municipal properties cannot become a heritable right and that the licencees cannot be permitted to continue in possession of shops under the guise of right of renewal.

13. The respondent/Corporation has issued the Tender Notification and Public Auction for lease/licence for a period of 3 years from 2019-2022 and the said notification came to be published on 23.01.2019 and as per General Condition No.46, it is stated that "While implementation of Municipal Schemes, the places for which lease/licenses have been granted, in the event of requirement, the lessees /licencees shall hand over the same immediately without imposing any condition".

14. No doubt, the appellants/writ petitioners are having subsisting right as lessees till 31.03.2025 and in the light of the above cited decision in Tamil Nadu Municipal Shop Merchants Association v. State of Tamil Nadu [AIR 2000 Mad 393], leases/licences of Municipal properties cannot become a heritable right and that the licencees cannot be permitted to continue in possession of shops under the guise of right of renewal and that apart, the renewal of licences granted in favour of the appellants/writ petitioners upto 31.03.2025 is subject to General Condition No.46 of the Tender Notification and Public Auction dated 23.01.2019 issued by the respondent/Corporation for a period of three years from 2019-2022.



15. During the course of arguments, the respective learned counsel and learned Senior Counsel appearing for the appellants/writ petitioners also made a submission that though Erode City Municipal Corporation Bus Stand consists of various complexes, decision has been taken only to go for demolition of 'A' Complex alone despite the fact that the said building is in sound and good structural condition. In the impugned common order dated 23.12.2020 made in W.P.No.14088 of 2020, the learned Judge in Para 11 had extracted the Consultancy Report from the Department of Civil Engineering, Kongu Engineering College for the purpose of ascertaining the structural stability of the building which is sought to be demolished and extracted the conclusion and recommendation and it is relevant to extract the same:

Conclusion:

Corrosion of reinforcement due to penetration of carbon dioxide, leaking and poor cover.

40-50% columns are corroded and concrete compressive strength of corroded column is less than 20 Mpa.

Strength of the exposed column is very poor, confined concrete start to disintegrate from the core concrete.

Seepage of water occurred in the ground floor slab, which initiated the corrosion in the roof slabs.

Recommendation:

The structure is not sound enough for modernisation and further extension. Repairing of damaged elements leads to more initial cost, maintenance cost and also the life span of repair work will be of minimum 20 years. Since the building is used for public purpose, it is suggested that modernization of complex building made with new construction by demolishing the existing structure to ensure public safety".

16. It is a settled position of law that evidence given by an expert body is to be treated like any other evidence and the opinion of expert is invited, as the Court may not have sufficient expertise in an important field especially technical field. In the above cited report, conclusion has been reached as regards structural stability of the building sought to be demolished and in the light of the technical nature of the report coupled with the fact that there is no bias or malice attributed either on the respondent/Corporation or on the said Expert Body with regard to the said opinion, it cannot be brushed aside and interfered with and therefore, the submission made in this regard is rejected.

17. In the light of the reasons assigned above, Question No. (1) is answered in negative against the appellants/writ petitioners.



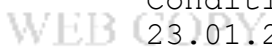
Question No. (2)

18. The primordial submission made by the learned counsel appearing for the appellants is that before issuing the impugned order dated 17.09.2020, the petitioners should have been afforded with fair and reasonable opportunity of putting forth their objections and the subsequent order dated 11.02.2021 passed by the respondent/Corporation on the petitioner's representation dated 19.06.2020 can be treated only as post decisional hearing and since the issue has already been pre-concluded, the impugned order is to be set aside with a direction to the respondent/Corporation to issue show cause notices, followed by receipt of response, adjudication and communication of the same to the appellants/writ petitioners. It is further pointed out that since the impugned order visits the appellants/writ petitioners with grave civil consequences and that apart, affect their livelihood guaranteed under Article 21 of the Constitution of India, the question of applying Useless/Empty Formality Thoery would not be a fair one.

19. In *Canara Bank v. V.K.Awasthy* [(2005) 6 SCC 321], in respect of Departmental/Domestic Enquiry, the issue relating to Post-decisional hearing came up for consideration and the Hon'ble Supreme Court, taking into consideration catena of decisions, has set aside the order passed by the High Court in reversing the punishment imposed upon the appellants and allowed the appeal.

20. In *Uma Nath Pandey and Others v. State of Uttar Pradesh and Another* [(2009) 12 SCC 40], in a Criminal Revision Case filed under Sections 397 and 401 CrPC, necessity of notice to the respondent came up for consideration and the Hon'ble Supreme Court, after referring to various decisions including the issue relating to Useless Formality Theory, has concluded that the allowing of the revision without notice is in violation of the principles of natural justice and set aside the same.

21. In *Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and Others* [(2015) 8 SCC 519], nature, scope, applicability and flexible nature of principle of natural justice came up for consideration and the Hon'ble Supreme Court held that it was not open to the authority to dispense with the requirement of principles of natural justice on the presumption that no prejudice is going to be caused to the person against whom action is contemplated and also observed that at the same time, it cannot be denied that as far as Courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any



22. In the light of the fact that the General Terms and Conditions of the Tender Notification and Public Auction dated 23.01.2019 for the period 2019-2022 stipulates that as and when the respondent/Corporation requires the shops in question, the lessees/licencees shall handover the same without imposing any condition and further that the condition of 'A' Complex, which houses the shops in which the petitioners were granted lease, became dilapidated and after obtaining Structural Stability Certificate from an Expert Body, a fair decision has been taken to go for demolition of the same and putting of new structure under Erode Smart City Scheme. The learned Judge has rightly concluded that no useful purpose would be served in calling for explanation on the decision taken by the respondent/Corporation.

24. Now coming to the submission made by the learned Additional Advocate General as to the maintainability of the writ petitions in non-statutory contracts, it is useful to refer to the decision of the Hon'ble Supreme Court in Zonal Manager, Central Bank of India v. M/s.Devi Ispat Ltd. & Ors. (2010) 7 Scale 638, wherein the maintainability of the writ petition in contractual matters came up for consideration and the Hon'ble Supreme Court, after referring to various decisions, in para 15 held as follows:

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the Constitution of India in its contractual or statutory obligation, writ petition would be maintainable. However, a legal right must exist and corresponding legal duty on the part of the State and if any action on the part of the State is wholly unfair or arbitrary, writ courts can exercise their power".

In para 16, the Hon'ble Supreme Court concluded that writ petition is maintainable even in contractual matters, in the circumstances mentioned in the earlier paragraphs.

25. In the light of the ratio laid down in the above cited decision, it cannot be said that the respondents had acted contrary to public interest, unjustly, unfairly, unreasonably discriminately and in violation of Article 14 of the Constitution of India in the performance of contractual obligations.

26. In the considered opinion of the Court, the plea made by the appellants/writ petitioners as to the non-adherence to the principles of natural justice in no way affect the decision making process, in the light of the fair decision taken by the respondent/Corporation to go for demolition of the dilapidated old structure and putting up of new structure. As already pointed out, if the appellants/writ petitioners are so advised, they are always at liberty to invoke Common Law Remedy also.

27. Hence, Question No.2 is answered in negative against the appellants/writ petitioners.

Question No.(3)

28. The respective learned counsel appearing for the appellants/writ petitioners made an alternative submission as to the grant of time till 31.03.2022 for vacating and delivering vacant possession of the shops and in the light of the report submitted by an independent body with regard to the structural stability of the building, which has been extracted in earlier paragraphs, this Court is not inclined to grant time. However, the respondent/Corporation can take note of the fact of closure of shops run by the petitioners due to the notifications issued under Disaster Management Act and that the business/commercial activities are limping back to normalcy, may consider their claim in the event of new building / complex come into being, for the remaining period of lease subject to norms. It is also open to the petitioners/appellants individually or collectively to submit representations in that regard and as and when those representations are received, it is open to the respondent/Corporation to consider and pass appropriate orders in accordance with law.

29. Hence, Question No.(3) is answered accordingly.



30. In the result, all the Writ Appeals are dismissed, confirming the common order dated 23.12.2020 made in W.P.Nos.14088 of 2020 etc., batch, subject to above observations. No costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Jvm

To

The Commissioner
Erode City Municipal Corporation
Erode.

+1cc to M.Rajamathivanan, Advocate (SR No.23522)

WA.Nos.366, 367, 793, 953, 955,
1057 to 1080, 1082, 1084,1085 and 1086 of 2021

JP (CO)
PR (11/08/2021)