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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.1013 of 2018 and C.M.P. Nos.8564 & 8565 of 2018

- 1.A.Sardar Khan
- 2.D.Tamil Selvi
- 3.R.Parimala
- 4.P.K.Baskar
- 5.L.Gopi
- 6.K.Shanmugam
- 7.M.Malarkodi
- 8.Akthar Basha
- 9.A.Baranirajan
- 10.M.Sundar Singh
- 11.G.Dinesh Kumar
- 12.S.Thirumaran
- 13.G.Rahman Khan
- 14.K.Ramu
- 15.T.Raji
- 16.R.Saroja
- 17.S.Richard Fernando
- 18.C.Yesodha

... Appellants

-VS-



WEB COPY

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 Regional Director of Municipal Administration,
Sarathi Nagar, Kakithaipattarai,
Vellore-12.
4. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
5. The Commissioner,
Thiruvathipuram Municipality,
Thiruvathipuram - 604 407,
Thiruvannamalai District. ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act against the order dated 08.01.2018 made in W.P. No.198/2018 passed by the Hon'ble Justice Mr.K.Kalyanasundaram.

Prayer in W.P. No.198/2018:

Filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate Writ, Order or Orders direction, calling for the records relating to the Impugned Orders / Notices bearing Na.Ka.No.5664/2016/A2 dated 31.03.2017, 23.05.2017 and bearing Na.Ka.No.5664/2014/A2 05.09.2017 issued by the 5th respondent herein in respect of petitioners Shop No's. 7, 20, 18, 27, 2, 11, 16, 17, 8, 6, 9, 15, 4, 19, 24, 21, 22, 13, 14, 23, 3 and 12 i.e totally 22 Shops situated at (IDSMT SHOPS) Office Front Side Shop, Municipality Office, Thiruvathipuram, on the file of the 5th respondent and quash the same.

For Appellants : Ms.D.Kamachi

For Respondents : Mr.T.Arunkumar,
Government Advocate for
R1 to R4

Mr.M.Elumalai for R5



JUDGMENT

(Judgment of this Court was delivered by T.RAJA, J.)

This writ appeal has been directed against the impugned order dated 08.01.2018 passed in W.P. No.198 of 2018 wherein the learned Single Judge, dismissing the above writ petition, held that once the auction notification was published, the petitioners are deemed to have vacated the tenement and the respondents can enter the place with the help of police force, if required. Aggrieved thereby, the appellants are before us.

2.Learned counsel for the appellants submitted that the appellants have been running the shops in question for several years on lease/rent. It is the claim of the appellants that all the shops are measuring to an extent of 80 sq.ft. and they are nearly 24 years old and the appellants are involved in trade/business, like selling stationeries, foot wears etc. Out of the meager income derived from their business, the appellants are eking out their livelihood. After taking the shops for lease from the fifth respondent, the appellants have raised loan for diversification of their business and invested amount for renovation. By passage of time, the appellants have also built up reputation and goodwill for their business/trades. When they were regularly paying the licence fee, the fifth respondent fixed the periodical enhancement, as per the Government Order in G.O. Ms. No.92 Municipal Administration and Water Supply dated 03.07.2007 issued by the first respondent. Based on the same, the fifth respondent had enhanced 15% rent from the prevailing rent to the shops for the period from 01.04.2016 to 31.03.2019 by adopting renewal procedure and the appellants had paid renewal charges and they are paying the enhanced rent to the fifth respondent. Before expiry of the period from 01.04.2016 to 31.03.2019, the fifth respondent had exorbitantly increased the monthly rent of the shops and issued impugned notices dated 31.03.2017, 23.05.2017 and 05.09.2017 fixing Rs.300/- to Rs.350/- i.e. 3 to 3.5 times higher than the prevailing rate. As it is arbitrary because the fifth respondent did not follow the guidelines provided under G.O. Ms. No.147 Municipal Administration and Water Supply dated 30.12.2000 and G.O. Ms. No.92 Municipal Administration and Water Supply dated 03.07.2007, the appellants were unable to continue their business. Therefore, they came to this Court with the above writ petition questioning the impugned notices enhancing the rent, which are not in accordance with the guidelines issued by the Government vide above G.Os and Circular dated 30.11.2016.

3.Learned counsel appearing for the appellants further submitted that there was no transparency in fixing the enhanced rent by the fifth respondent for the shops leased out to the appellants. In spite of repeated requests made by the



appellants, no work sheet was given to them to show as to how the fifth respondent arrived to this much exorbitant amount. However, the fifth respondent, considering the rent paid by a hotel situated in 700 sq.ft. in a private land, enhanced the rent payable by the appellants. Therefore, the claim of the appellants before the learned Single Judge and also before this Court is that it is not correct to fix the amount equally for all the shops situated at various places of Thiruvathipuram Municipality, without considering the location feasibility available in the area. But the learned single Judge following a judgment of the Division Bench of this Court in the case of P.V.Subramanian v.Secretary to Government reported in 2014 (5) MLJ 129, holding that licence cannot be converted into one of lease and that the object of letting out the shop is to collect more revenue for the Municipality/Corporation and that the extension granted to the existing licensees is only by way of concession, wrongly came to the conclusion that the fifth respondent has fixed the rent with all due consideration. However, the learned Single Judge has also held that merely because there is a reduction of 33% in the guideline value, it would not be a reason enough for the appellants to interfere with the order of the decision of the fifth respondent and after the completion of 9 years of lease period, as per the above G.O. Ms. No.92 Municipal Administration and Water Supply dated 03.07.2007, the fifth respondent was at liberty to bring all the shops in public auction. After completion of 9 years of lease period, the fifth respondent has to work out the new market rent fixing the new licence fee on the basis of the market rate prevailing. This aspect has not been followed. Therefore, the impugned notices are liable to be quashed.

4.A detailed counter affidavit has been filed refuting the arguments advanced by the learned counsel appearing for the appellants. Mr.M.Elumalai, learned counsel appearing for the fifth respondent submitted that though all the appellants were given the shops in question in the year 1994 onwards, they were allowed to continue till the arrival of the above G.O. Ms. No.92 Municipal Administration and Water Supply dated 03.07.2007 which gave them three consecutive renewal on payment of the enhanced rent at the rate of 15% on every three years. After enjoying the benefit of the said G.O. 92, namely 3 renewal period, on payment of 15% enhanced rent on every three years interval, they were indisciplined because they were not regularly paying the licence fee. Except one person, who is the occupant of Shop No.13, all other persons have not cleared their rent. Therefore, this was brought to the notice of this Court on 06.08.2021. On the said day, learned counsel for the appellants submitted that all the appellants will clear the arrears as per the order of this Court. In spite of the chance given to them, they have not cleared the rent. By serving a copy of sheet, showing the



arrears of rent payable by 23 occupants of the shop, learned counsel for the fifth respondent urged this Court to dismiss this appeal, as they are not entitled to be heard.

5. However, learned counsel appearing for the appellants requested this Court to give them a last opportunity to hear their grievances before the fifth respondent to which they are legally entitled to. Since all the appellants have completed 9 years of lease period, as per the said G.O., the fifth respondent has to fix the licence fee on the basis of the existing market value of the shops, which has not been done because they have not been heard again.

6. Mr. T. Arunkumar, learned counsel for respondents 1 to 4 submitted that three notices dated 31.03.2017, 23.05.2017 and 05.09.2017 were issued by the fifth respondent requesting repeatedly these appellants to come and make their grievances, but, unfortunately, they did not come for negotiation. Therefore, this Court has dismissed the above writ petition. In a similar circumstance, the Hon'ble Division Bench of this Court in Writ Appeal No. 1460 of 2021 dated 23.06.2021, considering the similar and identical issue, has dismissed the appeal. Therefore, these appeals are also liable to be dismissed.

7. Learned counsel appearing for the appellants requested us to consider her last plea stating that in view of Covid-19 pandemic situation, these poor appellants were unable to clear the arrears amount. However, if they are able to clear all the arrears on the basis of the enhanced rent fixed by the fifth respondent, the same may be considered.

8. Though we find merits on the submission made by Mr. M. Elumalai, learned counsel appearing for the fifth respondent and Mr. T. Arunkumar, learned Government Advocate appearing for respondents 1 to 4, considering the present pandemic situation, we are inclined to accept the plea made by the learned counsel appearing for the appellants. Therefore, if the appellants are prepared to accept the enhanced rate fixed by the fifth respondent on clearing the entire arrears, their request would be considered. Four weeks' time is granted to the appellants to approach the fifth respondent with the arrears of enhanced rent as on date. Accordingly, the writ appeal stands disposed of. Consequently, connected M.Ps are closed. No costs.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar



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, Chempauk,
Chennai - 600 005.
3. The Regional Director of Municipal Administration,
Sarathi Nagar, Kakithaipattarai,
Vellore-12.
4. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
5. The Commissioner,
Thiruvathipuram Municipality,
Thiruvathipuram - 604 407,
Thiruvannamalai District.

+1cc to the Government Pleader Sr No.41106
+1cc to Ms.D.Kamatchi Sr No.40957

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PVS (CO)
PR (16/09/2021)