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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.91, 93, 96, 99 & 102 of 2022

&

W.M.P.Nos.83, 84, 85, 86, 88, 90, 93, 94 & 96 of 2022

R.Ranganathan	...Petitioner in WP/91/2022
B.Arasu	...Petitioner in WP/93/2022
S.M.Abuthahir	...Petitioner in WP/96/2022
K.Dhanalakshmi	...Petitioner in WP/99/2022
D.Saravanan	...Petitioner in WP/102/2022

Vs.

The Commissioner,
Cuddalore Municipality, Cuddalore,
Cuddalore District.

...Respondent in all WP's

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the entire records relating to the impugned order passed by the respondent in his proceedings Na.Ka.No.14703/2016/A2, dated 31.07.2018 in so far relates to giving retrospective effect from 01.07.2016 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.P.Srinivas

C O M M O N O R D E R

The notice dated 31.07.2018 asking the petitioners to pay the fair rent fixed by the competent authority with effect from 01.07.2016 for the purpose of extension of lease, failing which the license will be cancelled, is under challenge in these Writ Petitions.



2. The petitioners are running stall business at Cuddalore Municipality shopping complex at Manjakuppam. The petitioners states that they are paying the lease amount of Rs.708/- per month to the respondent municipality. Further, for the year 2016 - 2017 the respondent municipality collected a lease amount from the petitioners at the rate of Rs.600/- plus Rs.108/- as GST and the lease was extended and the respondent served order dated 31.07.2018 by fixing enhanced lease amount at the rate of Rs.4,286/- (for the petitioners in W.P.Nos.91, 96, 99 & 102 of 2022) and Rs.2700/- (for the petitioner in W.P.No.93 of 2022) per month plus 18% GST.

3. The above enhanced lease amount came into effect from 01.07.2016 and the petitioners were asked to pay the enhanced lease amount, within a period of seven days, otherwise, the license will be cancelled and the authorities would opt for public auction.

4. The petitioners state that they are paying the enhanced lease amount but the respondent is insisting the petitioners to pay the arrears of the enhanced rent from 01.07.2016 onwards. Thus, the petitioners are constrained to move the present writ petitions.

5. The admitted fact is that the lease for a period of nine years was entered into between the respondent municipality and the petitioners from 02.07.2007 to 01.07.2016. The lease period expired and thereafter, the petitioners were allowed to continue. The petitioners state that the lease was extended by the authorities. Further, some other persons filed the writ petitions and in those writ petitions also this Court has said that the revised lease amount has to be paid by the lessees. In the event of non-acceptance, the municipality can opt for public auction. Admittedly, the petitioners were not party to those writ petitions.

6. This Court is of the considered opinion that the lease period of nine years admittedly expired on 01.07.2016. However, the petitioners are continuing in the shops. The respondent has not opted for public auction and considered the case of the writ petitioners for extension, in the event of paying the enhanced fair rent fixed by the competent authorities.

7. The petitioners state that the enhanced rent is being paid by them from the year 2018 after passing of the impugned order. However, the impugned order categorically states that the revised fair rent is fixed with effect from 01.07.2016, the date on which the period of lease expired.



8. It is made clear that the rent was revised on expiry of lease period and option was given to the petitioners either to pay the enhanced lease amount or to vacate the premises, enabling the respondent to opt for public auction of the shops.

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9. Providing an opportunity to the petitioners after the expiry of the lease itself is a concession. To avail the concession or not is the decision to be taken by the petitioners. The lease period expired on 01.07.2016 and after the expiry of the lease period, the enhanced fair rent fixed must be paid by the occupants. In the event of non-acceptance they are at liberty to vacate the premises enabling the authorities to conduct public auction of the shops.

10. Contrarily, the writ petitioners cannot litigate an issue and by getting an interim order and keeping the writ petition pending for years together would cause loss of revenue to the State which can never be appreciated by this Court.

11. There is a growing trend of filing a Writ Petition at the fag end and after obtaining the interim order the litigants are taking undue advantage and thereafter, raising a point that they are paying the fair rent with prospective effect. In the event of extending such concessions, there is a huge loss to the State / Exchequer and loss of revenue to the public can never be accepted by this Court. Therefore, the persons who are approaching the Court at the fag end are bound to establish the genuinity of their case for the purpose of obtaining any relief from the High Court. The very idea of litigating the issues and taking undue advantage of pendency of the case can never be tolerated nor be considered.

12. In the present case the impugned notice was issued in proceedings dated 31.07.2018. The writ petitions were filed on 03.01.2022, after a lapse of about three and half years. When the authorities have initiated action for vacating the premises and to conduct public auction, the petitioners have suddenly approached this Court. The writ petitions itself are liable to be dismissed on the grounds of laches.

13. The petitioners are saying that they are paying fair rent fixed from the date of passing of the impugned order. However, the order unambiguously states that the fair rent was fixed with effect from 01.07.2016. Therefore, the petitioners are bound to pay the arrears of fair rent from the date of expiry of the lease period, if they have chosen to get an



extension of lease. If they are not willing to seek extension of the lease, then it is for them to vacate the premises enabling the authorities to conduct public auction which may fetch more revenue to the state and the petitioners may also be permitted to participate in the public auction.

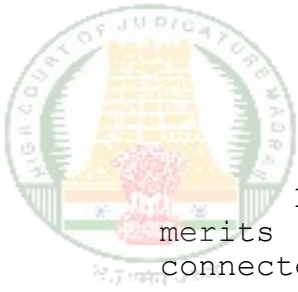
14. This being the avenues available to the petitioners, it is for them to pay the arrears of rent and seek extension of lease failing which, they are liable to be evicted and the authorities are bound to conduct public auction by following the procedures as contemplated.

15. This Court is of the considered opinion that on expiry of the lease period as per the policy, the Government has to conduct public auction for the purpose of generating revenue. No doubt, public auction alone will provide better revenue. On expiry of lease period, the extension of lease period by enhancing the rent cannot be appreciated as there is a possibility of non-transparency. Therefore, in all circumstances, on expiry of lease the authorities must opt for public auction. While conducting public auction, the existing lease holder may also be permitted to participate in the action. Contrarily, a mere extension will encourage corrupt activities and non-transparency in the matter of dealing with the public buildings and other aspects of the matter.

16. In the present case, the petitioners were allowed to continue in the shop premises even after the expiry of the lease. However, the fair rent was enhanced with effect from 01.07.2016. The petitioners have not paid the enhanced rent from 01.07.2016 but paying the rent from the year 2018 onwards i.e., after issuance of the impugned order.

17. This being the factum, the petitioners are directed to pay the arrears of enhanced fair rent, within, a period of four weeks from the date of receipt of a copy of this order, failing which the respondent is directed to evict the petitioners without giving any further notice and conduct public auction which would generate better revenue to the State and the same would be the transparent policy, which is in existence as of now in respect of the Government buildings, shops, markets etc.

18. Further, the writ petitions itself are filed after a lapse of three and half years from the date of issuance of notice i.e., 31.07.2018.



19. Thus, the writ petitions stand dismissed both on merits as well as on the grounds of latches. Consequently, connected Miscellaneous Petitions are closed. No costs.

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Sd/-
Assistant Registrar(LA)

//True Copy//

Sub Assistant Registrar

Jeni/Kan

To

The Commissioner,
Cuddalore Municipality, Cuddalore,
Cuddalore District.

W.P.Nos.91, 93, 96, 99 & 102 of 2022

SRA(CO)
SU(28/01/2022)