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\IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.842 of 2022

and

W.M.P.Nos.920 & 921 of 2022

(Through Video Conferencing)

S.Ganesan,
S/o.Subramaniam

...Petitioner

Vs

1. The Commissioner,
Gopichettipalayam Municipality.
2. The Additional Chief Secretary
to Government of Tamil Nadu,
Municipal Administration and
Water Supply (M.A.IV) Department,
Chennai - 600 009.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarid Mandamus, to call for the records pertaining to the impugned demand notice dated 05.01.2021 issued by the 1st respondent demanding the arrears of rent of Rs. 49,560/- for the period June 2020 to December 2020 for the petitioner's Shop No.1 at the New Bus Stand TNUDF, Gobichettipalayam, Erode District and qaush the same and consequently direct the respondents to waive the same by considering the petitioner's representation dated 21.12.2020.

For Petitioner : Mr.M.Karthik

For Respondents :

For R1 : Mr.B.Anand
Standing Counsel

For R2 : Mr.K.Suresh
Government Advocate



ORDER

The writ on hand has been instituted challenging the demand notice dated 05.01.2021 issued by the first respondent demanding arrears of rent of Rs.49,560/- for the period June 2020 to December 2020 for the petitioner's Shop No.1 at the New Bus Stand TNUDF Gobichettipalayam, Erode District and quash the same and direct the respondents to waive the same by considering the petitioners representation dated 21.12.2020.

2.The petitioner is a lessee in respect of the aforementioned shop, and lease was granted by the first respondent for running the canteen stall shop for several years. Lease deed was executed and the petitioner was paying the monthly rent to the Gobichettipalayam Municipality. The petitioner states that the Government considered the Covid-19 loss occurred for the traders and issued G.O.(D).No.298 Municipal Administration and Water Supply (MA IV) departed dated 02.09.2020 and thereby waived the rent for all the municipal shops for the period from 01.04.220 to 31.05.2020 including the petitioner's shop leased out to the petitioner.

3.The learned counsel for the petitioner, made a submission that since the pandemic was continuing the benefit of the waiver is also to be extended from June 2020 to December 2020. In other words the petitioner seeks waiver of rent for the whole year.

4.The learned Standing Counsel for the first respondent, Municipality made a submission that the waiver of rent was granted for two months by the Government and accordingly, the said benefit was extended to the petitioner and other eligible persons. Further waiver cannot be granted as the Government has not taken any such policy decision, thus the writ petition is liable to be rejected.

5.Admittedly, the petitioner is running the shop based on the lease and as per the terms and conditions of the lease deed, the petitioner has to pay the rent on monthly basis. No doubt the Covid-19 pandemic caused greater financial loss and other implications in respect of all the citizens, including traders. Many people suffered on account of Covid-19 situation and the Government also is extending benefits then and there by taking a policy decision. As per the lease conditions the petitioner is bound to pay the rent and the waiver as a concession by the Government. Thus, the concession can never be claimed as a matter of right by the lessee. Concessions are granted by the Government on account of Pandemic and therefore, such concession cannot be extended by filing a writ petition before the High Court, under Article 226 of the Constitution of India. Courts are not empowered to create a policy, more specifically, for



grant of waiver of rent which is otherwise in accordance with the conditions of lease between the parties. It is a contractual obligation and writ itself is not entertained. Waiver is a concession and thus the petitioner has to approach the Government if at all any such concession is required.

6.The petitioner submitted a representation and even the said representation cannot be directed to be considered by this Court as even for issuing such a direction, the petitioner has to establish a right and the absence of establishing any right, the High Court would not be in a position to issue any such direction to the Government. Thus the petitioner cannot claim waiver of rent as a matter of right and if at all a concession is to be granted any further, the Government has to take a policy decision and the petitioner is at liberty to approach the Government but certainly not a writ petition before the High Court.

7.Further, the writ petition is filed challenging the demand notice. Demand notices are issued based on the terms and conditions of the lease. If at all the petitioner raises any objection or seeking further concession, the petitioner has to approach the Government by way of representation. In this case, the petitioner approached the Government, therefore, it is left open to the Government to take a policy decision by the Government. However, the Courts cannot frame any such policy decision or direct the Government to grant such waiver of rent as it involves financial implications and granting of waiver in large scale would cause loss of revenue to the State and therefore, the petitioner is not entitled for any relief as such sought for in the present writ petition.

8.With the above observations, the writ petition stands dismissed. Consequently connected writ miscellaneous petitions are also closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

nst/cse

To

1. The Commissioner,
Gopichettipalayam Municipality.



2. The Additional Chief Secretary
to Government of Tamil Nadu,
Municipal Administration and
Water Supply (M.A.IV) Department,
Chennai - 600 009.

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+1cc to Mr.B.Anand, Advocate, S.R.No.4593
+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.5285
+1cc to the Government Pleader, S.R.No.4741

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and
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NSK 11/02/2022