



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.Nos. 4635, 4637 & 4640 of 2021

And

W.M.P.Nos. 5268, 5269 & 5273 of 2021

C.Selvi ... Petitioner in WP.No.4635 & 4637 of 2021

S.Ganesan ... Petitioner in WP.No.4640 of 2021

Vs.

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

... Respondents in all WP's

Prayer in W.P.No. 4635 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus call for the records pertaining to the impugned demand notice dated 05.01.2021 issued by the first respondent demanding the arrears of rent of Rs.2,84,970/- for the period June 2020 to December 2020 for petitioner's shop No.4 at New Bus Stand MUDF, Gobichettipalayam, Erode District and quash the same and consequently, direct the respondents to waive the same by considering the petitioner's representation dated 21.12.2020.

Prayer in W.P.No. 4637 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus call for the records pertaining to the impugned demand notice dated 05.01.2021 issued by the first respondent demanding the arrears of rent of Rs.98,791/- for the period June 2020 to December 2020 for petitioner's shop No.7 at New Bus Stand MUDF, Gobichettipalayam, Erode District and quash the same and consequently, direct the respondents to waive the



same by considering the petitioner's representation dated 21.12.2020.

Prayer in W.P.No. 4640 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus call for the records pertaining to the impugned demand notice dated 05.01.2021 issued by the first respondent demanding the arrears of rent of Rs.49,560/- for the period June 2020 to December 2020 for petitioner's shop No.2 at New Bus Stand MUDF, Gobichettipalayam, Erode District and quash the same and consequently, direct the respondents to waive the same by considering the petitioner's representation dated 21.12.2020.

For Petitioner in
all W.Ps.

: Mr. I.C.Vasudevan

For 1st Respondent in
all W.Ps.

: Mrs. Yamuna Devi
Special Government Pleader

For 2nd Respondent in
all W.Ps.

: No appearance

COMMON ORDER

The demand notices dated 05.01.2021 are sought to be quashed in these Writ Petitions.

2. The petitioner is a lessee entered into a lease agreement with the respondent Municipality and running a canteen stall for several years. The petitioner states that due to pandemic situation, the stall was closed and they could not able to pay the monthly rent.

3. A request is made by the traders for waiver of rent and the Government also considered and issued G.O.(D).No. 298 Municipal Administration and Water Supply (MA IV) Department dated 2.9.2020 by granting waiver of rent for all municipal shops for the period 01.04.2020 to 31.05.2020. However, the petitioner seeks further extension of waiver whcih cannot be considered by this Court.

4. The demand notice was issued asking the petitioner to pay the lease amount by deducting two months waiver granted by the Government in G.O.(D).No. 298, Municipal Administration and Water Supply (MA.IV) Department, dated 02.09.2020.



5. The learned counsel for the petitioner mainly contended that, the petitioner could not able to collect monthly rent in respect of the cateen stall during the pandemic period. The entire period of lock down is to be taken into consideration for the purpose grant of waiver. Thus, the impugned Government Order is to be quashed and the period of waiver is to be extended.

6. The learned Standing Counsel appearing on behalf of the third respondent objected the said contention by stating that as per the lease terms and conditions, the petitioner is bound to pay the lease amount. Considering the pandemic situation, the Government granted two months waiver. The demand notice has been issued, which is impugned in this Writ Petition. In respect of the lease amount for the entire period of pandemic, waiver cannot be granted by the Municipality and more so, it is a policy decision taken by the Government for grant of waiver and under those circumstances, these Writ Petitions are liable to be rejected.

7. The contractual obligations between the parties in the lease agreement need not be adjudicated in a writ proceeding under Article 226 of the Constitution of India. This agree terms and conditions of the contract. Undoubtedly, they are binding on the parties. However, in the present case, considering the pandemic situation, a policy decision has been taken by the Government for grant of waiver of two months rent uniformly to all the shops across the State of Tamilnadu. The Government also in this regard implemented cannot be interfered with by the Court. Further, the Court cannot extend the concession of waiver granted by the Government which involves huge financial implications. In respect of financial implications, the Courts are always slow in interfering with the decisions taken by the Government by way of policy. Therefore, the very relief sought for to extend the waiver period cannot be granted by the High Court and if at all, any further concession is to be granted, the Government alone is competent to take a policy decision considering various factors including the financial constraint of the public exchequer.

8. In respect of the extension of lease period also, the Court cannot take a decision as the terms and conditions of the agreement between the parties are binding on them. Therefore, for extension of any concession contrary to the agreed condition between the parties, the parties have to negotiate and take a decision and the High Court may not have any role to interfere or issue a direction in favour of any one of the parties to the contract which is not desirable.

9. Even in case of dispute between the parties with



reference to the terms and conditions of the contracts, the parties are bound to approach the competent Civil Court of law for adjudication. This being the basic principles to be followed. The quashing of the Government Order does not arise as it provides two months waiver, extension of waiver cannot be granted by the High Court as in the event of considering the same would run contrary to the terms and conditions admitted between the parties which is a contract.

10. In view of the facts and circumstances, the petitioners are at liberty to approach the competent authorities for redressal of their grievances and more specifically with reference to the terms and conditions of the contract between the parties. However, the petitioners are entitled for the waiver of two months rent in accordance with the Government Order already passed and the said benefit alone can be extended by the competent authorities.

11. Accordingly, this Court has no hesitation in forming an opinion that the petitioner are not entitled for any relief and consequently, these Writ Petitions stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Vsg

To

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

+1cc to the Government Pleader, S.R.No.6428, 6429

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KSM(CO)
SU(16/02/2022) (17/02/2022)