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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.874 OF 2022

&

W.M.P.NO.954 OF 2022

(THROUGH VIDEO CONFERENCING)

K.V.Shajan
S/o Varghese.

...Petitioner

Vs

1. The State
Represented by the Secretary
Municipal Administration and Water Supply Department
Secretariat, Fort St.George
Chennai - 600 009.
2. The Commissioner
Coonoor Municipality,
Coonoor
3. The Revenue Officer
Coonoor Municipality
Coonoor.

...Respondents

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records with respect to the impugned notice dated 25.10.2021 in Na.Ka.No: A4/670/2016 issued by the respondents 2 & 3 and quash the same.

For Petitioner : Mr.M.Sneha

For Respondents
For R1 : Ms.V.Yamuna Devi
Special Government Pleader

For R2 & R3 : Mr.P.Srinivas



ORDER

The notice issued by the respondent Municipality demanding a 15 percent increase of monthly rent is under challenge in the present writ petitions.

2.The petitioner is a lessee of Shop bearing door Nos.87 and 88, Market Road, Coonoor for several years and they have been paying the rent regularly as per the demand raised by the respondents 2 and 3. The petitioner states that the last such rent was paid by the petitioner on 15.02.2021 at the rate of Rs.2951/- per month for each shop along with GST of Rs.531/- and in all Rs.3482/- per month. The petitioner is in occupation of the shop measuring about 450 Sq.ft. and running a fancy store in the said premises. The shop has been functioning for the last several years. When the petitioner tendered the rent for the month of March 2021, the respondents 2 and 3 refused to receive the same by stating that a decision is taken for enhancement of rent. Thereafter the respondent, Commissioner, Coonoor Municipality, issued the notice enhancing the rent by increasing 15 percent of the rent.

3.Admittedly, the petitioner is a lessee and he is in occupation of the premises belongs to the Municipality on certain terms and conditions. The petitioner admits that he is in occupation of the premises for several years, i.e. more than nine years and the rent being paid till February 2021 was Rs.3482/- per month. The shop situated in the prime location at Coonoor market and for several years, the petitioner is paying the meagre rent, undoubtedly, the same would cause financial loss to the Municipality.

4.The Municipalities are running and implementing various welfare schemes and providing infrastructure facilities only depending on the revenue and in the event of non-enhancement of rent, tax, etc., the Municipality will not be in a position to implement the welfare schemes for the benefit of the people at large. The petitioner is in occupation of the premises for several years and paying meagre rent and further, once the lease period is expired and the petitioner is in occupation for more than ten years, then the municipality is bound to opt open public auction for the purpose of generating better revenue for the benefit of municipality so to provide better services and infrastructure to the people of that locality. Contrarily, the municipality cannot close its eyes in respect of payment of such meagre rents and allow such persons to continue in the leased out premises for several years by actively or passively colluding with those lessees.



5. The active and passive conclusion of the authorities can never be ruled out in such circumstances, more specifically, in respect of the properties belonging to the municipality, Corporation, Government etc. Therefore, the higher officials are bound to look into such inactions, lapses on the part of the authorities and initiate serious action against those authorities who have not acted for the benefit of the municipality or acting detrimental to the interest of the Municipalities, Corporations, etc. Efficient public administration is the constitutional mandate, public authorities are expected to function for the welfare of the people and for implementation of the welfare schemes in an effective manner. Revenue is the back-bone of implementation of such welfare schemes and providing of infrastructure facilities. Therefore, concentration on revenue of the State is of paramount importance for the benefit of the people and in the event of lapses or inefficiency, it has to be construed that the State fails in its duty to honour the constitutional mandate of equality and social justice. Equality in economic status is also the perception of the Constitution. It is not as if a rich can become richer and the poor will remain as poor. Every Government of the day is expected to thrive to uplift the economically poor people and in the event of inefficient administration, it may not be possible for the Government to achieve the equality class and social justice enunciated under the Constitution of India.

6. This Court is of the considered opinion that in respect of the lease conditions, no writ is entertainable as it is a contract and such contractual obligations between the parties are to be enforced by adjudicating the issues before the competent forum. Admittedly, the petitioner is a lessee, rent is enhanced, however, it is enhanced by 15 percent increase of the existing rent and this itself is not proper on the part of the authorities. The Government has taken a policy decision that on expiry of lease of such public properties belongs to the Government, Local Bodies, any Government institutions must be put on open public auctions for generating better revenue in the interest of public at large. Thus, on expiry of lease, all the authorities are bound to conduct open public auction, so that the municipalities, corporations, local bodies other panchayats etc. may generate higher revenue for the purpose of implementing various welfare schemes for the benefit of the people of that locality.

7. Increasing a rent at the behest of the authorities can never be appreciated. It is not as if by increasing 15 per cent of the rent, a lessee is allowed to continue for an indefinite period. It is not made clear as to how long this lessee will be allowed to continue in the premises. If a lessee is allowed to



continue in such an unguided manner, then it will lead to infringement of the rights of all other persons, who all are also waiting for public auction of these public properties.

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8.The notice impugned refers G.O.Ms.No.92 Municipal Administration and Water Department dated 03.07.2007. The said G.O cannot be an appropriate one with reference to the subsequent development occurred. The Hon'ble Supreme Court of India and the High Courts repeatedly held that open public auction must be conducted whenever the period of lease expires. Therefore the reliance placed on by the authorities with reference to the said G.O of the year 2007, may not be appropriate and it must be looked into by the first respondent and all appropriate actions must be taken in consonance with the established principles and all such properties leased out must be put on public open auction on expiry of lease for the purpose of the welfare of the local bodies and in the interest on the public at large.

9.This apart, extension of lease by citing a Government order periodically will cause infringement of public rights. Only when such public properties are kept open for public auction, the eligible persons will be provided with an opportunity to participate. Therefore, no vested right can be created in favour of any lessee for an indefinite period and periodical extension of lease by citing a Government order is no more a good practice and in violation of the principles of Law laid down by the Constitutional Courts. Thus the first respondent has to look into all these aspects, issue appropriate directions to all the authorities across the State of Tamil Nadu to ensure that on expiry of lease, the concerned authority must put the properties on open public auction for the purpose of generating better revenue for implementing the welfare schemes and to provide infrastructure facilities.

10.As far as the impugned demand notice is concerned, it is enhancement of rent made after several years and the petitioner is all along paying a sum of Rs.3482/- per month in respect of the shop at Coonoor Market, which is a prime location. The enhancement cannot be construed as excessive or unfair or otherwise. Even this Court is of the opinion that such enhancement itself is improper and public open auction must be conducted for the purpose of leasing out the public property. This being the principles to be followed, the petitioner has not established any right for the purpose of interfering with the notice.



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

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

nst/cse

To

1. The Secretary
Municipal Administration and Water Supply Department
Secretariat, Fort St.George, Chennai - 600 009.
2. The Commissioner
Coonoor Municipality, Coonoor
3. The Revenue Officer
Coonoor Municipality, Coonoor.

+1cc to M/s.M.Sneha, Advocate, S.R.No.4337

+1cc to Mr.P.Srinivas, Advocate, S.R.No.4871

+1cc to the Government Pleader, S.R.No.4717

W.P.No.874 of 2022

PMK(CO)

RLP(09/02/2022)