



W.P.No.31267 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.11.2022

CORAM:

THE HON'BLE **MR.JUSTICE N.SATHISH KUMAR**

W.P.No.31267 of 2013

1.M.PARTHASARATHY
2.M.ANANDA RAJ
3.M.RAVI
4.M.MANIKANDAN
5.Sathya

... Petitioners

Vs.

1.The Secretary to the Government
of Tamil Nadu,
Housing and Urban Development
Fort St. George
Chennai 600 009

2.The Tamil Nadu Slum Clearance Board
Rep. by its Secretary
No.5, Kamarajar Salai
Chennai 600 009

3.The Estate Officer IV
Tamil Nadu Slum Clearance Board
Teynampet
Chennai 600 018

... Respondents



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PRAYER: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the 1st respondent dated 27.09.2012 and made No.23695/KuMa.2(1) 2011-2 and quash the order of the 1st respondent as illegal and without jurisdiction.

For Petitioner : Mr.M.P.Jayaprakash

For Respondents : Mr.P.Sathish, AGP for R1

Mrs.G.Thilagavathy
Senior Counsel
for G.Venkatesan
standing counsel for TNUHDB R2&

R3

ORDER

The Writ Petition has been filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the 1st respondent dated 27.09.2012 and made No.23695/KuMa.2(1) 2011-2 and quash the order of the 1st respondent as illegal and without jurisdiction.

2.It is the case of the writ petitioners that the 2nd respondent Board allotted shop Nos.1 to 5 and 7 to the petitioners on a monthly rent fixed



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by the Respondent Board and the petitioners have been running Auto Spare Parts shop for the past 17 years in the above said shop leased out by the Respondent Board and the petitioners have been paying the rent regularly without any default. It is the further case that on 10.09.2013, the 3rd respondent renewed the lease for the period from 14.12.2013 to 13.12.2014 on increasing the rent by 5%, against which, the petitioners had filed statutory appeal before the 1st respondent under Section 59 of Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 and the said appeal was also dismissed on 27.09.2012. Challenging the same, the present writ petition is filed on the ground that the procedures are not followed and no opportunity was granted.

3. Counter affidavit filed by the respondents 2 and 3 states that the shop Nos. 1 to 5 & 7 in a shopping complex situated at Ramakrishnapuram, T. Nagar, Chennai 600017 have been allotted to the petitioners under monthly rent basis fixed by the Tamil Nadu Slum Clearance Board (now Tamil Nadu Urban Habitat Development Board) at



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the rate of Rs.19/- (Rupees Nineteen only) per sq. ft. / per month by separate proceedings as enumerated below;

Sl. No.	Shop No.	Name of the Allottees	Monthly Rent per sq.ft. and extent	12 months advance deposit	EB advance deposit
1	1 to 4	M.Parthasarathy	Rs.4,690/- and 246.86 sq. ft.		
		M.Anatharaj	Rs.5,292/- and 278.51 sq. ft.		
		M.Ravi	Rs.5,893/- and 310.15 sq.ft.		
		M.Manikandan	Rs.6,494/- and 341.80 sq.ft.		
2.	5	Sathya @ Sathyanarayanan	Rs.7,096/- and 373.45 sq.ft.	Rs.85,152/-	Rs.1,000/-
3.	7	Munusamy	Rs.6,675/- and 315.30 sq. ft.	Rs.80,000/-	

4.As per the terms and conditions of the allotment, the respondent board was entitled to increase the rent every succeeding year at 15% to 20% and 25% respectively. In terms of the allotment order from the year 1996 to 1999, the petitioners were liable to pay the enhanced rent as per the terms and conditions of allotment. Therefore, the petitioners have made comprehensive representations for reduction of enhanced rent and the same was made, deliberated and forwarded to the Government by the



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respondent vide letter in R.C.No.27546/2001/B2 dated 09.08.2002 ending up to 31.01.2004 for consideration and for further reduction of rent for commercial buildings of the respondent board which was revised to 10% per annum as per G.O.Ms.No.239 Housing and Urban Development dated 09.06.1999, Thereafter vide G.O.Ms.No.108, the Housing and Urban Development (SC-1) department dated 18.05.2004 the 1st respondent revised the rent for commercial buildings of the Board at 5% p.a. from 10% p.a.. It was also ordered that the rent in the first floor of the commercial complex of the Board to be rendered by 10% as compared to the ground floor and the said revision to take effect from 2004.

5.In so far as the writ petitioners are concerned, after the revision was notified under the G.O.Ms.No.108 dated 18.05.2004, the respondent has issued notice demanding the arrears liable to be paid by the petitioners immediately. According to the respondents, the revision has been made only at the enhanced rent of 5%, despite the fact, that contract provided for enhancement upto 20%. Therefore, when the



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G.O.Ms.No.108 dated 18.05.2004 has been passed, statutory appeal filed by the petitioners was dismissed, pursuant to the G.O.Ms.No.108 dated 18.05.2004. Hence sought to dismiss the writ petition.

6.Learned counsel for the petitioners would submit that there is no contract to enhance the rent at the rate of 15% to 20%, however, the G.O. has been passed enhancing the rent at the rate of 5% now. As the Slum Clearance Board is insisting the petitioners to pay the arrears of rent, the petitioners have decided to surrender the vacant possession within the time fixed by this Court and they have also filed an affidavit before this Court today. The affidavit filed by the petitioners is taken on file.

7.Whereas, the learned counsel for the respondent would submit that as per the enhanced rate at the rate of 5% , the writ petitioners have to pay a sum of Rs.2,80,03,130/-. It is their contention that though the contractual terms provide for enhancement of 20%, considering the comprehensive representation made by the allottees, the Government has reduced the rate at 5% and notified the revision. The petitioners are



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squatting on the property for more than 17 years without paying any rent and they cannot challenge the order.

8.Learned counsel for the petitioners whereas disputed the amount calculated by the respondents. At any event, the G.O. has been passed and the learned counsel for the petitioners submitted that the shops have been allotted to the petitioners and that they have been paying the rents. The petitioners are the recognized tenants and they are in continuous possession of the property. Now, they cannot contend that there was no agreement or fresh terms of contract between the parties. The petitioners are estopped from denying the relationship. The G.O. revised the increase only at 5%. Appeal is also dismissed pursuant to the G.O. Therefore, this Court is of the view that once the rent has been revised reasonably, the tenants are bound to pay the same. Now, they cannot turn around and contend that there is no contractual terms to enhance rents. Such contention cannot be countenanced in the eye of law. In the ordinary contract, revision is permitted annually. Therefore, the contention of the learned counsel for the petitioners cannot be



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countenanced. Therefore, the appeal has been dismissed only based on the G.O. passed by the Government considering the representation of the allottees. Therefore, it cannot be said that there is discrimination in fixing the rent.

9.I do not find any merits accordingly in the writ petition. Affidavit is also filed by the petitioners intending to vacate the premises and handing over the possession. Such view of the matter, the petitioners as undertaken before this Court, are directed to handover the premises within a period of one (1) month from today and failure to vacate the premises as undertaken by the petitioners before this Court, they should be summarily evicted from the premises by the respondents. It is also well open to the respondents to recover the arrears of rent in the manner known to law.

10.This Writ Petition stands dismissed accordingly. No costs.

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