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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No. 23817 of 2021

And

M.P.No. 25080 of 2021

Gopala Krishnan

... Petitioner

Vs.

The Commissioner
Udhagamandalam Municipality,
Udhagamandalam, The Nilgiris

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records on the file of the respondent in Roc.No. 708/2016/A7 dated 03.10.2019 and quash the same.

For Petitioner : Mr. V.Raghavachari

For Respondent : Mr. P.Srinivas
Standing Counsel

O R D E R

The writ on hand is filed questioning the validity of the notice issued by the respondent Municipality in proceeding dated 03.10.2019. The impugned notice states that in respect of the shops where the lessees have completed 9 years, the rent is enhanced and accordingly, the petitioner was asked to pay the rent with effect from 01.07.2016.

2. The petitioner states that he is a tenant in respect of Shop No.9, situated at Upper Bazar Road, near Government High School in Ooty. The grievances of the writ petitioner is that the rent is enhanced and the notice impugned has been issued and therefore, the petitioner is constrained to move the present Writ Petition.

3. The contention of the petitioner is that the revised



rent fixed is exorbitant as the enhancement is made, suddenly which would affect the petitioner financially and therefore, an opportunity must be provided to the petitioner.

4. The respondent/Commissioner, Udhagamandalam Municipality, filed a counter affidavit stating that the process of refixing the rents of the shops throughout the State of Tamilnadu have been commenced with effect from 01.07.2016, which is the date on which the 9 years have expired since the issue of G.O.Ms.No. 92. The exercise of refixation of rent had been undertaken by the Municipalities concerned. In order to remove the difficulties and to maintain uniformity, the Commissioner of Municipal Administration, issued instructions for the Municipalities to cause the refixation to be done by the Monitoring Committees headed by the Regional Directors of Municipal Administration of the concerned Regions. The Monitoring Committees has collected the relevant details from the PWD Department Registration and carried out the legal inspection to the concerned area where the shops are situated. The field officers deputed by the Monitoring Committee had also conducted survey in respect of the prevailing market value. Accordingly, assessing the prevailing market rent in a particular locality, the Monitoring Committee had arrived at a conclusion and recommended the rates of rent as per the tabular Column.

Place at shops	Type of roof	Total shops	Before Increase Old Monthly Rent (01.07.2016) (Per Sq.ft.)	PWD (Per Sq.ft) as per local inspection in pvt shops	Rent (Per Sq.ft) as per local inspection in pvt shops	Committ ee fixed Rent (per Sq.ft)	Final fixedre nt (per sq.ft)
		GF FF	GF FF	GF FF	GF FF	GF FF	GF FF
Govt.Hr Sec. School	RCC	11 9	44.32 29.90	48.00 46.00	67.50 60.00	70.00 62.00	70.00 62.00

5. Accordingly, the rent was reversed. The recommendations of the Monitoring Committee was communicated by proceedings dated 14.06.2019 and the final decision was taken and the recommendations of the Monitoring Committee was accepted by the Municipal Council Resolution No. 1563 dated 23.09.2019. The revised rents were informed to the Office bearers of the



VyabarigalSangam, representing the Traders/Licencees and meetings were also conducted. On 01.10.2019, the Office Bearers as well as other licencees numbering 13 along have attended the meeting. The meeting notice was issued on 24.09.2019 and served through the concerned Bill Collectors and served on the licencees by 25.09.2019. It is for the individual licencees to attend that meeting that was held and raise their objections. On 01.10.2019, the attendees were informed of the various processes that had placed and the manner in which the Monitoring Committee had fixed the rents were explained. The attendees have accepted the said explanations and left the meeting. Thereafter, notices were served on the individual Licencees such as the petitioner dated 03.10.2019 and the said notice is under challenged in the present Writ Petition.

6. This Court is of the considered opinion that as per the established principles of law, on expiry of lease, the shops have to be leased out only by way of open public auction and following the provisions of the Tender Act. By conducting open public auction more revenue can be generated in the interest of the public and for the purpose of implementing the welfare schemes by the Municipal Corporation and local bodies. If at all the existing tenants are continuing for definite period, it is not nearly for how many years the lease is extended and accordingly, fixing of fair rent in accordance with law. There is no clear formation in this regard. In all circumstances, the public properties are to be dealt with in the manner known to law and once the lease period expired, then the property must be further leased out by way of open public auction in the interest of the public providing opportunity to all the persons, who are all aspirant to participate in the open tender which would allow better for the Municipal Corporation etc. Instead of conducting open auction, the authorities have undertook steps for enhancement of rent. Even such enhancement of rent as per the prevailing market rent is also objected by the traders by paying neither amount of rent. The traders are in occupation of the Municipalities shop for many years. The parties are also actively or passively collusion with the traders to establish the principles of law.

7. Thus, the Government has to take appropriate decision to lease out all the public properties by way of open auction in the interest of the public and for the purpose of implementation of public welfare schemes.

8. This apart, the petitioner is in occupation of the shop based on the terms and conditions of the lease which is a contract. Such contractual obligations cannot be adjudicated in a writ proceedings. Enhancement of rent is made by Constituting Committee and followed the procedure as directed by



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this Court in a writ petition filed by the Traders Association in W.P.No. 30631 of 2017. This being the factum, the petitioner has not made out any acceptable ground for the purpose of considering the relief and this apart, the demand notice is under challenge in the present Writ Petition, if any grievances exist with reference to the other disputes regarding the terms and conditions of lease, the petitioner has to approach the competent Civil Court of law. As far as the waiver of rent is concerned, the Government has already granted two months waiver in G.O.Ms.No 298 and the petitioner may claim the waiver as per the terms and conditions of the Government Order.

9. With the above said observations, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Vsg

To

The Commissioner
Udhagamandalam Municipality,
Udhagamandalam, The Nilgiris

+1cc to M/s.V.Raghavachari, Advocate, S.R.No.6271

W.P.No. 23817 of 2021
And
M.P.No. 25080 of 2021

PMK (CO)
SU(16/02/2022)