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W.A.No.535 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **07.08.2023**

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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- 1.D.Rajendran
- 2.V.Rajasekar
- 3.C.Gunasekaran
- 4.D.Tamilselvan
- 5.U.Roohi Mohammed
- 6.M.Yaseen
- 7.A.Akthar Basha
- 8.B.Nemichand
- 9.K.Dayalan
- 10.K.Sabapathi
- 11.K.Damodaran



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12.N.Hari
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.. Appellants

Vs.

1.The Secretary to Government
Municipal Administration and
Water Supply Department
Fort St.George
Chennai-600 009

2.The Director of Municipal Administration
Municipal Administration Department
Ezhilagam, Chepauk
Chennai-600 005

3.The Regional Director of Municipal Administration
Sarathi Nagar,
Kakithaipattarai
Vellore-12

4.The District Collector
Vellore District
Vellore

5.The Commissioner
Municipal Commissioner
Gudiyattam Municipality
Gudiyatham, Vellore District

.. Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent to set aside the order passed in W.P.No.15512 of 2017 dated 20.11.2017 on the file of the Court.



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For Appellants : Ms.D.Kamachi

For Respondents : Mr.K.Tippusultan, G.A for R1 to 4

Mr.P.Raja Rajeswari, G.A for R5

J U D G M E N T

(Judgment of the Court was made by D.KRISHNAKUMAR,J.)

The petitioners/appellants who are lessees, challenged the demand notice issued by the respondent claiming increase in rent for the shops leased to the petitioners/appellants.

2. It is the case of the appellants that they have taken on lease various shops situated at Veerabardan Street Complex, Gudiyatham measuring approximately 80 to 150 sq.ft and they have been carrying on their trade/business in flowers, urban medicine, footwear, sweets, tea etc., and out of the meager income they have been eking out their respective livelihoods. While so, the 5th respondent increased the monthly rent exorbitantly from 01.07.2016 and issued notices dated 10.04.2017 to all the petitioners. The increase in rent was atleast 3 to 8 times higher than the existing rent and in doing so, the 5th respondent has not followed



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G.O.No.147 dated 30.12.2000 and G.O.No.92 dated 03.07.2007.

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3. The learned Single Judge, in and by order dated 21.06.2017 dismissed the Writ Petition as against which the present Writ Appeal has been filed.

4. The Writ Court relied on the Division Bench judgment of this Court in *P.V.Subramanian Vs. Secretary to Government*, reported in **2014 (5) MLJ 129** and held that the Municipality had fixed the rent taking into account all relevant factors and the impugned notice did not warrant any interference and dismissed the Writ Petition.

5. The counsel for the appellants places reliance on G.O.No.92 Municipal Administration Water Supply department dated 03.07.2007 and contended that the appellants are entitled for renewal of license and the respondent municipality cannot claim exorbitant rents for renewal of license.

6. Per contra, the learned Government Advocate appearing for the Municipality has submitted that the Writ Court has considered all relevant



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G.O's and rightly held that the appellants have no right to seek extension of lease in perpetuity and prays for dismissal of the Writ Appeal.

7. In the course of arguments, the counsel for the appellants would submit that the appellants are willing to clear the arrears due and payable by them and sought for a liberty to request the Municipality for renewal of the license of the appellants shops.

8. The Division Bench of this Court in while deciding the scope of G.O.No.92, Municipal Administration and Water Supply Department dated 3.7.2007 in ***P.Malliga Vs.The Commissioner, Erode City Municipal Corporation, Erode***. [WA.Nos.366, 367, 793, 953 and 955 of 2021 dated 17.4.2021] has held as follows:

“11. The scope of G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007 came up for consideration before the Division Bench of this Court in the decision in P.Muthusamy v. State of Tamil Nadu [2014 (5) MLJ 129]. In the said decision, it has been held that Municipality/Local Body is entitled to augment its financial resources by cancelling the existing



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licenses and put into Auction the shops.

12. In Tamil Nadu Municipal Shop Merchants Association v. State of Tamil Nadu [AIR 2000 Mad 393], it has been held that leases/licences of Municipal properties cannot become a heritable right and that the licencees cannot be permitted to continue in possession of shops under the guise of right of renewal.

13. The respondent/Corporation has issued the Tender Notification and Public Auction for lease/licence for a period of 3 years from 2019-2022 and the said notification came to be published on 23.01.2019 and as per General Condition No.46, it is stated that "While implementation of Municipal Schemes, the places for which lease/licenses have been granted, in the event of requirement, the lessees /licencees shall hand over the same immediately without imposing any condition".

14. No doubt, the appellants/writ petitioners are having subsisting right as lessees till 31.03.2025 and in the light of the above cited decision in Tamil Nadu Municipal Shop Merchants Association v. State of Tamil Nadu [AIR 2000 Mad 393], leases/licences of Municipal properties cannot become a heritable right and that the licencees cannot be permitted to continue in possession of shops under the guise of right of renewal and that apart, the renewal of



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licences granted in favour of the appellants/writ petitioners upto 31.03.2025 is subject to General Condition No.46 of the Tender Notification and Public Auction dated 23.01.2019 issued by the respondent/Corporation for a period of three years from 2019-2022."

9. In the light of decisions cited supra, the licences of Municipal properties cannot become a heritable right and the licencees cannot be permitted to continue in possession of shops under the guise of right of renewal. In such view of the matter, we are not inclined to interfere with the order passed by the learned Single Judge.

10. At this juncture, considering the submission made by the learned Government Advocate and the counsel for appellants, and in the light of decisions cited supra, the appellants undertake to settle the entire arrears to the respondent Municipality within a period of three months time. On payment of the entire arrears to the respondent Municipality within a period of three months, the petitioners/appellants shall make a request before the respondent Municipality for renewal of licence. The respondent Municipality shall consider the request made by the



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petitioners/appellants and take appropriate decision in accordance with law. However, we make it clear that the licencees cannot have any legal right for renewal of licence. If any default on the part of the petitioners/appellants, the respondent Municipality shall take necessary action by evicting the licencees from the shops without further notice. In the interest of revenue to the Municipality, it is for the Municipality to consider and grant licence to the applicants.

11. Considering the above and the submissions of the appellants, that the entire arrears due and payable to the respondent Municipality would be settled within a period of three months, we deem it fit to dispose of the Writ Appeal in the manner following:

i) the Appellants shall settle the entire arrears amount due and payable to the respondent Municipality within a period of three months from the date of receipt of a copy of this order;

ii) on payment of entire arrears to the respondent Municipality within the stipulated time, the appellants shall be entitled to make a request to the respondent Municipality for renewal of their respective licenses within one month thereafter;



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iii) On such request made, the respondent Municipality shall consider such request and take appropriate decision, in accordance with law.

12. However, we make it clear that the appellants cannot claim any legal right for renewal of license. However, in the interest of revenue to the Municipality and considering the fact that the appellants would have cleared all pending arrears, it is for the Municipality to consider grant of renewal/fresh license to the appellants, within a period of four weeks from the date of the appellants making such a request, after settling all arrears within the stipulated period of three months.

With the above directions, Writ Appeal stands disposed of.

(D.K.K.J) & (P.B.B.J)
07.08.2023

Internet : Yes
Neutral Citation: Yes/No



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To

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D.K.KRISHNAKUMAR, J.,
and
P.B.BALAJI,J

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