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W.A.Nos.1798 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.1798 of 2017

and CMP.No.22626 of 2017

Mohamed Basheer

.. Appellant / Writ Petitioner

vs.

The Commissioner,
Villupuram Municipality,
Villupuram.

.. Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 16.11.2017 passed in W.P.No.13443 of 2017

For Appellant : Mr.S.Ilamvaludhi

For Respondent : Mr.K.Tippusulthan
Government Advocate

JUDGMENT

(Judgment of the Court was made by *Justice D.Krishnakumar, J.*)

The writ petitioner is the appellant herein and aggrieved by the order of dismissal of the writ petition filed as against the impugned communication of the respondent dated 01.03.2017 in revising the rent for the shop under his occupation, has filed the instant writ appeal.



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WEB COPY 2. The petitioner is a licensee under the respondent Municipality and running Shop No.5 for several years and paying the rent regularly to the respondent without default. While that being so, the impugned demand notice dated 01.03.2017 was issued by the respondent calling upon the appellant to pay the enhanced rent of Rs.8,394/- from 01.04.2017 as against the existing rent of Rs.1,193/- as per G.O.Ms.No.92, Municipal Administration and Water Supply (MA.4) Department dated 03.07.2007. The said demand notice was put to challenge in the writ petition, which came to be dismissed vide the impugned common order, against which the present writ appeal is filed.

3. The learned counsel for the appellant submitted that the appellant was granted interim stay on condition that the appellant continues to pay 50% of the enhanced rent to the respondent and based on the interim orders passed by this Court, they are continuing as licensee in the shop in question. The learned counsel for the appellant further submitted that by the impugned demand notice, the respondent Municipality has renewed the lease period for a period of 3 years from 01.04.2017 to 31.03.2020, subject to the payment of



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enhanced rent along with arrears from 01.04.2017 and the said licence period was already over and he is continuing as licensee in the shop in question for almost six years and now at this stage, the present writ appeal is taken up for hearing before this Court.

4. The learned counsel for the respondent submitted that the demand made by the respondent Municipality is without any basis and also in violation of G.O.Ms.No.92 dated 03.07.2007 and a Committee has been constituted and based on the market value of the property, the Committee has fixed the licence amount to the shops in question and without considering the said fact, the respondent Municipality has issued the impugned demand notice and the Writ Court has also erroneously dismissed their claim and therefore, prays for appropriate orders.

5. Similar issue came up before us in W.A.No.1186 of 2018 dated 24.07.2023 [*L.Arul and Others v. Secretary to Government, Municipal Administration and Water Supply Department, Chennai-9 and Others*], wherein we have passed the following order :

"8 The Division Bench of this Court in while deciding the scope of G.O.Ms.No.92, Municipal Administration and



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*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 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***



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[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 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 licencees 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. 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 in the light of decisions cited supra, the appellants undertakes to settle the entire arrears to the respondent Municipality within a period of three months time. On payment of 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 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.



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With the above directions, the writ appeal stands disposed of. No costs."

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6. Mr.K.Tippusulthan, learned Government Advocate for the respondent Municipality submitted that based on the aforesaid order of this Court, the present writ appeal may be disposed of on similar lines.

7. The learned counsel for the appellant agreed that the appellant undertakes to pay the arrears amount within a period of four months from the date of receipt of a copy of this order and on payment of entire arrears amount to the respondent Municipality within the said period, the appellant / writ petitioner shall make a request to the respondent Municipality for renewal of licence.

8. In the light of the earlier decision of this Court in respect of the very same issue, we are not inclined to interfere with the order passed by the learned Single Judge. However, considering the submission made by the learned Government Advocate and in the light of decisions cited supra, the appellant undertakes to settle the entire arrears to the respondent Municipality within a period of four months time. On payment of entire arrears to the



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respondent Municipality within a period of four months, the petitioner/appellant shall make a request before the respondent Municipality for renewal of licence. The respondent Municipality shall consider the request made by the petitioner/appellant and take appropriate decision in accordance with law. However, we make it clear that the licensee cannot have any legal right for renewal of licence. If any default on the part of the petitioner/appellant, the respondent Municipality shall take necessary action by evicting the licensee/appellant from the shop in question without further notice. In the interest of revenue to the Municipality, it is for the Municipality to consider and grant licence to the applicant.

9. With the above directions, the writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] [P.B.B., J.]
16.08.2023

Index : Yes / No

Internet : Yes / No

Jvm

To
The Commissioner,
Villupuram Municipality,



Villupuram.

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AND
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