



W.P.(MD)No.5059 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**W.P.(MD)Nos.5059, 5871 to 5885, 5951 to 5960, 5969 to 5975, 6014 to 6044,
6114 to 6144, 7975 to 8005 and 8126 of 2023
and
W.M.P.(MD)Nos.7351 to 7427 and 7440, 7442, 7444, 7506, 7508 of 2023
and connected Writ Miscellaneous Petitions**

W.P.(MD)No.5059 of 2023

Arumugam

... Petitioner

Vs.

- 1.The Commissioner,
Madurai City Municipal Corporation,
Aringar Anna Maaligai,
Madurai.
- 2.The Assistant Commissioner,
Madurai City Municipal Corporation,
Aringar Anna Maaligai,
Madurai.
- 3.The Special Revenue Inspector,
Madurai City Municipal Corporation,
Aringar Anna Maaligai,
Madurai.
- 4.The Revenue Assistant,
Madurai City Municipal Corporation,
Aringar Anna Maaligai,
Madurai.

... Respondents



W.P(MD)No.5059 of 2023

WEB COPY

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the entire records in connection with the impugned demand order passed by the 2nd respondent vide proceedings Reference No.Assessment No.115/6670126 dated 27.02.2023, quash the same.

For Petitioners : Mr.Niranjana S.Kumar

For Respondents : Mr.S.Devasena
Standing Counsel

(in all Writ Petitions)

COMMON ORDER

Common arguments were advanced in all the writ petitions. The stand taken by the petitioners in all the writ petitions were the same and the respondents in their reply also averred the same points. In view of that particular fact, common order is passed in all the writ petitions.

2. Let me take as an illustration, the facts stated in W.P.(MD)No.5059 of 2023. The writ petitioner therein, Arumugam who incidentally also claims to be the President of an Association of all the other shop owners and who had been the signatory to all the representations given on behalf of the petitioners,



W.P(MD)No.5059 of 2023

in his affidavit has stated that the petitioners herein have shops at Madurai Corporation Lorry Shed at West Veli Street. The shops measured 64 Sq.ft, 100 Sq.ft and 120 Sq.ft. It is stated that the shop owners put up the sheds themselves and developed them. They were tenants under the respondents namely Madurai Municipal Corporation. These two facts are neither denied nor disputed. The only issue now has to be examined is the issue of the rent which is payable by each shop owner. Impugned notices have been issued complaining that there has been substantial arrears of rent payable by each one of the shop owners and therefore by the impugned orders, respondents have called upon the petitioners to pay the arrears within a period of three days failing which they stated that possession would be taken and that the shops would be let out on auction.

3. The respondents have invited this issue by themselves as the only appropriate manner in which as the controlling authority over the shops, they should have exercised, is to determine the lease period for a fixed period with no option for renewal and to bring on auction the shops at the end of the period. It is common knowledge that tenants cannot remain continuously taking on rent shops, in public places under the Corporation since if they fall in arrears of payment of rent, they neither pay rent to the Corporation nor do they permit



W.P(MD)No.5059 of 2023

other prospective lessees or auction purchasers to do business thereby, they occupy the shops at relatively low rent. There is accumulated arrears. All this causes loss not only to the Corporation but as a matter of fact, there is loss of livelihood to hundreds and hundreds of other prospective members of the public who would expect that an opportunity would be given to them to also be lessees of the shop as auction purchasers of the shops.

4. View from that particular angle, the petitioners herein will necessarily have to abide by the rent as determined by the respondents herein. It has been stated that they had been in possession for a considerable number of years. They should have permitted the respondents to bring the shops on auction. There is no right vested in the petitioners herein to continue to be in occupation for ever and ever without even paying the rent as demanded and questioning every increase in the rent. One example of such questioning of rent, is a letter addressed by this particular petitioner herein, Arumugam, who after the Corporation had passed a resolution determining the rent at various rates of Rs. 30/-, 40/- and 50/- per sq.ft., for shops measuring, 64 sq.ft, 100 sq.ft and 120 sq.ft, respectively, which resolution has been finally signed by the Commissioner of the Madurai Municipal Corporation, placed a representation stating that a Deputy Commissioner, without giving the name and a few other



W.P(MD)No.5059 of 2023

officials had independently, agreed that the rent of the shops could be reduced to Rs.21/- per sq.ft. The representation is bundled with falsity and I would straight away reject the same and I would place the fate of these petitioners solely on the hands of the said Arumugam who appears to act as a *de jure/defacto* leader though without any authority whatsoever. If other shop owners are to suffer consequences owing to arrears in payment of rent to be paid by them, then they should blame this particular individual and not the respondents herein.

5. Those facts are narrated as a preliminary. It has to be noted that in Thilagar Thidal, wherein there are also shops let out on rent and on which the petitioners claim equality in treatment, originally the shops were let out on rent in the year 2007-2008 at Rs.2.75 per sq.ft. In the year 2010, this rent was increased to Rs.3.44/- per sq.ft. Between the years 2011 and 2012, it was increased to Rs.3.96/- per sq.ft. Between the years 2014 and 2015, this was increased to Rs.4.55/- per sq.ft., and thereafter to Rs.25/- per sq.ft. This was then increased to Rs.80/- per sq.ft. This was then decreased to Rs.25/- per sq.ft and after negotiations, was decreased to Rs.17.25/- sq.ft. These rental rates are for series of shops at Thilagar Thidal. Petitioners claim similar decrease in rent.



W.P(MD)No.5059 of 2023

WEB COPY

6. Insofar as the present shop owners are concerned, they now pay the rent at the rate of Rs.449/- per month for shops measuring 64 sq.ft, Rs.581/- per month for shops measuring 100 sq.ft and Rs.774/- per month for shops measuring 120 sq.ft. This was from the year 2016-2017. This was an increase from the year 2000-2001, when the rent was Rs.271/- per month for the shops measuring 64 sq.ft, Rs.373/- per month for shops measuring 100 sq.ft and Rs.325/- per month for shops measuring 120 sq.ft.

7. Thereafter, the respondents applied G.O.Ms.No.92 dated 03.07.2007 which is a governing Government order and by which it had been directed that rent should be based on the market value of the land. Accordingly, the respondents had proposed an increase of the rent at Rs.80/- per sq.ft., It is also complained that the petitioners herein had been in arrears even prior to the year 2017. It is stated in the representation of the petitioner herein that in the hope that the rent would be determined at Rs.21/- per sq.ft, they had purchased demand drafts for about 1 ½ crores towards arrears of rent. But at the same time, the resolution of the respondents would necessarily have to be upheld. If the Government Order is to be taken into consideration, then the rent per sq.ft should be Rs.80/-. There had been a resolution dated 25.01.2022 and the



W.P(MD)No.5059 of 2023

Commissioner had directed that three slabs of rates of rent could be determined namely at Rs.30/- per sq.ft., for the shops measuring 64 sq.ft, Rs.40/- per sq.ft for shops measuring 100 sq.ft and Rs.50 per sq.ft for shops measuring 120 sq.ft. It is stated that even if it is calculated as that particular rate, there would be only a marginal increase in the monthly rents to Rs.1920/-, Rs.4,000/- and Rs.6,000/- respectively per month for the aforementioned three areas of the shops. Still the respondents would suffer substantial loss. It is under these circumstances, that arguments have been advanced and the writ petitioners question the impugned orders complaining that they had been given just three days time to vacate and hand over possession of the shops.

8. On the other hand, it is the contention of the learned standing counsel for the respondents that the petitioners are entrenched traders whose turnover is substantial. The shops are quite close to the Railway Junction at Madurai and the Periyar Bus Stand and it is stated that the market value in that particular place is substantially high and the respondents have given considerable concession by determining the rent at Rs.80 per sq.ft.

9. Be that as it may, they had reconsidered the entire issue and had taken a considered view to have the rents at aforementioned rates of Rs.30 per sq.ft,



W.P(MD)No.5059 of 2023

Rs.40 per sq.ft and Rs.50 per sq.ft., for the three areas under the occupation of the petitioners herein. The demand of the petitioners is that there had been an understanding that the rents would be still further reduced to Rs.21 per sq.ft., is rejected by me. The letter relied on is a self serving document produced by the petitioners and it had not been countersigned by the Commissioner. The names of the officials who had so undertaken has also not been disclosed in the said representation given by the petitioner herein Arumugam. If he had purchased demand drafts, on the basis of that alleged understanding that the rent would be fixed at Rs.21/- per sq.ft, it only shows the malafide nature of the petitioners herein who demand a particular rent to be fixed and that only then they would pay the arrears. Whatever the rental rate is fixed, the arrears should be paid. It is not for them to put in a demand about the condition for payment of arrears by holding that the rent should be determined at Rs.21/- per sq.ft and only then they would pay the arrears. I wonder what they would do if the rent is determined at the rates as fixed by the Government under G.O.Ms.No.92. They should be quite aware of the concession granted by the Commissioner of the Corporation who by proceedings dated 25.01.2022 had granted substantial concession. Even the highest rate fixed at Rs.50/- per sq.ft is still Rs.30/- short of Rs.80/-, which would be the just market value per sq.ft, for the shops herein. A tabulated column had been presented by respondents giving the rental



W.P(MD)No.5059 of 2023

amount at Rs.80/- per sq.ft and at Rs.30/-, Rs.40/- and Rs.50/- per sq.ft., for the three areas respectively, and at Rs.21/- per sq.ft. I would straight away reject the calculation of the rent at Rs.21/- per sq.ft, more particularly because it had been projected only by the petitioner herein Mr.Arumugam, who has no right or authority to state that fact and who in my definite opinion, is only attempting to mislead the other petitioners. Left to themselves, the other petitioners would have individually approached the respondents, and paid the rents.

10. I am extremely confident that most of them would agree to the higher rent and they would release themselves and free themselves from the clutches of the petitioner Arumugam, the petitioner in W.P.(MD)No.5059 of 2023. He has no authority to control the other petitioners. The writ petitions have been filed in individual names and each writ petitioner has control for the shop under his occupation. There is no authority placed on any Joint Commissioner or Deputy Commissioners to accept to any reduced rent at Rs.21/- per sq.ft. Even if it is so projected, the said rent of Rs.21/- per sq.ft is rejected by this Court. The rent which has to be determined is only as per the resolution of the respondents. The resolution has stated that rent would be Rs.30/- per sq.ft for shops measuring 64 sq.ft, Rs.40/- per sq.ft for shops measuring 100 sq.ft and Rs.50 per sq.ft for shops measuring 120 sq.ft.



W.P(MD)No.5059 of 2023

WEB COPY

11. A direction is given to each one of the petitioners to pay the arrears in accordance with the shops under his/her occupation. There cannot be consolidation of the amounts and payment of arrears in one lumpsum. If any one of the shopkeepers are not prepared to accept this condition then they may vacate and permit auction of that shop in accordance with rules and regulations. A direction is given accordingly and a time limit of two weeks time is given from the date of receipt of a copy of the calculation sheet showing the arrears to pay the difference in rent between the rent which is now paid and as fixed at Rs. 30/- per sq.ft for shops of 64 sq.ft, Rs.40/- per sq.ft for shops of 100 sq.ft and Rs.50/- per sq.ft for shops of 120 sq.ft. The arrears to be worked out and presented to each one of the petitioners by the respondents within a period of 10 working days from the date of receipt of a copy of this order and thereafter within a period of two weeks from that particular date, the arrears should be paid failing which, the respondents are at liberty to bring the particular shops which do not comply with the payment of arrears of rent and to agree to pay the rent at the aforementioned rate to auction in accordance with rules and regulations. No further orders are required.



W.P(MD)No.5059 of 2023

WEB COPY

12. These writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

24.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

pnn

To

- 1.The Commissioner,
Madurai City Municipal Corporation,
Aringar Anna Maaligai,
Madurai.
- 2.The Assistant Commissioner,
Madurai City Municipal Corporation,
Aringar Anna Maaligai,
Madurai.
- 3.The Special Revenue Inspector,
Madurai City Municipal Corporation,
Aringar Anna Maaligai,
Madurai.
- 4.The Revenue Assistant,
Madurai City Municipal Corporation,
Aringar Anna Maaligai,
Madurai.



WEB COPY



W.P.(MD)No.5059 of 2023

C.V.KARTHIKEYAN, J.

pnn

**W.P.(MD)Nos.5059, 5871 to 5885,
5951 to 5960, 5969 to 5975,
6014 to 6044, 6114 to 6144,
7975 to 8005 and 8126 of 2023**

24.04.2023