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W.P.Nos.3368 of 2020 etc batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos. 3368, 3370, 3372, 3373, 3377, 3379, 3380, 3382,
3440, 3444, 3445, 3446, 3443, 17723, 17786, 17789, 17791,
17734, 17771, 17778, 17783, 17792, 17787, 17788, 17752,
17755, 17762, 17737, 17740, 17745, 17727, 17730
& 17748 of 2020, 26654 of 2019

and

W.M.P.Nos.3933, 3935, 3936, 3911, 3912, 3913, 3914, 3917, 3918,
3920, 3921, 3928, 3929, 3932, 3939, 3940, 4011, 4013, 4015, 4010,
4016, 21982, 21965, 21967, 21971, 21972, 21975, 21976, 21978,
21979, 21983, 21989, 21992, 22003, 22005, 22007, 22008, 22011,
22012, 22013, 22014, 22018, 22020, 22031, 22033, 22041, 22043,
22405, 22046, 22047, 22049, 22051, 22052, 22053, 22054, 22055,
22056, 22057 of 2020, 26042 of 2019

W.P.No.3368 of 2020

Perumal

.... Petitioner

Vs

1. The Commissioner,
Hosur City Municipal Administration,
Hosur.

2. The Secretary,
Municipal Administration & Water Supply Department,
Fort St.George, Chennai – 9.

3. The Commissioner of Municipal Administration,
Chepauk, Chennai – 600 005.

.... Respondents



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Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for records relating to the first respondent's notification notice made in Na.Ka.No.3512/2016/A3 dated 06.05.2019 to quash the same and to consequently direct the respondents to revise and refix the lease rent appropriately as may be fixed by this Court and to extend all benefits.

W.P.Nos. 3368, 3370, 3372, 3373, 3377, 3379, 3380, 3382, 3440, 3444, 3445, 3446, 3443 of 2020, 26654 of 2019

For Petitioners : Mr.L.Chandrakumar
For R1 : Mr.M.Rajamathivanan
Standing Counsel
For R2 & R3 : Mr.V.Manoharan
Additional Government Pleader

W.P.Nos.17723, 17786, 17789, 17791, 17734, 17771, 17778, 17783, 17792, 17787, 17788, 17752, 17755, 17762, 17737, 17740, 17745, 17727, 17730 & 17748 of 2020

For Petitioners : Mr.L.Chandrakumar
For Respondent : Mr.T.Balaji
Standing Counsel

COMMON ORDER

These Writ Petitions have been filed challenging the order passed by the Commissioner, Hosur City Municipal Administration, Hosur, thereby revised the rent for their respective shops .

2. Though the petitioners are different in all the writ



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petitions, the issue involved in all the writ petitions are one and the same.

Therefore, this Court is inclined to pass a common order.

3. The Commissioner, Hosur City Municipal Administration, Hosur, had leased out the shops to the petitioners to do trade in their respective field of their business in the MGR Market. Initially, they were allotted their respective shops for a period of three years. Subsequently, the lease period was extended periodically. However, lease of some of the shops were not extended from the year 2017. While being so, the Government passed an order in G.O.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, and the Circular issued by the Commissioner of Municipal Administration and the Special Officers proceedings dated 13.07.2017 with reference to the prevailing market rate, the rent came to be revised and accordingly the rent was enhanced retrospectively. Accordingly, the revision of tax, annual deposit amount was also enhanced and the respective shops were directed to comply with the same. The said notices were challenged in these writ petitions.

4. The learned counsel appearing for the petitioners would



submit that all of a sudden, the rent has been enhanced to 1000 times than what was in existence, that too, retrospectively. The respective shops were originally leased out to the petitioners for lower rent and all of a sudden, by the impugned notice, the rent was enhanced and the petitioners were directed to pay retrospective rent for the past several years.

5. A perusal of the counter filed by the first respondent and the submissions made by the learned Standing Counsel appearing for the first respondent reveals that G.O.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 was issued and accordingly, the rents for all the shops in Salem Regional Municipalities viz., Aathur Municipality, Namakkal Municipality, Thiruchengode Municipality, Komarapalayam Municipality, Rasipuram Municipality, Pallipalayam Municipality, Dharmapuri Municipality, Krishnagiri Municipality, Hosur Municipality and Karur Municipality, in which all the municipalities, the committee was formed for finding out the rental value of the shops. The Committee was headed by the Regional Director of Municipal Administration, Salem Region and consisting six members. All the members are Municipal Commissioners and also the Revenue



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Inspectors. The said committee evaluated the rent for the shops depending on the areas or other relevant criteria and undertaken the study of the market rates of rent for the adjoining shops based on the value of the properties in the Registration Department, market rents for the nearby shops as well as the rents fixed periodically by the Public Works Department were worked out.

6. Accordingly, the Corporation fixed the market rate as Rs.67/- per square feet to the petitioners' shop. Accordingly, after careful consideration, the rent has been enhanced for 138 shops including the petitioners' shop as per G.O.Ms.No.92, dated 03.07.2007. Thereafter, the Commissioner of Municipal Administration had issued a Circular dated 30.11.2016 and Regional Director, Salem, by its office proceedings dated 15.02.2017 and Special Officer prior permission dated 13.07.2017, the rent was enhanced retrospectively. That apart, all the petitioners are in arrears of rent. Similarly placed persons had filed writ petition before this Court in W.P.No.39436 of 2015 and this Court, by an order dated 18.02.2016, dismissed the writ petition. The relevant portion of the order is extracted hereunder :-

“2.The Learned Single Judge, while passing the



impugned order on 18.02.2016 in W.P.No.39436 of 2015
(filed by the Appellant/ Petitioner/Association) at
paragraph 13 had observed the following:

*“13. Reference was also made to the decision of the Hon'ble Division Bench in the case of **A.Sathar vs. District Collector, Coimbatore & Anr.**, reported in **AIR 1998 Madras 217**, where the Hon'ble Division Bench pointed out that the extension granted earlier by the Panchayat would not mean that appellant therein is entitled to continue in possession of the premises in question for ever by paying ridiculously low rent and extension of lease to the said appellant is against the interest of the Panchayat. Thus, it was held that the interest of the Panchayat cannot be jeopardised by permitting the appellant therein to continue in possession of the premises in question at the enhanced rate of 15%. Further reference was made to the decision of the Hon'ble Supreme Court in the case of **Ram & Shyam & Co., vs. State of Haryana and Ors.**, reported in **(1989) 3 SCC 267**, wherein it was held that disposal of public property partakes the character of a trust in that in its disposal, there should be nothing hanky panky and it must be done at the best price, so that larger revenue coming into the coffers of the State Administration would serve public purpose. Further, identical grounds raised before the Hon'ble Division Bench of this Court in W.A.No.1471 of 2014, was rejected by judgment dated 12.11.2014 and confirmed by the Hon'ble Supreme Court by order dated 18.12.2014. The other decisions referred to by the learned counsel for the respondent, are in support of the conclusion taken by this Court, which ultimately can lead to the only decision*



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*in rejecting the prayer sought for.”
and resultantly, dismissed the Writ Petition.”*

7. Aggrieved by the same, the lease holder of their respective shops filed writ appeals in W.A.No.339 of 2016, in which the Hon'ble Division Bench of this Court, by an order dated 29.03.2016, dismissed the writ appeal after citing various judgments of the Hon'ble Supreme Court of India. The relevant portion of the order is extracted hereunder :

*“20.The Learned Counsel for the 2nd Respondent/Municipality cites the Division Bench decision of this Court in **P.Muthusamy V. State of Tamil Nadu, rep. By its Secretary to Government, Municipal Administration and Water Supply Department, Chennai and another** reported in (2014) 5 MLJ 129 [where one of us S.K.A., J. is a member] wherein it is held as follows:*

“The petitioners have been given only a licence to run the shops. Just because the word “lease” has been mentioned, a licence cannot ipso facto be converted into a lease. Admittedly, the licence issued has fixed terms. Therefore, the Petitioners do not have a legal or a vested right to continue in occupation for ever. The object of letting out the shops is to collect more revenue for the Respondent – Municipality, which is meant to be used for welfare measures. The resolution has been passed after making detailed discussion and it was also passed as a consequence of the earlier order by which rent was fixed. Since the said rent so fixed was not paid, the Respondent – Municipality was made



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to pass the impugned resolution. Therefore, it cannot be said that the impugned resolution has been unilaterally passed and as such, the said decision is in accordance with the Government Orders passed, which confer the power on the Respondent – Municipality to take action towards the eviction from the shops in the event of non-payment of rent payable. Respondent-Municipality has got its own duty and obligation to perform. Appointments will have to be made to the public office and salaries will have to be paid. Money will have to be spent towards the welfare measures. The assessment made also indicates that the proposed auction would bring more money. The best way to get the maximum revenue is by way of public auction. Therefore, this Court does not find any arbitrariness in the action of the Respondent – Municipality. The Petitioners, being the defaulters, cannot content that they should be allowed to continue forever.”

*21. At this juncture, this Court aptly points out the decision of the Hon'ble Supreme Court in **Shri Sachidanand Pandey and another V. The State of West Bengal and Others** reported in **AIR 1987 Supreme Court 1109 at Special Page 1133 at paragraph 39** wherein it is observed as follows:*

“39. On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established: State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to



dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.”

22. Also, this Court refers to the decision of the Hon'ble Supreme Court in ***Mahabir Auto Stores and Others V. Indian Oil Corporation and Others*** reported in ***AIR 1990 Supreme Court 1031 at Special Page 1032***, whereby and whereunder, it is observed and held as follows:

“The State acts in its executive power under Art.298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercise of power. Therefore, the action of State organ can be checked under Art.14. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So whatever be the activity of the public authority, it should meet the test of Art.14 of the Constitution. If a Governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. Rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens.



Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination. It is well settled and there can be “malice in law”. Existence of such “malice in law” is part of the dimension of the rule of relevance and reason as well as the rule of fair play in action.

23. Furthermore, in the decision of the Hon'ble Supreme Court in **Delhi Science Forum and Others V. Union of India and Another** reported in (1996) 2 Supreme Court Cases 405, at Special Page 409, wherein it is laid down as follows:

“The question of awarding licences and contracts does not depend merely on the competitive rates offered; several factors have to be taken into consideration by an expert body which is more familiar with the intricacies of that particular trade. While granting licences a statutory authority or the body so constituted should have latitude to select the best offers on terms and conditions to be prescribed taking into account the economic and social interest of the nation. Unless any party aggrieved satisfies the court that the ultimate decision in respect of the selection has been vitiated, normally courts should be reluctant to interfere with the same.”

24. Moreover, this Court worth recalls and recollects the decision in **A.Sathar V. The District Collector, Coimbatore and another** reported in AIR 1998 Madras 217 and 218, wherein at paragraph 2, it is



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observed as follows:

“..... We are of the view that the appellant has no vested right to continue in occupation of the premises in question. Admittedly, the premises in question belong to the second respondent / panchayat which is entitled to lease out the properties owned by it by public auction. As rightly pointed by the learned single judge, properties owned by the Municipality are also a source of revenue to the Municipality and the interest of the Municipality has to be balanced as against the interest of the shop owner lessee. It cannot be disputed that the lessees may also be entitled to a fair term and the Government had, therefore, allowed the lessees to continue their occupation for a second term. As already seen the appellant was given extension of lease period from time to time from the year 1988 to 31.02.1997 on terms. Even the last lease was extended for three years by enhancing the rent by 30 percent. Under these circumstances, it is not fair on the part of the appellant to ask for the extension of the lease for further term of three years from 1-4-1997 to 31.03.2000 on an enhancement of 15 per cent of the previous rent. The extension granted earlier by the Panchayat, to the appellant would not meant that the appellant is entitled to continue in possession of the premises in question for ever by paying ridiculously low rent. We are of the view that the extension of the lease to the appellant is against the interest of the Panchayat. As already noticed the rental income from the properties owned by the Panchayat is one of the sources of income to the Panchayat. Therefore, the interest of the Panchayat cannot be jeopardised by permitting the appellant to continue in possession of the premises in question at the



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enhanced rate of 15 per cent as prayed for. There are absolutely no merits in this writ appeal and the same is dismissed."

*25. Apart from that, this Court relevantly points out the decision of the Hon'ble Supreme Court in **Nagar Nigam Meerut V. AL Faheem Meat Exports (P) Ltd., and Others** reported in (2006) 13 Supreme Court Cases at page 382 and at special pages 384 & 385, whereby and whereunder, it is observed and laid down as follows:*

"It is now a well-settled principle of law that having regard to the provisions of Article 14 of the Constitution, State within the meaning of Article 12 thereof cannot distribute its largesse at its own sweet will. The court can ensure that the statutory functions are not carried out at the whims and caprices of the officers of the Government / local body in an arbitrary manner. But the court cannot itself take over functions. Not finding any arbitrariness, discrimination or malafides, the High Court had no justification for interfering with the advertisement inviting fresh offers for the contract in question. All contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well-known newspapers having wide circulation, so that all eligible persons will have an opportunity to bid in the auction, and there is total transparency. This is an essential requirement in a democracy, where the people are supreme, and all official acts must be actuated by the public interest, and should inspire public confidence. The Supreme Court has been insisting upon that rule, not only to get the highest price for the property but also to



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ensure fairness in the activities of the State and public authorities. The State or its instrumentalities should not give contracts by private negotiation but by open public auction / tender after wide publicity. Although the Nagar Nigam had advertised the contract, the High Court has directed that it should be given for 10 years to a particular party (Respondent 1). The contract had not only been given by way of private negotiation, but the negotiation had been carried out by the High Court itself, which is impermissible. Having regard to the nature of the trade or largesse or for some other good reason, a contract may have to be granted by private negotiation, but normally that should not be done as it shakes the public confidence. However, in rare and exceptional cases, for instance during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through “private negotiations.”

26. There is no two opinion of a vital fact that the 2nd Respondent/Municipality is the competent/appropriate authority to determine what rent a particular shop of the Panchayat may fetch and it is well settled principle in Law that a lease cannot be extended much to the detriment of panchayat and in any event, the panchayat



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cannot be a loser on any score.

27.It cannot be forgotten that bearing in mind Article 14 of the Constitution of India, a 'State' within the meaning of Article 12 cannot distribute its 'Largesse' at its sweet will and pleasure.

*28.Besides the above, this Court significantly points out the Division Bench Judgment of this Court in **W.A.No.1471 of 2014 (between C.Vinoba and others V. The Commissioner, Palladam Municipality, Palladam, Thiruppur District and Others)** wherein at paragraph 5, it is observed as follows:*

“5.There is no dispute that the rent paid by the appellants as compared with the present market rent is nominal. It is also not in dispute that under G.O.Ms.No.92, Municipal Administration and Water Supply department dated 03.07.2007, the appellants have a right to continue for a maximum period of nine years on a lease of three years subject to renewal. The appellants have been occupying the shops for a very long period on payment of the rent of a meagre amount. Thus, the appellants cannot claim renewal as a matter of right. The Municipality has several functions to perform for the welfare of the people of the locality. The collection of market rent is one of the source of income of the municipality. Thus, the municipality cannot be permitted to allot shops on nominal rent without assessing the market value of the same. It is well certain that auction is the best mode of allotment of shops.”



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29.As far as the present case is concerned, the filing of the Writ Petition by the Appellant/Association seeking to quash the auction-cum-tender notification issued by the 2nd Respondent/Municipality dated 27.11.2015, in and by which, the Municipality had brought the lease hold right of the 71 shops in auction (owned by the Municipality within its municipal limits etc.) is not per se maintainable because of the latent and patent reason that an Association cannot in Law espouse the cause of individual members/shop owners/lessees/licensees. Viewed in that perspective, the Writ Petition sans merits. Even otherwise, the individual shopkeepers of the Appellant/Association do not have either a legal or vested right to continue in occupation of the shops belonging to the 2nd Respondent/Municipality. The paramount interest of the 2nd Respondent/Municipality cannot be put to peril by permitting the shopkeepers of the Appellant/Association to continue in possession of the premises in the subject matter in issue at a increased rate of 15%. No wonder, the rule of Law requires competitive bidding which paves way for obtaining a paper price in relation to a public property which is in the nature of a trust. Therefore, the public property is to be put into auction by inviting tender so as to enable the Municipality to obtain the highest offer in a fair and transparent manner. Only then, the public



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welfare of a particular Town Panchayat can augment its revenue to the optimum level, as opined by this Court. Looking at from any angle, the Appellant is not entitled to any relief in the Writ Appeal filed by it. Consequently, the Writ Appeal fails.

8. In view of the above, this Court finds no infirmity or illegality in the order impugned in all the writ petitions and these writ petitions are devoid of merits and are liable to be dismissed.

9. Accordingly, these writ petitions stand dismissed. However, the respondents are at liberty to take appropriate action as against the petitioners for committing default in payment of rent. Consequently, connected miscellaneous petitions are closed. No costs

09.08.2024

Internet : Yes
Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
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To

1. The Commissioner,
Hosur City Municipal Administration,
Hosur.



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