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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.12.2024

PRONOUNCED ON : 20.12.2024

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.Nos. 8446 & 5529 of 2021

And

W.M.P.Nos. 8995, 8998, 8999 & 6158 of 2021

W.P.No. 8446 of 2021

1. C.S.Muralidharan
2. M.S.Amarnath
3. G.Udhayakumar
4. B.Gopinath
5. D.Dinesh Kumar
6. G.Hariram
7. K.Balaji
8. R.Ramya
9. N.Venkatesan
10. D.S. Velayudham
11. C.Govindharaj

... Petitioners

..Vs..



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

2. The Municipal Commissioner
Gudiyattam Municipality
Gudiyattam, Vellore District.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records relating to the impugned notices bearing Na.Ka.No.2252/A1/2018 dated 21.09.2020 in respect of the petitioners' shops on the file of the second respondent and quash the same.

W.P.No. 5529 of 2021:

1. C.Govindharaj

2. G.Udhayakumar

3. C.S.Muralidharan

4. M.S.Amarnath

5. M.Lokeshwari

... Petitioners

Vs.

1. The Secretary to Government
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For Petitioners
in both W.Ps.

:: Ms. D.Kamatchi

For 1st Respondent in
both W.Ps.

:: Dr. T.Seenivasan
Special Government Pleader

For 2nd Respondent in
both W.Ps.

:: Mr. P.S.Sivashanmugasundaram

COMMON ORDER

Both these Writ Petitions had been filed in the nature of Writ of Certiorari calling for the records of the impugned notices dated 21.09.2020 issued by the second respondent / the Municipal Commissioner, Gudiyattam Municipality, Gudiyattam, Vellore District relating to the shops of the petitioners and to quash the same.



2. In the affidavit filed in support of the Writ Petitions, it had been stated that the writ petitioners in both the Writ Petitions are small traders and lessees of shops owned by the second respondent, Gudiyattam Municipality. It had been stated that they are carrying on business in selling clothes, taking xerox copies, running barber shops, saloon and such other small business shops. They claimed that they have been paying the rent to the second respondent. By the impugned notice, the second respondent had enhanced the license fee/rent. The present Writ Petitions have been filed challenging such increase.

3. The learned counsel for the petitioners contended that the petitioners had raised loans for their businesses and had spent considerable amounts investing in the businesses. The petitioners have also built up reputation and good will in the area. It was further stated that without any reason, the rent had been increased at the rate of 15% of the prevailing rent. It had been stated that the guidelines which had been laid down to be followed for increase in the rent had not been followed. It had been claimed by the learned counsel that the petitioners are ready and willing to pay a reasonable rent and therefore sought interference of this Court and protection from paying the exorbitant rent demanded.



4. Notice had been directed to the respondents. The learned counsel for the respondent pointed out that the issue raised is no longer resintegra and placed reliance on a Judgment of the Division Bench of this Court in W.A.No. 535 of 2018 wherein by Judgment dated 07.08.2023 the Division Bench examined a demand notice by which the rent for the shops leased to the appellants therein had been increased and a demand was placed for monthly rent to be paid. That was also a case relating to the very same second respondent herein namely, Gudiyattam Municipality. The Division Bench had held as follows:-

“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 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 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 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;

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. ”

5. The directions aforementioned apply directly to the facts of this case. The same directions are issued:-



i) The petitioners 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 the entire arrears to the respondent Municipality within the stipulated time, the petitioners shall be entitled to make a request within one month thereafter to the respondent Municipality for renewal of their respective licenses; and

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

6. I would also make it clear that the petitioners cannot claim any legal right for renewal of license. But if the petitioners were to clear all the pending arrears, the second respondent may consider grant of renewal / fresh license to the petitioners within a period of four weeks from the date of the petitioners making such request after settling all arrears within the stipulated period of three months.

**C.V.KARTHIKEYAN, J.,**

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7. With the above direction, the Writ Petition stands disposed of. Consequently, connected Civil Miscellaneous Petitions stand closed. No order as to costs.

20.12.2024

vsg

Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order

To

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Pre-Delivery Order made in**W.P.Nos. 8446 & 5529 of 2021****And****W.M.P.Nos. 8995, 8998, 8999 & 6158 of 2021**