



W.P. No. 8762 of 2023 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. Nos. 8762 to 8764, 8766, 8769, 8771, 8828,
8832, 8836, 8838, 8842 and 8844 of 2023**

and

**W.M.P. Nos. 8943 to 8946, 8950, 8951, 8994, 8995,
8997, 9000, 9002 and 9004 of 2023**

S.Kumar ... Petitioner in W.P. No. 8762 of
2023

A.Ayyappan ... Petitioner in W.P. No. 8763 of
2023

J.Vasanth ... Petitioner in W.P. No. 8764 of
2023

N.Rajendran ... Petitioner in W.P. No. 8766 of
2023

A.Mohammed Sheriff ... Petitioner in W.P. No. 8769 of
2023

P.Chezhiyan ... Petitioner in W.P. No. 8771 of
2023

P.Ganesan ... Petitioner in W.P. No. 8828 of
2023

K.Chakaravarthy ... Petitioner in W.P. No. 8832 of
2023

A.V.Kumar ... Petitioner in W.P. No. 8836 of



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T.Sridhar
2023

... Petitioner in W.P. No. 8838 of

S.Sivashankaran
2023

... Petitioner in W.P. No. 8842 of

K.Kalamegham
2023

... Petitioner in W.P. No. 8844 of

-vs-

1. The Additional Chief Secretary to the Government,
Municipal Administration and Solid Waste Department,
Secretariat,
Chennai - 600 009.
2. Director Municipal Administration,
Municipal Administration Department,
No.75, Santhome High Road, M.R.C. Nagar,
Raja Annamalaipuram,
Chennai - 600 028.
3. The Regional Director of Municipal Administration,
50, M.P. Sarathy Nagar,
Kagithapattarai,
Sathuvachari,
Vellore - 632 012.
4. The Commissioner,
Municipality Office,
Sevalai Road,
Thirukovilur,
Kallakurichi District - 605 757.

... Respondents in all W.P.s

Common Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the 4th respondent to constitute a committee to assess, reduce and determine the rent payable as per the calculations fixed by the PWD department, guideline value and as per the rents being collected from other such shops belonging to the Municipality on Sevvalai road from the date of auction till date for the shops situated in Anna Marumalarchi Vaniga Valagam.



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For Petitioner : Mr. S.Girissh
(in all W.P.s)

For Respondents : Mr. B.Vijay,
(in all W.P.s) Additional Government Pleader
(for R1 to R3)

Mr. P.Kumaresan,
Additional Advocate General
assisted by Mr. L.P.Maurya (for R4)

COMMON ORDER

Since the subject-matter of dispute in these Writ Petitions are inter-connected, they have been heard together and are disposed by this common order.

2. Heard Mr. S.Girissh, Learned Counsel for the Petitioners, Mr. B.Vijay, Learned Additional Government Pleader appearing for the First to Third Respondents and Mr. P.Kumaresan, Learned Additional Advocate General assisted by Mr. L.P.Maurya, Learned Counsel appearing for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

3. The chronological sequence of events leading to the filing of these Writ Petitions as borne out from the record are narrated below:-



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(i) The Petitioners were the successful bidders in respect of Shop Nos. 14, 4, 16, 19, 17, 10, 3, 18, 11, 20 and 13 respectively in the auction conducted on 27.07.2011 for lease of the 20 shops in the Shopping Complex, viz., 'Anna Marumalarchi Vaniga Valagam', belonging to the Thirukovilur Town Panchayat in Kallakurichi District (hereinafter referred to as 'the property' for short), in furtherance to tender dated 01.07.2011, and they had remitted the requisite deposit.

(ii) Since the Petitioners were of the view that the rate of rent fixed in the auction was exorbitant, they had made representation to Thirukovil Town Panchayat to reduce the rent, but the parties were not able to arrive at any consensus in that regard.

(iii) According to the Petitioners, they had occupied the shops from the year 2013 onwards and have been paying the electricity charges.

(iv) Since the Executive Officer of the Thirukovilur Town Panchayat sent a notice dated 13.08.2015 for eviction of the Petitioners from the respective shops in their occupation, they had jointly filed the suit in O.S. No. 224 of 2015 before the Principal District Munsif Court, Thirukovilur, in which an *ex parte* decree of permanent injunction was passed on 17.10.2016 restraining the Executive Officer of the Thirukovilur Town Panchayat or any person claiming through him from evicting them from



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the respective shops in their occupation.

WEB (v) (DP)

The Assistant Directors of Town Panchayat, Cuddalore Zone by Proceedings in Na.Ka. No. 1535/2017/Peru3 dated 20.10.2017 had required the Executive Officer of the Thirukovilur Town Panchayat to ascertain the market value of the land for determining the rent payable by the tenants (including the Petitioners) of the property for the respective shops.

- (vi) As the Thirukovilur Town Panchayat had been upgraded as a Municipality, it was renamed as the Thirukovilur Municipality.
- (vii) The application to set the *ex parte* decree dated 17.10.2016 passed in O.S. No. 225 of 2015 by the Principal District Munsif Court, Thirukovilur was filed on 22.04.2021 by the Thirukovilur Municipality along with an application in I.A. No. 510 of 2021 to condone the delay of 1615 days in filing the same, which is said to be pending.
- (viii) The Principal District Munsif Court, Thirukovilur referred the parties to mediation in which it was agreed during the sitting on 30.03.2022 to refer the matter of fixing the rent payable by a Committee.
- (ix) Since the Petitioners did not pay the arrears of rent, it had accumulated to the tune of more than Three Crores, the Fourth Respondent had on 11.02.2023 locked and sealed the shops of the Petitioners.



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(x) In that backdrop, the Petitioners have filed these Writ Petitions seeking a direction to the Fourth Respondent to constitute a Committee to assess, reduce and determine the rent payable as per the calculations fixed by Public Works Department guideline value and as per the rents being collected from other such shops belonging to the Municipality on Sevvalai Road from the date of auction till date for the shops situated in Anna Marumalarchi Vaniga Valagam.

4. At this juncture, reference must be made to clause 4(ii) and (iii) of G.O. Ms. No. 92, Municipal Administration and Water Supply Department dated 03.07.2007 (translated from Tamil to English) issued by the Government of Tamil Nadu, in which it has been stipulated as follows:-

“(ii) The Municipal shops may leased out, at a time for a period of three years. On expiry of a tenure of three years period, it will be renewed automatically. Such renewal will be done till nine years. The lease amount will be increased at 15%, once in three years. (This condition would also be applicable to those who are in the enjoyment of lease at present).

(iii) The lease rent shall be revalued after nine years. The current lease holder, may be granted priority in extension of lease period for a further period of 9 years, as per the lease, revised on the basis of market value prevailing then.

In case of his reluctance, that property shall be brought to lease, through public



auction.”

On its reading, it is clear that there ought to have been periodical fixation of the market rent for the property belonging the Fourth Respondent in terms of the said Governmental Order, which has been in force from 03.07.2007 till 13.04.2023 when the Tamil Nadu Urban Local Bodies Act, 1998 (hereinafter referred to as 'the TNULB Act' for short) came into effect. It would be relevant here to refer to Rules 304 and 316 to 319 of the Tamil Nadu Urban Local Bodies Rules, 2023 framed in the exercise of powers conferred by Section 198 of the TNULB Act, as extracted below:-

“304. Lock and seal.— If a trade or business for which a licence is required under the Act and these Rules is carried on without a licence or if licence has been cancelled under rule 302, if the Licensee continues to violate the conditions of the licence or if orders of the Commissioner under rule 302 are not obeyed within the time prescribed, the Commissioner may lock and seal the premises and also initiate criminal action therefor:

Provided that no premises shall be locked and sealed without providing an opportunity of being heard to the owner as well as the occupier of the premises.

....

316. Licencing or leasing of Immovable Properties.— (1) The Municipal Council may grant licence or lease to any person for use and occupation of any land or building belonging to the municipality for a period of three years.



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(2) After the completion of the period prescribed in sub-rule (1), no extension or renewal of the same lease shall be permitted and any applications for the same shall be considered afresh in accordance with provisions of the Act and Rules.

(3) The licence fee or lease rent for lands let out for public purpose or for use by Central Government or State Government Departments or Public Sector Undertakings shall be based on the guideline value of the land as per the following table:—

THE TABLE

Usage	Lease Rate as percentage of Guideline Value
(1)	(2)
Charitable and Religious	0.5%
Private Schools	3%
Aided schools where percentage of students in aided section is less than 50% of total school strength	1.5%
Aided school, where the percentage of students in the aided section is more than 50% of total school strength. (In this category, aided school alone should be functioning in the premises leased and no other educational or related activities should be undertaken)	0.5%
Lease to Central Government or State Government departments or Public Sector Undertakings other than Metro Rail Organisations	3%
Metro Rail Organisations	1%



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(4) The licence fee or lease rent for buildings let out for public purpose shall be based on the Annual Rental Value derived for the purpose of calculation of Property Tax.

(5) Licence or lease for land and buildings let out for commercial or residential purpose including shopping complexes or public markets belonging to the municipality shall be effected by public auction-cum-tender which shall be conducted by the Commissioner or by a person duly authorized in this behalf.

(6) The auction floor price shall be fixed as below:—

Category	Auction Floor Price
(1)	(2)
Land - Commercial	3% of Guideline Value of Land
Land - Residential	1.5% of Guideline Value of Land
Land - Agricultural	0.5% of Guideline Value of Land
Building - Commercial other than shopping complexes or public markets	Commercial Annual Rental Value as decided for Property Tax assessments
Building - Shopping complexes or public markets	Based on the actual rental value prevailing in the locality with such variations based on location of the shop in the market, demand, current vacancy levels, infrastructure facilities available, as may be decided by the council.
Building - Residential	Residential Annual Rental Value as decided for Property Tax assessments

(7) The bids at the auction-cum-tender shall be placed by the Commissioner before the council or a committee to accept the highest bid or bids.

(8) A person occupying a municipal land or building shall be liable to payment of a damage fee for use and occupation at the same rate as the licence



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fee or lease rent, if the occupation is without a licence or lease or continues beyond the period of the said licence or lease until the person is evicted from such illegal occupation: Provided that mere payment of damage fee shall not entitle such illegal occupant to any rights over the said land or building.

(9) Auction-cum-tender.— The Commissioner or a person duly authorized by him should conduct the auction-cum-tender and shall not permit any person who fails to deposit as security such sum as may be specified in the preliminary notice to bid at the auction.

(10) The Commissioner shall, after the auction-cum-tender is completed, place before the Council, a list of bids at the auction-cum-tender and the highest bidder shall be granted the licence or lease: Provided that if the highest bid has to be rejected for any reason, the reasons for the same shall be recorded in writing.

(11) (a) In case of auction for licence of rental shops belonging to the municipality, the Council may, on application by the concerned person, give preference to,—

- (i) In case of demolition and reconstruction, existing licensees of the demolished shopping complex;
- (ii) Licensees of another shopping complex belonging to the municipality which was demolished or diverted to some other use by the municipality;
- (iii) Commercial shop owners in lands acquired by the municipality;

(b) (i) Any person claiming such preference shall be required to match



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the highest bid price and submit necessary documents proving eligibility for preference;

(ii) The order of preference shall be in the same order as in clause (a) and within each category, the preference shall be in order of seniority within that category with respect to the month and year of demolition or acquisition;

(iii) Preference in allotment shall not be applicable to legal heirs of such persons if the said person is deceased;

(c) Five per cent of the shops may be allotted to persons with disability, willing to match the highest bid.

(12) Immediately after the auction has been confirmed, the intimation about the acceptance shall be communicated to the bidder to pay the entire amount of the first installment within the date stipulated and the necessary particulars shall be entered in the Demand Register.

(13) The licensee or lessee shall enter into an agreement with the municipality, within one week of confirmation of auction-cum-tender by the council.

317. Cancellation of licence or lease.— (1) The licence or lease may be cancelled by the Commissioner in default of Licence fee or lease rent or violations of the terms and conditions of the licence or lease. (2) On cancellation or suspension of a licence or lease, if any balance of licence fee or lease rent is to be recovered a suit in a Civil Court should be filed to recover the



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balance.

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318. Application of certain provisions.— The provisions regarding cancellation or suspension of licence in rule 302 shall mutatis mutandis apply for licences or lease granted under this rule.

319. Occupation of a municipal land or building or of a land or building vested in the municipality without a licence or lease.— If the occupation of a municipal land or building or of a land or building vested in the municipality is without a licence or lease or continues beyond the period of the said licence or lease, the occupant shall be liable to be evicted under provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 (Tamil Nadu Act 1 of 1976).”

The said position of law is fortified by the decision of the Full Bench of this Court in *Ramaraju -vs- State of Tamil Nadu* [2005 (2) CTC 741], which is reproduced below:-

“38(6) If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the procedure contemplated in law, namely, either by taking recourse to the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral



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force.”

As per Section 2(g) of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 (hereinafter referred to as 'the TNPP Act' for short), 'unauthorised occupation' includes the continuance in occupation by any person of the public premises, after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises, has been determined for any reason whatsoever.

5. A conspectus of the aforesaid legal provisions would show that the following position would emerge *viz-a-viz* the undisputed facts of this case:-

- (i) the maximum period of lease of shops occupied by each of the Petitioners would be 9 years comprising of 3 block periods of 3 years each on increase of rent @ 15% at the end of each block period of 3 years (till 13.04.2023 when the TNULB Act came into operation);
- (ii) though an existing lessee would not be entitled to extension of lease beyond 3 years at a time and would have to apply afresh thereafter, he could claim preference, if he matches the highest bid price in the re-auction;
- (iii) if the lessee continues to occupy the property after the lease period had expired without obtaining fresh lease, he shall be liable to be evicted



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under the provisions of the TNPP Act; and

(iv) in the event of default of payment of the lease rent or violation of the terms and conditions of the lease, the Commissioner of the Municipality may lock and seal the premises after affording opportunity of hearing to the lessee and also initiate criminal action in that regard.



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6. Inasmuch as each of the Petitioners have been in occupation of the respective shops leased to them for a period more than 9 years, they would have to necessarily participate in fresh auction and match the highest bid so as to be entitled to preference in allotment. On the expiry of the maximum lease period of 9 years coupled with default in payment of the arrears of rent, the Fourth Respondent was entitled to treat the leases in favour of the Petitioners to have been automatically terminated. As its corollary, it would follow that in the absence of the Petitioners satisfying the prescribed requirements, they shall not be entitled to continue in occupation of their respective shops and have become liable to be evicted from there.

7. Since there has been default in payment of rent by the Petitioners, their shops were liable to be locked and sealed by the Fourth Respondent. If the Petitioners intend to voluntarily vacate from their respective shops, they could make a request in writing to the Fourth Respondent to remove their goods and other belongings and hand over the vacant possession of the respective shops.

8. If the Petitioners do not voluntarily surrender their respective shops to the Fourth Respondent, they would be liable to be evicted from there following the prescribed procedure under the TNPP Act. Since the Petitioners have obtained



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an *ex parte* decree of permanent injunction restraining the Fourth Respondent from vacating them from the shops in their occupation, the Fourth Respondent may pursue the application filed for setting it aside after condoning the delay in filing the same.

9. After obtaining vacant possession of the shops, the Fourth Respondent would have to follow the prescribed procedure for leasing them out to eligible persons through public auction.

10. In respect of the arrears of rent payable by each of the Petitioners, they could enter into a settlement with the Fourth Respondent as to the amount, interest payable for delayed payment and periodicity of installments, failing which the Fourth Respondent could initiate legal proceedings for recovery of the amount fixed at the time of auction, when the Petitioners were initially granted lease and claim for increase at the end of the each block period of 3 years in the prescribed manner and recover the unpaid amount due by filing suit in the jurisdictional civil court on proving the claim.

11. In view of the foregoing discussion, the Petitioners and the Fourth Respondent shall work out their respective rights accordingly.



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In the upshot, these Writ Petitions are disposed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed.

No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

Maya/Gsa

To

1. The Additional Chief Secretary to the Government,
Municipal Administration and Solid Waste Department,
Secretariat,
Chennai 600 009.
2. Director Municipal Administration,
Municipal Administration Department,
No.75, Santhome High Road, M.R.C. Nagar,
Raja Annamalaipuram,
Chennai 600 028.
3. The Regional Director of Municipal Administration,
50, M.P. Sarathy Nagar,
Kagithapattarai,
Sathuvachari,
Vellore 632 012.
4. The Commissioner,
Municipality Office,
Sevalai Road,
Thirukovilur,
Kallakurichi District 605 757.



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Copy to

1. S.Kumar, S/o. Sivakumar,
Shop No. 14, Vaanamalai Street,
Thirukovilur Taluk, Kallakurichi.
2. A.Ayyappan, S/o. Arumugam,
Shop No. 4, Lala Thoppu Street,
Thirukovilur Taluk, Kallakurichi.
3. J.Vasanth, S/o. Jeevanantham,
Shop No. 16, Rudrappa Naicker Street,
Thirukovilur Taluk, Kallakurichi.
4. N.Rajendran, S/o. Nandagopal,
Shop No. 19, Nehru Street,
Villupuram.
5. A.Mohammed Sheriff, S/o. Abdul Washraf,
Shop No. 17, Nehru Street,
Tindivandam Taluk, Villupuram,
6. P.Chezhiyan, S/o. Palani,
Shop No. 10, Theppakulam Street,
Thirukovilur Taluk, Kallakurichi.
7. P.Ganesan, S/o. Palani Pillai,
Shop No. 3, Anna Nagar,
Thirukovilur Taluk, Kallakurichi.
8. K.Chakaravarthy, S/o. Kumar,
Shop No. 18, K.K. Road,
Villupuram.
9. A.V.Kumar, S/o. Velayudham,
Shop No. 11, Sevalai Road,
Thirukovilur Taluk, Kallakurichi.
10. T.Sridhar, S/o. Thiyagarajan,
Shop No. 20, Perumal Naicker Street,
Thirukovilur Taluk, Kallakurichi.
11. S.Sivashankaran, S/o. Subramani,
Shop No. 13, Theppakulam Street,
Thirukovilur Taluk, Kallakurichi.
12. K.Kalamegham, S/o. Kannan,
Shop Nos. 6 & 8, Madurai Veeran Kovil Street,
Thirukovilur Taluk, Kallakurichi.



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P.D. AUDIKESAVALU, J.

Maya/Gsa

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