



WEB COPY



W.P.No.32130 of 2023 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.32130, 32133, 32134, 32136, 32137,
32140, 32142, 32143, 32144 of 2023

and

W.M.P.Nos.31703, 31704, 31707, 31708, 31709, 31711,
31713, 31714, 31715, 31719, 31721, 31722, 31724, 31725,
31726, 31728, 31730 and 31731 of 2023

W.P.No.32130 of 2023:-

Baskar

...Petitioner

-Vs-

1. The Commissioner,
Coimbatore Corporation,
Coimbatore.

2. The Assistant Commissioner (in charge),
Central Region,
Coimbatore Corporation,
Coimbatore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the records relating to the impugned notice dated 21.08.2023 in Na.Ka.No.5253/12/A2(M) of the second respondent herein in respect of Shop No.12, Avinashi Road, Corporation Commercial Complex, Coimbatore and quash the same.



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In all W.Ps.

For Petitioner : Mrs.A.L.Ganthimathi, Senior Counsel
For Mr.L.Palanimuthu
For Respondents : Mr.K.M.D.Muhilan
Standing Counsel

COMMON ORDER

These writ petitions have been filed challenging the order dated 21.08.2023 passed by the second respondent, thereby directing the petitioners to pay the arrears of rent along with service tax and penalty.

2. The petitioner in all the writ petitions are licensee in respect of their respective shops situated at Avinashi Road, Corporation Complex, Coimbatore. Since 1982, they are paying rent without any arrears. While being so, they were issued with demand notice demanding huge rent, advance and security deposit failing which, the petitioners were threatened for eviction proceedings. Therefore, the petitioners filed suit in O.S.No.2091 of 2001 before the District Munsif Court, Coimbatore, for injunction restraining the respondents from evicting the petitioners forcibly from their respective shops. It was decreed and aggrieved by the same the respondents filed appeal and later the same was taken up to this Court in S.A.Nos.674 & 675 of 2006.



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3. In the mean while, the petitioners were served with notice thereby demanding 50% increase in rent from 01.04.2003 and also for additional security deposit. The petitioners also filed a suit in O.S.No.4550 of 2004 for injunction and the same was decreed. Aggrieved by the same, appeal suit was filed in A.S.No.82 of 2007 on the file of the Sub Court, Coimbatore. The Appellate Court passed order that till the disposal of the second appeals filed by the respondents as against the earlier suit, the petitioners should not be disturbed.

4. Accordingly, their license were also renewed and new fair rent has been fixed as per the government order in G.O.No.147 dated 31.12.2000 and G.O.No.92 dated 03.07.2007. Further, if they are not paid the rent within a period of seven days, they were threatened with eviction proceedings. Therefore, they once again filed suit in O.S.No.8 of 2013 for injunction and also declare that the demand notice is not valid. The said suit was allowed and aggrieved by the same, appeal suit was filed in A.S.No.70 of 2018 and the same was pending. While being so, the second respondent now issued the final demand notice dated 21.08.2023, thereby demanding arrears of rent from the year 2015-2021



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along with service tax and penalty. The said demand notices are under challenge in the present writ petitions.

5. While pending the writ petitions, the matter has been referred before the mediation for amicable settlement between the petitioners and the respondents. In the mediation, there was an amicable settlement dated 02.05.2024, insofar as the rent is concerned and accordingly fixed rent at Rs.56/- per sq.ft., from 01.09.2012 with periodical hike of 15% once in three years i.e., first hike on 01.04.2015 and second hike on 01.04.2018 and thereafter as nine years block lapses, fresh rent of Rs.90/- per sq.ft., per month shall be paid by the petitioners from 01.04.2021 and with hike of 15% for every three years. The rent for sealed period from 01.08.2023 to the date of re-opening and covid period shall be waived as per law. The parties had agreed to pay the rent as per the settlement dated 02.04.2024.

6. Insofar as the service tax and penalty are concerned, the learned Senior Counsel appearing for the petitioners submitted that while filing the suit, the petitioners were directed to pay the arrears of rent at the rate of admitted rent. The petitioners also produced the schedule of



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payment of rents. Therefore, the respondents cannot demand any penalty and the petitioners are not liable to pay any service tax. That apart, all of sudden the respondents demanded huge amount without any prior notice with regard to service tax and penalty.

7. The learned Standing Counsel appearing for the respondents submitted that there are nine shops in which, two shops viz., shop Nos.1 & 16 had paid the entire arrears as agreed by them and the shops were opened to take their respective articles. Insofar as other shops viz., shop Nos.3, 4, 8 are concerned, they paid part of the rent amount and there are arrears in rent. Insofar as the remaining four shops are concerned, they have not made any payment as agreed by them.

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



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9. Admittedly, all the petitioners had paid their admitted rent.

As per the enhanced rent amount, the respondents imposed service tax and penalty on the petitioners. Now, as far as the rent is concerned, they have arrived at settlement as per the above terms. Therefore, the petitioners are not liable to pay any service tax and penalty and the demand notice issued by the second respondent is liable to be set aside.

10. Accordingly, insofar as the service tax and penalty are concerned, the impugned demand notices dated 21.08.2023 are hereby quashed. Insofar as the arrears of rent is concerned, the petitioners and the respondents are directed to act upon as per the settlement agreement dated 02.04.2024.

11. With the above directions, all the Writ Petitions stand partly allowed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

20.08.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
rts



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To

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2. The Assistant Commissioner (in charge),
Central Region,
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