
(2011) 07 MAD CK 0180
In the Madras High Court
Case No : Writ Petition No. 2264 of 2004

G. Rudrappa

APPELLANT

Vs

The Udhagamandalam Municipality and The Nilgiris and The
Commissioner, Udhagamandalam Municipality

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 07 MAD CK 0180

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : Yashod Vardhan for R. Siva Kumar, for the Appellant; V. Subbarayan, for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The Petitioners, numbering 31, have come to this Court by filing these writ petitions seeking to issue a writ of certiorari, calling for the records of the first Respondent pertaining to their proceedings in Resolution No. 671 dated 30.5.2000 and the consequential notice No. Na.Ka.A9/2003 dated 15.12.2003 issued by the second Respondent and quash the same.

2. The Petitioners are all tenants under the first Respondent-Municipality. The first Respondent, after availing loan from the Government of India has constructed Low Income Group Colony consisting of 40 small houses in the year 1963. After some time, the constructed houses viz., houses having 435 sq. ft. and 512 sq.ft of land were let out to several tenants in the year 1970.

3. The Petitioner in W.P. No. 2264/2004 viz. Rudrappa has become tenant for a flat having an extent of 512 sq. ft of land by paying a monthly rent of Rs. 155/-. Similarly, tenants who have taken tenement having an extent of 435 sq. ft. were paying monthly rent of Rs. 120/-. Subsequently, the Respondents by passing a Resolution in the year 2000, sought to increase the monthly rent from Rs. 155/-

to Rs. 1085/-and from Rs. 120/-to Rs. 840/-. Aggrieved by the said Resolution No. 671 dated 30.5.2000 and the consequential notice dated 15.12.2003 issued by second Respondent increasing the monthly rents of residential houses of the Petitioners, the Petitioners have come to this Court by challenging the same in the present writ petitions.

4. At the time of entertaining the writ petitions, this Court granted an interim injunction on condition that the Petitioners should pay 75% of the increased rent. Aggrieved by the said order, the Petitioners went before the Division Bench of this Court by filing writ appeal. The First Bench of this Court in its Order dated 19.4.2004 in WAMP. No. 2414 of 2004 granted injunction on condition that the Petitioners, in each of the petitions, should pay double the amount till the disposal of the present writ petitions.

5. At this point of time, the learned Senior Counsel for the Petitioners submits that from the date of passing the Order by the First Bench in W.A.M.P. No. 2414/2004, they have been regularly paying double the amount by complying with the Order. With this, he further added in his submission stating that all the Petitioners are small time vegetable vendors, therefore the stand taken by the first Respondent in Resolution No. 671 dated 30.5.2000 seeking to revise the rent from Rs. 155/- to Rs. 1,085/- almost 700% more than the accepted rent is exorbitant and also an unreasonable revision and he further submits that the Resolution dated 30.5.2000 which is the basis for issuance of notice dated 15.12.2003 seeking to increase the rent by the second Respondent should be set aside by this Court as there is No. reasonable basis for fixation of rent by the Respondents. In support of his submission, he has also relied upon the judgment of the Apex Court reported in Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another, for the proposition that a balance has to be struck between the two extremes if the landlord is going to increase the rent of the tenant and if the balance is not properly maintained, it would amount to defeating the exemption clause enacted in the Constitution. The above said proposition canvassed by the Petitioner does not sound logically correct to the present case. The reason is that this is the case where all the Petitioners became tenants under the Respondent Municipality in the year 1970 for low income group houses built by the Respondents, by accepting tenement admeasuring 435 sq.ft for Rs. 120/- p.m and another tenement admeasuring 512 sq. ft for monthly rent of Rs. 155/-.

6. On the other hand, the learned Counsel for the Respondent would submit that though these monthly rents were fixed in 1970, for about 30 years ago, the Respondent Municipality have not sought to increase the rent and therefore by taking into account the place in which the tenements are situated, Resolution No. 671 dated 30.5.2000 has been passed by the first Respondent. After passing the resolution, the first Respondent Municipality have taken into the market value and the prevailing price conditions and thereafter they fixed a monthly rent of Rs. 840/-for a tenement admeasuring 435 sq. ft and Rs. 1,085/-for a tenement

admeasuring 512 sq. ft in the year 2000.

7. Immediately after the Resolution dated 30.5.2000 was passed increasing the rent from Rs. 155/-to Rs. 1,085/-and for other group of tenements when they increased from Rs. 120/-to Rs. 1040/-, a representation was given to the Respondent not to increase the rent many fold, but the Respondent without considering the plight of the Petitioners have wrongly passed yet another Resolution dated 24.11.2003 in the year 2003. Somehow, the Petitioners even after retirement from the service of the Municipality when they refused to vacate and handover, the retired employees who were allotted the low income group tenements failed to vacate and handover, should come forward either to accept the rent as increased by the Respondents or they should vacate and hand over the tenements given by the Respondents. However, when the Respondents have passed resolution No. 671 dated 30.5.2000 increasing the rent from Rs. 155/-to Rs. 1085, the Petitioners' residents welfare association sent their representation dated 10.8.2000 to the Respondents requesting them not to increase the rent. Based on the representation, the first Respondent also passed subsequent resolution No. 779 dated 23.1.2003 and thereby, it was decided to carry out an inspection and only after undertaking a physical verification of tenement, the Respondents on 24.11.2003, passed yet another Resolution No. 1411 unanimously resolving to collect the rent as fixed by the Council in its earlier Resolution No. 671 dated 30.5.2000. He further argued that when the Respondents came to the conclusion that the Petitioners are liable to pay only a reasonable monthly rent of Rs. 1,085/-for tenement admeasuring 512 sq. ft and Rs. 840/-as monthly rent for a tenement admeasuring 435 sq. ft even in 2003, it is not open to the Petitioners to avoid or evade the payment of very meagre amount of rent atleast in the year 2011. On this basis, the learned Counsel for the Respondent has prayed for dismissal of the writ petitions.

8. This Court, at the time of entertaining the present writ petitions, directed the Petitioners to pay 75% of the revised rent by order dated 9.2.2004. The Petitioners, aggrieved by the said order passed in WPMP. Nos. 2564 of 2004 etc., preferred a Writ Appeal and the First Bench of this Court by Order dated 19.4.2004 in WAMP. No. 2414 of 2004, while granting interim injunction, directed the Petitioners to pay double the amount which they were previously paying as on the date of Resolution dated 30.5.2000.

9. Though the learned Counsel for the Petitioners submits that all the Petitioners have been paying double the rent as directed by this Court, the counter filed by the Respondents does not reflect so. Be that as it may, the question ultimately needs to be decided by this Court is whether there has been a contract in payment of rent between the Petitioners and landlord.

10. Heard the learned Counsel appearing for both the parties.

11. Admittedly, the Petitioners became tenants of the Respondents Municipality for a sum of Rs. 120/-p.m for a tenement admeasuring 435 sq. ft and a monthly

rent of Rs. 155/-for a tenement admeasuring 512 sq. ft. For almost three decades, the Respondent-Municipality have not even thought of increasing the rent by 1%. Only, in the year 2000, they passed Resolution No. 671 dated 30.5.2000 seeking to increase the monthly rent of residential house from Rs. 155/-to Rs. 1085/-by issuing a notice dated 15.12.2003. Even before the notice was issued in the year 2003, immediately after Resolution dated 30.5.2000 was passed, all the Petitioners have approached the Respondents by making representation to reduce the rent. Immediately on receipt of representation, one more resolution was passed by the Respondent in Resolution No. 779 dated 23.1.2003. By the said resolution, the Respondents have decided to consider the Petitioners' representation by appointing an officer of the Respondents Municipality to conduct physical verification of the tenement as to whether the increased rent can be implemented by the Respondent Municipality. On the basis of the Resolution dated 779 dated 23.1.2003, an officer of the Respondents-Municipality has undertaken a thorough verification of the tenements which are in possession of the Petitioners. The Respondents after considering the location of the building and the amenities provided to the Petitioners, and after taking note of the inspection report and day to day price hike etc. passed the resolution No. 1411 dated 24.11.2003 wherein the Respondents have unanimously resolved to collect the rent as fixed by the council in its Resolution No. 671 dated 30.5.2000.

12. Since the representation made by the Petitioners' welfare Association dated 10.8.2000 has been properly considered by the Respondents Municipality by passing Resolution No. 779 dated 23.1.2003, followed by final resolution No. 1411 dated 24.11.2003, this Court cannot stand in the way of demanding reasonable monthly rent of Rs. 840/-and Rs. 1085/-for tenement admeasuring 435 sq. ft of land and 512 sq. ft. of land respectively. Further, the entire gamut of dispute raised in the present writ petition is relating to pure question of fact. Therefore, the Writ Court, sitting under Article 226 of the Constitution of India, cannot decide the same, when the Respondent municipality has already fixed the reasonable rent after 30 years from the date the tenants were put in possession. Besides, the dispute between the landlord and the tenants for fixation or enhancement of the rent cannot under any circumstances be considered by the Writ Court. That apart, when the Petitioners were, admittedly, inducted as tenants in the flats belonging to the Respondent municipality on a monthly rent of Rs. 120/-for 435 sq.ft. and Rs. 155/-for 512 sq. ft. in the year 1970, increasing the rent from Rs. 120/-to Rs. 840/-for a flat having an extent of 435 sq. ft. and from Rs. 155/-to Rs. 1085/-for a flat having an extent of 512 sq. ft. in the year 2000, can never be found fault with. In fact, even the said rent also have not been paid, except making double the amount of the previous rent, 12 even in 2011. When the Petitioners are enjoying the flats belonging to the Respondent municipality by occupying their buildings in ideal location, they cannot be allowed to complain the reasonable enhancement of the above mentioned rent.

13. In view of the above, I find no merit in the present writ petitions. Accordingly, all the Writ Petitions are dismissed. However, there shall be no order as to costs. Connected WPMPs. are also dismissed