

**A.Gomathi Vs. the Assistant Commissioner/Executive Officer,**

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**SooperKanoon Citation :** [sooperkanoon.com/1169004](http://sooperkanoon.com/1169004)

**Court :** Chennai

**Decided On :** Sep-02-2014

**Judge :** S.Nagamuthu

**Appellant :** A.Gomathi

**Respondent :** The Assistant Commissioner/Executive Officer,

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

02. 09.2014 CORAM: THE HONOURABLE MR.JUSTICE R.MAHADEVAN  
W.P.(MD)Nos.13573 of 2012 and W.P.(MD)Nos13574, 13582, 13583, 13780 to  
13782, 13350 to 13359, 13537 to 13544, 13913 to 13922, 13908 and 14241 to  
14250 of 2012 and Respective Miscellaneous Petitions in the Respective Writ  
Petitions W.P.[MD]..No.13573 of 2012 A.Gomathi : Petitioner Vs. The Assistant  
Commissioner/Executive Officer, Arulmigu Koodal Alagar Temple, Madurai. :  
Respondent PRAYER Writ Petition is filed under Article 226 of the Constitution of  
India for the issue of a Writ of Certiorari to call for the records of the respondent,  
dated 22.03.2012, passed under Section 34-A of 22/59, read with G.O.Ms.No.456,  
Tamil Development, Hindu Religious and Charitable Endowment, News, dated  
09.11.2007, in respect of Door No.6, Theppam South New Building, Town Hall  
Road, Madurai, quash the same, as the same is arbitrary, ultravires, violative of  
principles of natural of justice. !For Petitioners : Mr.R.G.Shankar Ganesh For  
Respondent : Mr.S.Manohar Standing Counsel :COMMON

## ORDER

\*\*\*\*\* As the issues involved in all the Writ Petitions are common, with a challenge to the very same Impugned Orders against the sole respondent, they have been taken up together and dealt with, by a Common Order.

2. Challenge in these Writ Petitions is to the order, dated 22.03.2012, passed under Section 34-A of 22/59, r/w G.O.Ms.No.456, Tamil Development, Hindu Religious and Charitable Endowment, News, dated 09.11.2007, issued by the respondent herein, fixing the fair rent.

3. The case of the petitioners, in a nutshell, is that the Madurai Municipality had put up shops on the northern side of the road, viz., Koodal Alagar Perumal Koil Southern Street. The right to collect the rent from the vendors, who have been in occupation of the said buildings, was leased out to various persons, by the Madurai Municipality. The members of the market had started a Sangam, under the name and style ".Madurai Town Hall Road Perumal Teppakulam Market Vyaparigal Sangam".. The members of the Sangam had been in occupation of the various shops and doing vegetable vending business. After the demise of certain members, the other members had occupied the shops as tenants. When the matter stood thus, the respondent herein had filed a suit, in O.S.No.362 of 1963, on the file of the District Munsif Court, Madurai, seeking permanent injunction, restraining the Madurai Municipality from putting up any further construction. The said suit came to be decreed, on 30.06.1966. Thereafter, the respondent had filed E.P.No.137 of 1970, to execute the decree, which was dismissed, as not pressed, on 29.07.1970.

4. In the meanwhile, the Sangam had filed a suit, in O.S.No.686 of 1970, on the file of the District Munsif Court, Madurai, seeking a decree of permanent injunction against the Madurai Municipality and the respondent herein, from, in any way, interfering with their peaceful possession of the shops in question. The said suit was dismissed, on 13.09.1971. Aggrieved over the same, an appeal, in A.S.No.90 of 1972 was filed, on the file of the Subordinate Court, Maudai and the same was dismissed. Challenging the same, S.A.No.1166 of 1975 was filed and the same was also dismissed, by a Judgment and Decree, dated 10.01.1978. While so, in

the month of January 1978, a fire accident took place, due to which, the entire superstructure of the market was destroyed. Because of the same, the members of the Sangam were put to heavy loss.

5. Taking into consideration of the pathetic situation of the members of the Sangam, the Madurai Corporation had decided to put up permanent structures. Claiming to be the representatives of the worshippers of the deity of Sri Koodal Alaga Perumal Koil, a suit in O.S.No.111 of 1978, on the file of the Sub Court, Madurai, came to be filed, against the Madurai Corporation and the temple for the decree of permanent injunction, seeking to restrain the Madurai Corporation from proceeding with the construction of the superstructure and also for a decree of mandatory injunction from removing the structures, which were already put up by the Corporation. In the said suit, the members of the sangam were not arrayed as parties. On 27.11.1980, the said suit was decreed. The persons, who had obtained the decree, had filed E.P.No.247 of 1983, on the file of the Third Additional Subordinate Court, Madurai, for executing the decree, by demolishing the existing market. However, the respondent did not chose to execute the decree and the same became inexecutable and barred by limitation. Thereafter, on the basis of the agreement entered into between the parties, by way of mediation, the petitioners have been paying the rent on daily basis, as licensees. The said licensees had been paying a very meagre sum as rent and considering the prevailing market rent, the respondent, by the impugned order, dated 22.03.2012, had fixed the fair rent, under Section 34-A of 22/59, r/w G.O.Ms.No.456, Tamil Development, Hindu Religious and Charitable Endowment, News, dated 09.11.2007, which is under challenge in the present Writ Petitions.

6. According to the respondent, there are various Government orders, related to grant of licenses with conditions stipulated thereon. The licensee, who had occupied the shops, did not have any vested right to continue in the shops forever. Since the transactions are commercial in nature, the petitioners are liable to pay rental amounts, which are fixed on the basis of the market value of the area concerned. Hence, the respondent justified the fixation of fair rent against the petitioners.

7. In similar circumstances, a Division Bench of this Court in P.Muthusamy Vs. The Commissioner, Dharapuaam Municipality [W.P.Nos.7080 to 7084 of 2014, dated 30.04.2014]., had held as follows:- ".20. The facts narrated above would clearly indicate that 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 a fixed terms. Therefore, the petitioners do not have a legal or a vested right to continue in occupation for ever. There is no doubt that the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1961, does not apply to the case on hand. The petitioners can very well participate in the proposed auction. In other words, they cannot claim the right of a statutory tenant.

21. 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 Government Orders, as narrated above, are very specific about the purpose of auction followed by lease/licence. Since the transactions are commercial in nature, the petitioners, being licensees, cannot insist that the rent, which as they think, just and proper alone is liable to be paid. Since the licence is to be granted by the respondent-Municipality, while making offer, the said authority can impose its own terms in accordance with law. While accepting the said offer, the petitioners cannot insist that the condition attached therein cannot be imposed. A perusal of the Government Orders referred to above as well as the orders impugned make it clear that the rent has been fixed based upon the prevailing market value and not otherwise. What has been given by way of extension to an existing license was only a concession. The subsequent extension has been made during the pendency of the writ petitions. The said decision was made in view of the undertaking given by the licensees. An undertaking was given in connection with the payment as well as on the withdrawal of the writ petitions. The Government orders also state that in the event of non compliance of the conditions imposed including the payment of appropriate rent, a licensee is liable to be removed.

22. .... The fact that the Commissioner of Municipal Administration directed the respondent-Municipality to fix the market rent as the rent payable based upon the Government Orders which in turn was complied with would also show that there is

no quarrel with the position that the market rent shall be the basis for the fixation of the rent payable by the licensees. In any case, the petitioners, being the defaulters, cannot contend that they should be allowed to continue forever. As the orders impugned have been passed by taking into consideration of the relevant materials, we do not find any room for interference." (emphasis applied.) 8. Here, in these cases, even though various grounds have been raised and the learned counsel appearing on behalf of the petitioners makes his arguments, at length, while concluding the arguments, the learned counsel submits that the petitioners herein would file a Joint Calculation Sheet, stating the amounts already paid by them, from 2001 to June 2014, the amount demanded by the respondent, and the arrears of amount payable by the petitioners in installment basis, and therefore, the respondent may be directed to consider the same and pass appropriate orders as per law.

9. Accordingly, the learned counsel appearing on behalf of the petitioners had filed a common calculation sheet, stating the amounts already paid by the petitioners, amount demanded by the respondent, the period required for the payment of arrears of rent and the number of installments required by the petitioners, which are as follows:-

Sl. No	Name of the Petitioner	W.P.(MD)No	Amount paid	Amount Demanded	Period Required for Payment of Arrears
1	A.Gomathi	13573/12	Rs.28,105/-	Rs.61,225/-	2 Years/40 Installments
2	P.Thirumalai Kumar	13574/12	Rs.81,906/-	Rs2,08,866/-	4 Years/50 Installments
3	A.Muthu Selvam	13582/12	Rs.8,028/-	Rs.19,167/-	1 Year/15 Installments
4	P.Amutha	13583/12	Rs.29,534/-	Rs.65,632/-	2 Years/25 Installments
5	Shahul Hameed	13780/12	Rs.39,990/-	Rs.60,283/-	2 Years/20 Installments
6	B.Vijaya	13781/12	Rs.42,891/-	Rs.75,844/-	2 Years/30 Installments
7	M.Seenivasan	13782/12	Rs.74,390/-	Rs.2,13,073/-	5 Years/50 Installments
8	B.Suresh Kumar	13350/12	Rs.17,041/-	Rs.48,688/-	2 Year/25 Installments
9	V.Gurusamy	13351/12	Rs.33,555/-	Rs.83,887/-	2 Years/25 Installments
10	T.Balu	13352/12	Rs.46,937/-	Rs.93,874/-	3 Years/40 Installments
11	R.S.Chellapandi	13353/12	Rs.30,270/-	Rs.75,674/-	3 Years/40 Installments
12	N.V.Janarthanan	13354/12	Rs.44,400/-	Rs.98,669/-	4 Years/50 Installments
13	B.Chandran	13355/12	Rs.1,65,554/-	Rs.4,13,872/-	5 Years/60 Installments
14	V.Muthu mari	13356/12	Rs.30,816/-	Rs.1,02,722/-	3 Years/40 Installments
15	K.Muthu	13357/12	Rs.26,963/-	Rs.77,039/-	3 Years/40 Installments

S.Gurunathan 13358/12 Rs.2,16,693/- Rs.7,89,710/- 5 Years/60 Installments 17  
S.Rajamani 13359/12 Rs.86,668/- Rs.2,16,670/- 4 Years/50 Installments 18  
R.Murugendran 13537/12 Rs.16,233/- Rs.64,934/- 2 Years/25 Installments 19  
S.Somnath Babu 13538/12 Rs.37413/- Rs.1,06,895/- 3 Years/40 Installments 20  
P.Pandiammal 13539/12 Rs.1,11,912/- Rs.2,79,780/- 4 Years/50 Installments 21  
K.Revathy 13540/12 Rs.21,044/- Rs.70,149/- 2 Years/25 Installments 22 B.Suresh  
Kumar 13541/12 Rs.56,927/- Rs.48,087/- 1 Year/ 15 Installment 23 Selvarasi  
13542/12 Rs.23,632/- Rs.67,522/- 2 Years/25 Installments 24 D.Subramanian  
13543/12 Rs.46,427/- Rs.1,16,068/- 3 Years/40 Installments 25 P.Muniammal  
13544/12 Rs.29,049/- Rs.82,998/- 2 Years/25 Installments 26 M.Panchavarnam  
13913/12 Rs.43,256/- Rs.75,154/- 1 Year/15 Installments 27 Ponnammalai  
13914/12 Rs.67,755/- Rs.1,01,169/- 1 Year/15 Installments 28 N.Omprakash  
13915/12 Rs.56,703/- Rs.1,04,584/- 1 Year/15 Installments 29 S.Mahalakshmi  
13916/12 Rs.48,940/- Rs.1,07,380/- 1 Year/20 Installments 30 R.Surirajan  
13917/12 Rs.82,819/- Rs.2,07,048/- 5 Years/60 Installments 31 S.Bajilabanu  
13918/12 Rs.40,685/- Rs.80,678/- 1 Year/15 Installments 32 M.Senthil 13919/12  
Rs.43,030 Rs.81,180/- 1 Year/15 Installments 33 V.Mari 13920/12 Rs.42,003/-  
Rs.87,397/- 1 Year/15 Installments 34 P.Ramkumar 13921/12 Rs.84,536/-  
Rs.2,19,995/- 2 Years/25 Installments 35 P.Umadevi 13922/12 Rs.84,536/-  
Rs.2,29,295/- 2 Years/25 Installments 36 B.Muthulakshmi 13908/12 Rs.6,045/-  
Rs.20,151/- 1 Year/15 Installments 37 P.Pitchaimani 14241/12 Rs.1,06,730/-  
Rs.2,50,952/- 2 Years/30 Installments 38 P.Balasubramanian 14242/12  
Rs.40,210/- Rs.81,494/- 1 Year/15 Installments 39 C.Bhavani 14243/12  
Rs.41,300/- Rs.74,535/- 1 Year/15 Installments 40 K.Jeyaram 14244/12  
Rs.43,918/- Rs.83,930/- 1 Year/15 Installments 41 V.Mahalakshmi 14245/12  
Rs.1,11,820/- Rs.2,48,490/- 4 Years/50 Installments 42 R.Kannan 14246/12  
Rs.39,475/- Rs.70,064/- 1 Year/15 Installments 43 R.Sathyamoorthy 14247/12  
Rs.39,615/- Rs.1,38,597/- 2 Years/20 Installments 44 M.Subramanian 14248/12  
Rs.20,061/- Rs.66,871/- 2 Years/25 Installments 45 R.Pappathi 14249/12  
Rs.77,136/- Rs.1,93,068/- 2 Years/20 Installments 46 T.Rajammal 14250/12  
Rs.1,04,823/- Rs.3,35,819/- 3 Years/40 Installments 10.

Placing reliance on the above Joint Calculation Sheet, the learned counsel appearing on behalf of the petitioners submits that, as directed in the impugned orders, the petitioners will

pay the entire amounts, after deducting the amounts, which had already been paid. He further submits that as the petitioners are day hawkers, the respondent may be directed to consider the claims of the petitioners, sympathetically, and permit them to pay the said amounts in reasonable installments.

11. The learned Standing Counsel appearing on behalf of the respondent submits that the claim of the petitioners, for effecting the payment in installment basis, is too long and the same will be considered by the respondent with reasonable installments and appropriate orders would be passed.

12. The said submissions made by the learned counsel appearing on behalf of the petitioners and the learned Standing Counsel appearing on behalf of the respondent are placed on record.

13. In view of the above, these Writ Petitions are disposed of, on the following terms:- The respondent is directed to work out the arrears of amount payable by the petitioners, as-on-date, after adjusting the amounts already paid by them and issue notice to the petitioners, within two weeks from the date of receipt of a copy of this order, mentioning the amounts payable by them, and the time for payment of such amounts in reasonable installments. On receipt of such notices, the petitioners are directed to effect the payment of arrears, as directed by the respondent, without default, along with the monthly rents. It is made clear that if the amount, as demanded by the respondent, is not paid, within the time to be granted by the respondent, it is open to the respondent to bring the shops in question for public auction. Consequently, all the connected Miscellaneous Petitions are closed. No costs. Note: Issue order copy on 03.09.2014 Index :Yes 02.09.2014 Internet :Yes  
To The Assistant Commissioner/Executive Officer,  
Arulmigu Koodal Alagar Temple, Madurai. R.MAHADEVAN, J.

PRE-DELIVERY COMMON

ORDER

MADE IN W.P.(MD)Nos.13573, 13574, 13582, 13583, 13780 to 13782, 13350 to 13359, 13537 to 13544, 13913 to 13922, 13908 and 14241 to 14250 of 2012  
DATED ?. 02.09.2014

