

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

WP(C).No. 8442 of 2015 (E)

PETITIONER

**NAZAR E S/O.ISMAYIL, AGED 37 YEARS
KALAVARAKIZHAKKETHIL HOUSE, MEMANA
OCHIRA P.O. KOLLAM PIN 690 526.**

**BY ADVS.SRI.P.A.ABDUL JABBAR
SRI.MUHAMMED SHAFFI**

RESPONDENT(S):

- 1. CHENGANNOR MUNICIPALITY REPRESENTED BY ITS SECRETARY
MUNICIPAL OFFICE, CHENGANOOR P.O., ALAPPUZHA
PIN 689121.**
- 2. THE SECRETARY,CHENGANNOR MUNICIPALITY
REPRESENTED BY ITS SECRETARY MUNICIPAL OFFICE
CHENGANNOR P.O. ALAPPUZHA, PIN 689121.**

R BY SRLS.HARIKRISHNAN,SC,CHENGANNUR MUNICIPALITY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1:** TRUE COPY OF THE AGREEMENT EXECUTED BY THE PETITIONER IN FAVOUR OF THE 1ST RESPONDENT
- EXT.P2:** TRUE COPY OF THE RECEIPT ISSUED BY THE 1ST RESPONDENT FOR PAYMENT OF RENT.
- EXT.P3:** TRUE COPY OF THE RECEIPT ISSUED BY THE 1ST RESPONDENT FOR RECEIVING REPRESENTATION OF THE PETITIONER.
- EXT.P4;** TRUE COPY OF THE RECEIPT ISSUED BY THE 1ST RESPONDENT FOR RECEIVING LICENSE FEE OF THE PETITIONER.
- EXT.P5:** TRUE COPY OF THE NOTICE RECEIVED FROM THE 1ST RESPONDENT.
- EXT.P6.** TRUE COPY OF THE REPLY GIVEN BY THE PETITIONER TO THE 1ST RESPONDENT.
- EXT.P7.** TRUE COPY OF THE AUCTION NOTICE ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPY

P.A TO JUDGE

SMM

DAMA SESHADRI NAIDU, J.

.....
W.P.C. No.8442 of 2015
.....

Dated this the 23rd day of March, 2015.

J U D G M E N T

The petitioner, said to be a petty tradesman, initially was given a piece of vacant land by the first respondent Municipality in 2008 to erect a temporary structure and establish a business, which is said to be a “Chinese Super Market”. The lease has been renewed annually with an enhancement of 5% on monthly rent, which presently stands at Rs.41,000/-, apart from the usual taxes.

2. For the year 2015 as well, the petitioner submitted the necessary application for renewal of his license. In fact, the Municipality is said to have renewed the license, after collecting the requisite fee through Ext.P4. Later the respondent Municipality has however issued Ext.P5 proceedings intimating the petitioner to vacate the leasehold property within 7 days after the

receipt of the notice, ostensibly, for the reason that the lease period is to come to an end by 31-3-2015. Though the petitioner submitted Ext.P6 reply requesting the authorities to renew his lease as had been done earlier, the respondent Municipality went ahead and issued Ext.P7 auction notification dated 2-3-2015.

3. Aggrieved by the action of the respondent Municipality in refusing to renew the lease of the petitioner, as well as its efforts to go ahead with the auction of the leasehold property, the petitioner has filed the present writ petition.

4. As a matter of subsequent development, the learned Standing Counsel for the respondent Municipality has informed that on 17-3-2015, pursuant to Ext.P7 notification, the respondent Municipality did conduct the public auction, in which only two persons participated. The person who quoted the higher amount, though was given time to deposit the amounts, did not turn up as per the time schedule. Now, once again, the respondent Municipality has scheduled the public auction to be held

on 30-3-2015.

5. In the above factual background, the learned Counsel for the petitioner has strenuously contended that the respondent Municipality has been renewing the petitioner's lease as well as the trade license since 2008. According to him, even this year it renewed the trade license. It is the singular contention of the learned Counsel for the petitioner that once the petitioner's trade license was renewed, the refusal of the respondent Municipality to extend the lease by way of renewal is totally unsustainable and that it defeats the legitimate expectation of the petitioner.

6. The learned Counsel has further contended that, in response to Ext.P5 notice issued by the respondent Municipality, the petitioner submitted Ext.P6 reply. The Municipality however did not chose to cause any reply thereto. In sum and substance, the learned Counsel contends that unless and until the respondent Municipality took a decision on petitioner's plea to have the lease renewed, it ought not have proceeded further.

7. Based on the information provided by the learned Standing Counsel that the successful bidder in the auction held on 17-3-2015 did not comply with the tender conditions, the learned Counsel for the petitioner insists that under these circumstances, it is imperative for the respondent Municipality to renew the lease instead of going once again for public auction which may prove to be futile.

8. Per contra, the learned Standing Counsel for the respondent Municipality has strenuously opposed the claims and conditions of the petitioner. She has submitted that once lease comes to an end by efflux of time, it is not mandatory for the respondent Municipality to respond to Ext.P6 reply submitted by the petitioner. She has also submitted that the respondent Municipality intends to put the property in public auction with a view to fetching the best possible rent, only in the interest of the Municipality, which cannot be objected to by the petitioner. In other words, it is the contention of the learned Standing Counsel that the petitioner is always at liberty to

participate in the auction and be the successful bidder.

9. Heard the learned counsel for the petitioner and the learned Counsel for the respondent Municipality apart from perusing the record.

10. Indeed, the petitioner has been continuing as a lessee since 2008, with an annual enhancement of monthly rent at 5%. At any rate, the lease for the year 2014-2015 is to come to an end by 31-3-2015. It is termination of lease by efflux of time. Under these circumstances, there is no legal obligation on the part of the respondent Municipality to put the petitioner on notice concerning the determination of the lease, much less, take a decision on Ext.P6 reply submitted by the petitioner.

11. Addressing the issue of annual renewal of the lease upto this point of time, I may observe that, in the absence of public auction in the previous years, the lease may have been renewed in favour of the petitioner; nevertheless, such a renewal, in my considered view, does not confer any indefeasible right on the petitioner.

In the same breadth, it is to be observed that such a practice, if at all having been adopted by the respondent Municipality, does not give rise to any legitimate expectation on the part of the petitioner. It is axiomatic to state that the common law of legitimate expectation is always subservient to the statutory principle and public interest. As a matter of policy, the respondent Municipality has decided to put the lease hold property in public auction. It is entirely open for the petitioner to participate and emerge victorious, if he is desirous of ensuring the continuation of his business in the same place.

12. Though, much stress has been laid by the learned Counsel for the petitioner on the submission that the respondent Municipality has already renewed the petitioner's trade license through Ext.P4, I am afraid that plea does not enure to the benefit of the petitioner. The renewal of trade license thereof stands entirely on a different footing from that of the lease hold rights. Mere renewal of trade license which is in the nature of

collecting the revenue would not affect the statutory and propriety right of the respondent Municipality to put its property to the best use possible, more particularly keeping the public interest in view.

13. Under the circumstances narrated above, I do not see any infirmity in the action of the respondent Municipality in its refusing to renew the lease, in issuing Ext.P7 auction notification, or in its going ahead with a reauction on 30-3-2015, to ensure that the lease hold property fetches the best possible revenue for the respondent Municipality.

14. It is however, abundantly made it clear that the petitioner is at liberty to participate in the auction to be held on 30-3-2015 or any other date.

15. At this juncture, the learned counsel for the petitioner has persistently submitted that at least until the auction process is over and a successful bidder emerges therefrom, without prejudice to the petitioner's rights and contentions, he may be permitted to continue the business till then.

16. I do not see any harm in the representation made by the petitioner. Accordingly, it is observed that the respondent Municipality may permit the petitioner to carry on with his business, until the auction process concludes and a particular bidder emerges successfully.

With the above observations the writ petition stands disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

smm

