

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:11.03.2015

CORAM

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.Nos.1508 to 1510 of 2014 and
M.P.Nos.1, 1, 1 and 2 of 2014

S.Murugan ... Appellant in 1508/2014
S.E.Niyamadullah ... Appellant in 1509/2014
S.G.Dhandapani ... Appellant in 1510/2014

Vs.

1. The Chairman,
Sathyamangalam Municipality,
Erode District.
 2. The Commissioner,
Sathyamangalam Municipality,
Erode District.
- Respondents in all WAs.

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent Act, against the order dated 24.09.2014 made in W.P.Nos.20818, 20843 and 20828 of 2014.

These writ Petitions file under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned Resolution Number 92 dated 30.06.2014 passed by the 1st respondent and the consequential Auction Tender Notice issued by the 2nd respondent vide his Office Proceedings No.Na.Ka. No.4500/2011/A1 dated 23.07.2014 as published in Daily Thanthi dated 26.07.2014 and quash the same and consequently permit the petitioner to continue as Licensee under the respondents till the license period is over i.e. till 30.4.2017, 14.2.16, 14.2.16 as far as the Shop No.22, 25 & 28 respectively at New Bus Stand Sathyamangalam is concerned

For Appellants : Mr.I.Abrar Md. Abdullah
(In all WAs)

For Respondents : Mr.P.H.Arvind Pandian
(In all WAs) Additional Advocate General
For Mr.A.S.Thambusamy

COMMON JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellants have preferred the instant intra Court Writ Appeals as against the common order dated 24.09.2014 in W.P.Nos. 20818, 20843 and 20828 of 2014 passed by the Writ Court.

2.The Writ Court, while passing the impugned order dated 24.09.2014, in W.P.Nos.20818, 20843 and 20828 of 2014, in paragraph 4, had observed the following:

"4.But the learned Additional Advocate General disputes the claim on the ground that the signature in the application for renewal of one person did not tally and that in respect of another person he is an employee of an Engineering College. Therefore, in the light of such allegations, I do not wish to grant the equitable remedy under Article 226. If the licenses of 84 shops have faced the auction, there is no reason why these petitioners are not faced the auction."

and finally disposed of the Writ Petitions, by directing the Respondents to put up four shops for a fresh auction and further observed that the Petitioners (Appellants) shall participate in the auction and if they are successful, they may take the licences and that even if they are not successful in the auction, they can always take recourse to clause 7 of the auction conditions stipulated in the auction notice and also passed orders to the effect that till the auction is conducted, they shall not be dispossessed.

3.The Learned Counsel for the Appellants contends that the Writ Court had committed an error in not appreciating the communication of the Respondents/Municipality notifying the extension of Lease.

4.The Learned Counsel for the Appellants urges before this Court that the conclusion arrived at by the Writ Court that the applications were not in order solely based on the submissions of the Learned Counsel for the Respondents/Municipality without any supporting material is an incorrect, invalid and illegal one.

5.The Learned Counsel for the Appellants takes a stand that the Respondents had not produced the entire gamut of materials before the Writ Court and furthermore, the Appellants had produced receipts to show that the licences were renewed.

6.Per contra, it is the submission of the Learned Counsel for the Respondents that the Appellants have no legal right to challenge the power of the Municipality to cancel their licences and to continue in possession of the premises forever and further, the 9 years lease period and the automatic renewal of the licences issued in their favour, as contemplated in G.O.Ms.No.92 dated 03.07.2007, had expired on 31.04.2014 itself and therefore, they are not entitled to seek for any automatic renewal of their Licences.

7.On behalf of the Respondents, it is contended that out of 88 shops, which were put to auction, only the present Appellants stake a claim that their licences were renewed till 31.03.2017 and majority of the Licensees had either vacated or were successful bidders in the auction.

8.It transpires from the counter filed by the 2nd Respondent/Commissioner of the Municipality before the Writ Court that the proposal to cancel all the licences and to conduct fresh public auction was mooted on 23.06.2014 itself and was placed before the Municipal Council Meeting on 30.06.2014 and in fact, the Appellants together with the members of the Association met the 2nd Respondent and made a request not to cancel the licences in question. But the Appellants were clearly informed about the need for augmenting the income of Municipality, for the Welfare of public and the public auction was conducted only after paper publication. Also, in paragraph 11 of the counter filed by the 2nd Respondent/Municipality (before the Writ Court), it was stated that 'In fact, 75 shops out of 88 shops situated in the Municipality were auctioned and the highest bidders were allotted their respective shops as per the order of this Court in W.P.Nos.20605 to 20640 of 2014 and further, only for enhancing the income, the Municipality had conducted the public auction and to spend the same for public welfare under various schemes etc.

9.It cannot be said that by way of 'Judicial Review', a Court of Law is not expected to act as a Court of appeal while examining an administrative decision and to render a finding whether such decision could have been taken otherwise based on the facts and circumstances of the case. Moreover, if the decision of the authority confines to reasonableness, then, it is not the function of a Court of Law to

look further into its merits. No doubt, a Court of Law can interfere only if the authority acts beyond its power.

10.It is to be borne in mind that the grant of an order of 'Mandamus' is, as a general rule, a matter for the discretion of Court. It is not granted as of right and it is not issued as a matter of course. The object of 'Mandamus' is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy, as per decision of the Hon'ble Supreme Court in Union of India V. S.B.Vohra, AIR 2004 Supreme Court 1402.

11.It is to be pointed out that a 'Writ of Mandamus' is a high prerogative Writ of a most wider remedial nature. A Writ of Mandamus may be issued in favour of a person who establishes legal right in him. The main function of Mandamus is to compel action. In fact, it neither creates nor confers power to act. In reality, a Mandamus cannot be issued to substitute the Judgment or discretion of the Court for that of authority against whom it is issued. It is to be remembered that a Court of Law cannot take a decision which in law is required to be taken by a statutory authority.

12.It is to be noted that the relief to be granted in favour of a particular party who approaches the Writ Court is certainly an equitable and discretionary one, in the considered opinion of this Court. Further, the Municipal Council had passed the resolutions by following the procedures established under relevant rules and only thereafter, the auction was conducted on 07.08.2014.

13.Suffice it for this Court to point out that majority of the Licensees of shops numbering 84 had faced the auction and as such, the Appellants also do stand on the same pedestal.

14.At this stage, it is brought to the notice of this Court that on behalf of the Respondents that the Appellants had suppressed the fact that they participate in the auction held on 08.10.2014. In fact, the Appellants were the successful bidders and therefore, they are liable to pay the respective bid amounts from 01.09.2014. However, the Appellants are paying only Rs.2,780/- (in W.A.No.1508/2014), Rs.3,998/- (in W.A.No.1509/2014) and Rs.4,935/- (in W.A.No.1510/ 2014) and they paid the same till September 2014. Moreover, when they are the successful bidders, they are liable to pay the highest bid amount from 01.09.2014 and in fact, the Appellant in W.A.No.1510/ 2014 had executed the necessary documents and conditions and he is in possession as licensee. Also, when the Appellants offer were accepted by the Municipality and when they had

affixed their signatures in the auction registered and as per Condition No.7 of the Auction Notice, when they were called upon to pay an additional sum of 12 months' highest bid amount on or before 25.10.2014, they had failed to pay the amounts till date.

15.On a careful consideration of respective contentions and in view of the fact that the Appellants had not divulged the fact that they took part in the auction held on 18.10.2014 and they being the successful bidders, the Writ Appeals filed by them are an otiose one, besides the same being devoid of merits, in the considered opinion of this Court.

16.In the result, the Writ Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Chairman,
Sathyamangalam Municipality,
Erode District.
2. The Commissioner,
Sathyamangalam Municipality,
Erode District.

+3cc's to M/s.R.Subramanian, Advocate, S.R.No.13785
+1cc to M/s.A.S.Thambuswamy, Advocate, S.R.No.13641

W.A.Nos.1508 to 1510 of 2014

CA(CO)
CA(01/04/2015)

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