

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.10254, 14406 and 20197 of 2015
and MP.Nos.1 to 3 & 5, 1,3 & 1 to 3 & 5 of 2015

P.Prakash .. Petitioner in all WPs

Vs

- 1.State of Tamil Nadu
Rep. by its Secretary to Government,
Municipal Administration and
Water Supply Department (T.P.-4)
Secretariat, Chennai-9. .. 1st Respondent in W.P.No.10254
of 2015
- 2.Commissioner of Town Panchayats,
Chennai - 108. .. 2nd Respondent in W.P.No.10254
of 2015
3. Commissioner of Town Panchayats,
Kuralagam, Chennai-104... 1st Respondent in W.P.No.20197 of
2015
- 4.District Collector,
Salem District, Salem. ... 3rd Respondent in W.P.No.10254
of 2015
- 5.Executive Officer,
Thammampatti Town Panchayat [Selection Grade],
Thammampatti, Gangavalli Taluk, Salem District.
.. 4th Respondent in W.P.No.10254 of 2015
.. 1st Respondent in W.P.No.14406 of 2015
.. 2nd Respondent in W.P.No.20197 of 2015
- 6.R.Bala Subramanian
[Respondent impleaded as per order dated 08.06.2015
in MP.No.4 of 2015 in W.P.No.10254 of 2015,
MP.No.2 of 2015 in
W.P.No.14406 of 2015]
.. 5th Respondent in W.P.No.10254 of 2015
.. 2nd Respondent in W.P.No.14406 of 2015
.. 3rd Respondent in W.P.No.20197 of 2015

7. P.Balasubramaniam,
S/o. Ponnusamy,
President, Thammampatti Town Panchayat (Selection Grade)
Thammampatti, Gangavalli Taluk, Salem District.

[Respondents impleaded as per order dated 08.09.2015
in MP.No.4 of 2015 in W.P.No.20197 of 2015]..R4 in
WP.No.20197/2015

8.Amresh Babu
R5 deleted as per order dated 30.09.2015
by NKKJ in WP.NO.20197/2015
...R5 in
WP.No.20197/2015

Prayer in W.P.No.10254 of 2015 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the Notification Na.Ka.No.7/2015/A2 dated 19.03.2015 on the file of the 4th respondent proceedings in so far as the same relates to Shop No.5, J.V.V.T. Shopping Complex and quash the same and consequently direct the respondents 1,2 and 4 herein to forthwith renew the lease for Shop No.5, J.V.V.T. Shopping Complex in favour of the petitioner herein accepting enhanced rent as stipulated in G.O.Ms.92, Municipal Administration and Water Supply Department dated 03.07.2007 upto 31.03.2021.

Prayer in W.P.No.14406 of 2015 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the Notification Na.Ka.No.07/2015/A2 dated 11.04.2015 on the file of the respondent herein and quash the same and consequently direct the respondent herein not to obstruct the business of the petitioner herein in any manner on payment of enhanced rent for shop No.5, J.V.V.T Shopping Complex.

Prayer in W.P.No.20197 of 2015 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the Resolution No.577(1) dated 01.04.2015 in so far as the petitioner herein is concerned and the consequential orders in Na.Ka.No.7/2015/A2 dated 01.04.2015 and 12.06.2015 on the file of the 2nd respondent herein and quash the same and consequently direct the respondents 1 and 2 herein to renew the lease for Shop No.5, J.V.V.T. Shopping Complex in favour of the petitioner without reference to G.O.Ms.181, Municipal Administration and Water Supply Department dated 19.09.2008.
In W.P.No.10254 of 2015:

For Petitioner : Mr.V.R.Rajasekaran
For Respondents 1 to 3 : Mr.R.Rajeswaran
Special Government Pleader
For Respondent 4 : Mr.R.A.S.Senthilvel
For Respondent 5 : Mr.P.S.Jayakumar

In W.P.No.14406 of 2015:

For Petitioner : Mr.V.R.Rajasekaran
For Respondent 1 : Mr.M.Digvijay Pandian
Additional Government Pleader
For Respondent 2 : Mr.P.S.Jayakumar

In W.P.No.20197 of 2015:

For Petitioner : Mr.V.R.Rajasekaran
For Respondent 1 : Mr.R.Rajeswaran
Special Government Pleader
For Respondent 2 : Mr.P.S.Sivashanmuga Sundaram
For Respondent 3 : Mr.P.S.Jayakumar
For Respondent 4 : No Appearance

COMMON ORDER

Heard the learned counsel for the parties and with their consent, these writ petitions are taken up for final disposal.

2. All the Writ Petitions are filed by the same petitioner P.Prakash and the issue involved in these Writ Petitions relates to an Auction- cum-Tender conducted in respect of lease hold right of a shop owned by the respondent-The Executive Officer, Thammampatti Town Panchayat [Selection Grade] bearing Shop No.5 in J.V.V.T. Shopping Complex.

3. In W.P.No.10254 of 2015, the petitioner seeks for issuance of Writ of Certiorarified Mandamus, to quash the proceedings dated 19.03.2015, which is the Auction Notice issued by the fourth respondent-Thammampatti Town Panchayat. In W.P.No.14406 of 2015, the petitioner has sought for issuance of Writ of Certiorarified Mandamus, to quash the proceedings dated 11.04.2015, by which, the request made by the petitioner for extension of the lease beyond 31.03.2015 was rejected. In W.P.No.20197 of 2015, the petitioner seeks for issuance of Writ of Certiorarified Mandamus, to quash the Resolution No.577(1) dated 01.04.2015, insofar as he is concerned, and, the consequential orders dated 01.04.2015 and 12.06.2015 and to renew the lease of Shop No.5 in his favour.

4. By the impugned Resolution in WP.No.20197/2015, the shop has been leased out to one R.Balasubramanian, who is said to have been declared as the successful bidder. Since the common issue in all these three Writ Petitions pertains to lease hold right to a shop owned by the respondent-Thammampatti Town Panchayat, all the Writ Petitions were heard altogether and disposed of by a common order.

5. The undisputed facts are, that the respondent-Thammampatti Town Panchayat, which is governed by the provisions of Tamil Nadu District Municipality Act, conducted Public Auction for lease of shops on monthly rental basis for the period from 01.09.2006 to 30.09.2008 and subsequently by complying G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007, the lease was extended with enhanced rate @ 15% as per the conditions stipulated under the said Government Order. Admittedly, the petitioner was inducted as a lessee of the shop in the year 2006 and he continued as such till the year 2012. The controversy now arises is whether the petitioner would be entitled for further renewal of lease of the shop in question beyond the year 2012, by applying G.O.Ms.No.92 or whether the shop should be put up for public auction.

6. The respondent-Thammampatti Town Panchayat would contend that after G.O.Ms.No.92 was issued on 03.07.2007, another Government Order was issued in G.O.Ms.No.181, Municipal Administration and Water Supply Department, dated 19.09.2008 and the said Government Order clearly states that the lease can be only for three years and thereafter the Town Panchayat brought the shops in question for re-auction on 01.04.2015 by the impugned Auction Notification issued on 19.03.2015. Therefore, the contention raised by the respondent-Thammampatti Town Panchayat is that the benefit of G.O.Ms.No.92 dated 03.07.2007 cannot be extended to the petitioner as the subject auction was conducted in accordance with G.O.Ms.No.181 dated 19.09.2008, which is the subsequent Government Order.

7. Further, it is submitted that in the auction conducted, one R.Balasubramanian was declared as a successful bidder at Rs.50,500/- as lease rent, and he has also deposited the money.

8. The learned counsel appearing for the petitioner contended that the lease having been entered, when G.O.Ms.No.92 dated 03.07.2007 was in force, the petitioner was entitled to the benefit of the said Government Order. Secondly, it is contended that G.O.Ms.No.181 dated 19.09.2008 would have no application on the facts of the case since what was granted to the petitioner is a lease and G.O.Ms.No.181 dated 19.09.2008

pertains only to licences. Thirdly, it is contended that the auction was not widely published and all the bidders in the auction invariably produced the Demand Drafts towards Earnest Money dated 29.03.2015 or 30.03.2015, which will go to show that a cartel had been formed and entire auction is vitiated. The another contention raised by the learned counsel for the petitioner is that though the petitioner had participated in the auction by producing a Demand Draft on 01.04.2015, he did not submit any bid, as the amount offered by the bidders was unreasonably high and this according to the petitioner is a view to somehow non-suit the petitioner. On the above grounds, the petitioner seeks to contend that the subject auction itself is to be set aside and the order rejecting the petitioner's request for the renewal of the lease to be quashed and the petitioner has to be granted an extension of lease, as a consequence of which, the offers submitted by R.Balasubramanian (3rd respondent in W.P.No.20197 of 2015) has to be rejected and W.P. No.20197 of 2015 should be allowed.

9. The first objection raised by the respondent Thammampatti Town Panchayat is that, for the subject auction cum tender, G.O.Ms.No.181 dated 19.09.2008 alone would be applicable and G.O.Ms.No.92 dated 03.07.2007 has no application.

10. On a perusal of G.O.Ms.No.181 dated 19.09.2008, it is evidently clear that the said Government Order deals with grant of licence for collection of fees in public markets, public toilets, bus-stand etc., The Government Order does not refer to lease of immovable property. The test to be applied is to ascertain, as to whether the grant is a lease or licence, is well settled in several decision and one of the primary test is whether the grantee has been granted exclusive possession of the premises under issue. If this test is satisfied, then the nature of the grant is undoubtedly a lease transaction. It is not in dispute that when the petitioner become a successful bidder, and was granted the shop in question, he was granted exclusive possession of the shop, as a result of which, the transaction between the petitioner and the respondent Town Panchayat was undoubtedly a lease transaction. Therefore, the contention raised by the Town Panchayat that G.O.Ms.181 alone will apply to the said tender, does not merit acceptance and it is rejected. Having come to the conclusion that G.O.Ms.No.92 would be applicable, it has to be seen as to whether the petitioner is entitled to the benefit of the said Government Order.

11. It is not in dispute that after the tender notification was issued on 19.03.2015, the petitioner participated in the tender and he appeared before the Tender Inviting Authority and also produced the Demand Draft for

Earnest Money. The petitioner while admitting these facts, would contend that he did not quote any amount because of the situation prevailing therein and there was a cartel and there was no wide publicity of the tender cum auction and the amount offered in the tender/auction was abnormally high, more particularly with regard to Shop No.5, which according to the petitioner, was with a malafide intention at the instance of neighbouring shop owner, who is also running a sweet stall.

12. While it might be true, that G.O.Ms.No.92 dated 03.07.2007 would apply to leases of Municipality of Town Panchayat, but the conduct of the petitioner is very relevant and important to be taken note of. Though the petitioner would contend that the auction was not widely published and there was cartel etc., except the petitioner, there has been no other person has challenged the auction, and no other person is said to have approached this Court raising similar plea. Therefore, after the auction have been conducted, the question of considering, as to whether the auction was widely published etc., does not arise, more particularly, when the petitioner himself was a participant. Therefore, in my view, even if G.O.Ms.No.92 dated 03.07.2007 is applicable to leases granted by Town Panchayat, the petitioner is estopped from raising such contention, on account of the fact that, he participated in the tender and on his own volition he has produced the Demand Draft. Therefore, the contention raised by the petitioner stating that the benefit of G.O.Ms.No.92 dated 03.07.2007 should be extended to him, cannot be accepted as the petitioner is estopped by his own conduct.

13. Then, coming to the next issue, that the present successful bidder has not complied with the conditions of the auction, and has not deposited the bid amount within the time permitted and the bid amount offered by the successful bidder is obnoxiously high at the rate of Rs.50,500/-. This contention cannot be raised by the petitioner, more so, when the respondent has filed the counter affidavit, clearly stating, that the successful bidder named R.Balasubramanian has remitted the entire amount of Rs.50,500/- and the possession has been handed over to him.

14. During the pendency of these Writ Petitions, there was a dispute as to whether the petitioner had vacated the premises and voluntarily handed over the possession of the shop. Therefore, this Court has appointed an Advocate Commissioner, who has also produced photographs along with the report which prima-facie shows that the shop in question is vacant. Be that as it may, the successful bidder having offered Rs.50,500/- and the amount having been remitted by him in full and unable to enjoy the lease hold right, on account of the interim order granted by this Court. For all the above reasons, this Court

is not inclined to set aside the lease granted in favour of the R.Balasubramanian (3rd respondent in W.P.No.20197 of 2015). Thus the petitioner having participated in the auction, produced the Demand Draft and yet on his own volition has failed to submit his bid, cannot now turn around and state that the benefit of G.O.Ms.No.92 should have been extended to him.

14. It is further submitted by the learned counsel for the respondent that the petitioner had sublet the shop, even during subsistence of the earlier lease, and in this regard certain documents are placed before this Court. However, this not being the reason for rejection of renewal and while passing order dated 11.04.2015, this Court is not inclined to adjudicate this contentions. Further, it is to be pointed out that the shop in question is owned by a local body, and augmenting the revenue of a local body is important, to carry out the welfare measures for the public. The respondent Town Panchayat has been able to receive a monthly rent of Rs.50,500/- as against the offer made by the petitioner at Rs.12,127.50p + 15% enhancement. Further, from the counter affidavit, it is seen that that upset price fixed for the said shop was Rs.19,500/- which was well within the knowledge of the petitioner. Hence, considering all the above, the petitioner has not made out any grounds to interfere with the impugned orders.

15. Accordingly, the Writ Petitions fail and are accordingly dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To:

1.State of Tamil Nadu

Rep. by its Secretary to Government,
Municipal Administration and
Water Supply Department (T.P.-4)
Secretariat, Chennai-9.

2.Commissioner of Town Panchayats,
Chennai - 108.

3. Commissioner of Town Panchayats,
Kuralagam, Chennai-104.

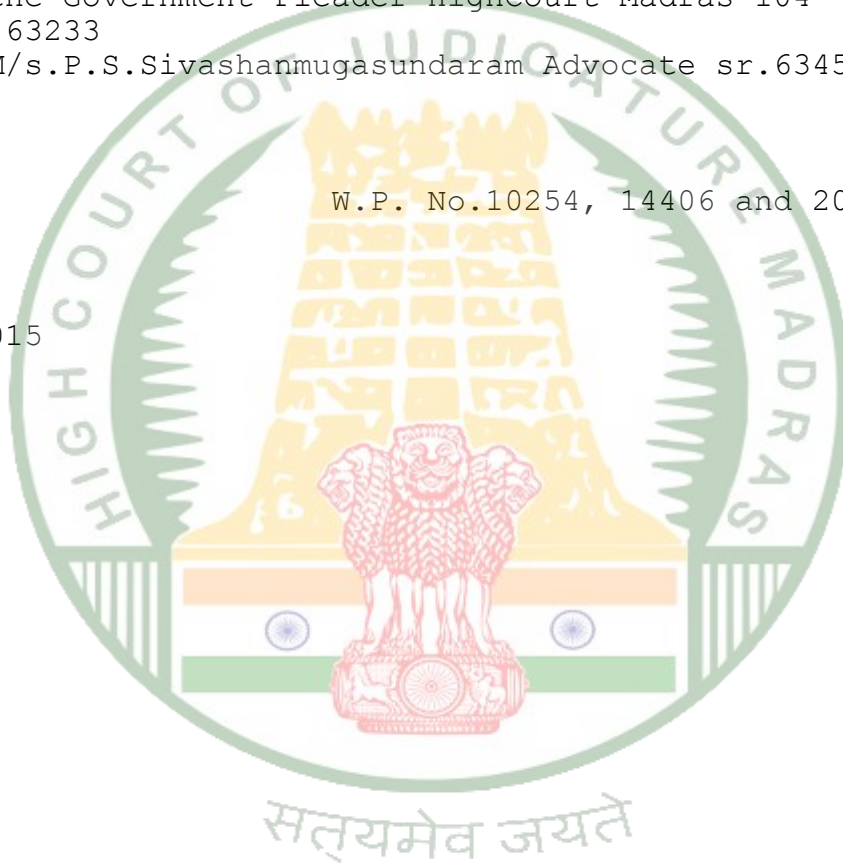
4.District Collector,
Salem District, Salem.

5.Executive Officer,
Thammampatti Town Panchayat [Selection Grade],
Thammampatti, Gangavalli Taluk, Salem District.

+1 cc to M/s.V.R.Rajasekaran Advocate sr.63077
+1 cc to M/S.T.Saravanan Advocate sr 63075
+1 cc to M/S.M.DiGvijayapandian Advocate sr.63107
+1 cc to M/s.P.S.Jayakumar Advocate sr.63299
+1 cc to the Government Pleader HighCourt Madras-104
sr.63224, 63233
+1 cc to M/s.P.S.Sivashanmugasundaram Advocate sr.63455

W.P. No.10254, 14406 and 20197 of 2015

aa14/12/2015



WEB COPY