

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2015

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.NOS.18346, 18417, 19324 to 19326, 22975,
23343 & 25264 of 2015

&

M.P.Nos.1 of 2015 in all W.Ps.

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M.P.No.2 of 2015 in W.P.Nos.18346 & 18417 of 2015

S.Vanjikumar	...Petitioner in W.P.No.18346 of 2015
T.Kathirvel	...Petitioner in W.P.No.18417 of 2015
S.Senthilvel	...Petitioner in W.P.No.19324 of 2015
S.Chandrakumar	...Petitioner in W.P.No.19325 of 2015
N.Ravikumar	...Petitioner in W.P.No.19326 of 2015
S.V.Muruganantham	...Petitioner in W.P.No.22975 of 2015
K.Uma Shankar	...Petitioner in W.P.No.23343 of 2015
K.Muhusamy	...Petitioner in W.P.No.25264 of 2015

Vs

1. Secretary to Government,
Municipal And Water Supply Department, Fort. St. George,
Chennai - 9.
2. Udumalpet Municipality,
Through its Chairman, Udumalpet,
Tiruppur District.
3. The Commissioner,
Udumalpet Municipality Udumalpet,
Tiruppur District

...Respondents in all WPs

Prayer

Writ Petition filed Article 226 of the Constitution of India for issuance of (i)W.P.No.18346/2015, WP.19324 to 19326,22975,23343,25264/2015 Writ of Declaration, declaring the second respondent's resolution No.1789, dated 01.04.2015, and auction dated 21.04.2015, as being ultravires, and the first respondent's G.O.Ms.No.92, dated 03.07.2007 and Articles 19 and 21 of Constitution.

W.P.No.18417/2015: Writ of Mandamus forbearing the respondents 2 and 3 from vacating the petitioner shop No.3 Western Side of

Central Bus Stand Municipal Commercial Complex Udumalpet
Tiruppur District:

For Petitioner in W.P.No.18346/2015 : Mr.S.Vanjikumar
For Petitioner in W.P.No.18417/2015 : Mr.C.Prakasam
For Petitioner in W.P.No.19324
to 19326/2015 : Mr.K.S.Kumar
For Petitioner in W.P.No.22975
& 23343/2015 : Mr.R.Nalliyappan
For Petitioner in W.P.No.25264/2015 : Mr.N.Thiagarajan

For Respondent- 1 in all W.Ps. : Mr.R.Rajeswaran
Special Government Pleader
For Respondents 2 and 3 in all W.Ps.: Mr.A.S.Thambusamy and
Mr.B.Anand.

COMMON ORDER

Though the prayer sought for in these Writ Petitions are slightly different, the sum and substance of the challenge made by the petitioners is to the Resolution, dated 01.04.2015, passed by the Udumalpet Municipality, in bringing the leasehold right for the shops owned by the Municipality for auction.

2. The petitioners have been inducted as lessees of the various shops owned by the respondent-Municipality during the year 2003. When the respondent-Municipality sought to bring the shops for auction, an Association called "Udumalpet Ulatchi Kadai Vyabarikal Nala Sangam", filed a Writ Petition before this Court, viz., W.P.No.10656 of 2015, to quash the Notification, dated 03.04.2015, published in the Tamil Daily, 'Dinamani', and to forbear the respondents from interfering with their peaceful possession of the shops, except, in accordance with law. The said Association also sought for an interim stay of the Notification, dated 03.04.2015. This Court, while ordering notice of motion to the respondents on 17.04.2015, observed that, it is always open to the petitioners to participate in the tender-cum-auction, and the matter was directed to be listed on 11.06.2015. The petitioners were also directed to provide details of the list of members, their business as well as the number of years, they were carrying on the business, and the respondent-Municipality were directed to furnish list of shop owners, and whether any of them had sublet the shops in favour of any third parties, and to file counter affidavit replete with all those details. It is noteworthy to point out that this Court did not grant any order of interim stay. Some of the learned counsel appearing for the petitioners have admitted the fact that this Court expressed its view that an Association would not be justified in approaching this Court, challenging the notification, since the leasehold right was that of an

individual right. In any event, the auction took place, as scheduled, and the petitioners herein have participated in the auction.

3. In my view, the interim order, dated 17.04.2015, passed in W.P.No.10656 of 2015 itself, has become infructuous, inasmuch, the petitioners have participated in the tender-cum-auction. However, the rights of the petitioners herein cannot be foreclosed solely on that ground, since they have individually approached this Court, and raised separate grievance and they have to be gone into.

4. Heard both sides and perused the materials placed on record.

5. It is the case of the petitioners that they were inducted as lessees of the shops owned by the respondent-Municipality in the year 2003, and they have been paying fair rent, and once in three years, the rent would be increased by 15% in terms of the Order passed by the Government, vide G.O.Ms.No.92 of Municipal Administration & Water Supply Department, dated 03.07.2007 (hereinafter referred to as 'G.O.Ms.No.92'). The petitioners' further case is that, they are entitled to continue in the shops as lessees for a period of five years on payment of enhanced rent, and the benefit of G.O.Ms.No.92, is applicable to them. Further, the petitioners would state that, in certain cases, shops have been transferred, and the lease is deemed to have commenced only from the date of transfer, and therefore, in accordance with G.O.Ms.92, the petitioners are entitled to further renewal.

6. Thus, the contention raised by the petitioners is that, as per the terms of G.O.Ms.92, they are entitled to continue as lessees on payment of 15% enhanced lease amount. Further, in certain Writ Petitions, there is allegation that the Commissioner of Udumalpet Municipality compelled the petitioners to participate in the auction held pursuant to the Notification dated 11.06.2015. However, such allegation has not been substantiated by placing any materials, nor the said Commissioner has been impleaded as respondent in his personal capacity. Therefore, the allegation of mala fide made by the petitioners that they were compelled by the Commissioner to participate in the auction is rejected as unsubstantiated. This leaves us with the only issue as to whether the petitioners are entitled to the benefit of G.O.Ms.No.92.

7. Admittedly, in these cases, the petitioners have been inducted as lessees in the year 2003 to 2005. That part, G.O.Ms.No.92 does not contemplate about the renewal of lease beyond the period of 8 years. Furthermore, none of the petitioners has made any request for extension of the lease

period by applying the terms of G.O.Ms.No.92. Therefore, the petitioners' contention that, while granting transfer of allotment in certain cases, G.O.92 was referred to, and therefore, the said Government Order should be made applicable from the date of transfer of allotment made to them also, deserves to be rejected. Though the allotments were transferred, as requested by some of the petitioners, the lease shall date back to the original date made in favour of the original lessee, and the transfer of name as lessee does not amount to a fresh grant. In fact, there was a challenge to the auction by three persons, who were all lessees of the respondent- Municipality raising several grounds by filing W.P.No.29710 to 29712 of 2015. In the said Writ Petitions, they questioned the fixation of the lease rent at Rs.12,000/- and the demand of security deposit of Rs.2,00,000/-. The said Writ Petitions were dismissed by order, dated 22.09.2015, with very strong observations made against the shop owners. At this stage, it would be worthwhile to extract the operative portion of the said order, dated 22.09.2015, which is as hereunder:-

" 7. It is very strange to note that persons choose to challenge the very order which is passed in their favour by the third respondent, Municipality giving the lease right to continue the business for a further period of three years, on the ground that the said decision to allot the shops was thrust upon them. First of all, the contentions are all liable to be rejected for the simple reason that the auction was only conducted by the third respondent inviting bidder. It was only an invitation and it is upto the persons to accept the invitation or not. In these cases, the petitioners are those who accepted the invitation, participated in the auction voluntarily and agreed to pay a sum of Rs.12,000/- as monthly rent. Having done so, they are estopped from questioning the process. Even now, it is not too late for the petitioners to continue the business by paying Rs.12,000/- as monthly rent and equally it is open for them to vacate and handover the possession of the shop to the Municipality, if they are not ready to pay the amount as fixed.

8. As already observed, the petitioners, voluntarily participated in the auction and quoted Rs.12,000/- as monthly rent. Since the petitioners continue to be lessees, they volunteered to take part in the

auction and quoted the amount and agreed for Rs.12,000/- as monthly rent. The contention that the amount fixed in the auction does not reflect the market value has got no legs to stand before this Court, since it is only a contract between the petitioners and the respondent. They voluntarily concurred to take part in the auction and it is not open to them now to make a claim that Rs.12,000/- fixed as monthly rent by the respondent is exorbitant. The judgment relied upon by the learned counsel for the petitioners reported in (2008) 1 MLJ 682, cited supra, is in now way connected with this matter as the said issue in the judgment is with regard to the extension of lease, whereas, this issue relates to auction. When any lessee, who is entitled to automatic extension for three years has to pay 15% more than what has been paid. Only in those circumstances, the judgment is of use.

9. With regard to fixation of Rs.2,00,000/- as caution deposit, it is always within the discretion of the respondent to fix the quantum of auction deposit. It is not compulsory for the petitioners to agree for any one of the condition of the auction. It is not too late for the petitioner to walk out from the lease. They can always proceed so by handing over the possession of the shops to the respondent. As long as the petitioners remain in possession of the shops agreeing to pay Rs.12,000/- as monthly rent, which is obligatory on the part of the petitioners to pay Rs.12,000/-.

10. There is a contention that the impugned order has been passed without the resolution of the Municipality. However, a perusal of the impugned order would show that by virtue of Resolution No.1826, dated 06.05.2005, the Udumalpet Municipality already approved the auction in favour of the petitioners, which has been incorporated in para 2 of the impugned order. Therefore, the said contention is also not sustainable. In view of the above reasons, the petitioners are not entitled to maintain the Writ Petitions as the impugned order has been

passed based on the offer given by them and approved by the Municipality. The petitioners cannot expect anything for a song, especially, when their participation is voluntary.

11. This kind of proceedings are very many only in Undumalpet Municipality area. This Court has almost dealt with more than ten cases with regard to the auction of the shops of the Udumalpet Municipality.. It seems that there is a syndicate active and it is evident in this case also. It is proved by the fact that the petitioner alone is the bidder for his shop but for the fourth respondent Officer, the Municipality would have lost heavy amount as revenue. Only Rs.1888/- was paid by the petitioners as monthly amount during previous lease before the auction was conducted. That itself would show that even the earlier auction was not done according to law and by forming a syndicate with other vendors or the shop owners they are causing heavy loss to the Municipality periodically. For breaking the rind/syndicate of the vendors, the fourth respondent has to be appreciated. It is the reality almost in all local bodies, by forming syndicate, the shops are taken for lesser amount causing heavy loss to the local bodies. This issue has to be taken care of by the appropriate authorities. Though these Writ Petitions are liable to be dismissed with heavy cost, for having voluntarily participated and accepted for the amount and thereupon for approaching this Court. However, this Court is not awarding any costs due to judicial restraint.

12. It is made clear that if the petitioners want to continue as lease/license, they shall file an affidavit before this Court within one week from today stating that they are ready to pay the rent as agreed upon, failing which, the petitioners shall vacate and handover the possession of the premises to the respondents, on or before 01.10.2015.

13. In the result, these Writ Petitions are dismissed. No costs."

8. The learned counsel appearing for the respondent-Municipality submitted that Writ Appeals preferred against the said order in W.A.Nos.1524 to 1526 of 2015, were dismissed by the Hon'ble Division Bench, and those petitioners have filed affidavits, stating that they are ready and willing to pay the agreed rent, and therefore, they are continuing. Thus, observations made in the order passed by this Court in Writ Petition Nos.29710 to 29712 of 2015 itself, would be suffice to deny the relief sought for in the present Writ Petitions. That apart, the learned counsel for the respondent-Municipality has invited this Court's attention to the decision rendered by the Hon'ble Division Bench of this Court reported in (2014) 5 MLJ 129, in re (P.Muthusamy Vs. State of Tamil Nadu, rep. by its Secretary and another) wherein, it is observed that the object of letting out of the shops is to collect more revenue for the Municipality, which is meant to be used for welfare measures, and when resolution has been passed after making detailed discussion, the same cannot be interfered with. Further, the Division Bench pointed out that the assessment made, also indicates that the proposed auction would bring more money, and the best way to get maximum revenue is by way of public auction, and finally held that there was no arbitrariness in the said case.

9. Reverting to the cases on hand, it is an admitted fact the petitioners have participated in the auction conducted by the respondent-Municipality, and offered higher amount of lease rent, therefore, they are not justified in now approaching this Court, challenging the auction proceedings, by raising a species plea that the Commissioner of Municipality compelled them to participate in the auction. As this plea, having not been substantiated by any materials, they have been rejected by this Court in the preceding para.

10. Further, it is also evident from the counter affidavit filed by the respondent-Municipality that all the petitioners have participated in the auction, and offered higher amount. In such circumstances, the petitioners are estopped from going back on their offer, and contending that they were compelled to participate in the auction at the behest of the Commissioner of Municipality. In the counter affidavit filed by the Commissioner, Udumalpet Municipality in connection with W.P.No.19324 of 2014, 19325, etc., Annexure-A has been given, listing out the names of the petitioners, who took part in the auction conducted by the respondent-Municipality, and the various amounts offered by the petitioners towards the lease. The amount offered by the petitioners binds them, therefore, if they are willing to pay the amount, as offered by them, in the auction conducted by the respondent/Municipality, they will be entitled to continue in the occupation of the shops owned by the

respondent-Municipality as lessees, failing which, it is open to the respondent/Municipality to dispossess them.

11. For the foregoing reasons, the Writ Petitions, viz., W.P.Nos.18346, 18417, 22975, 23343 & 25264 of 2015 fails, and they are dismissed.

12. Insofar as Writ Petitions Nos.19324 to 19326 of 2015 are concerned, the petitioners contention is that their allotment was made in February 2014, and therefore, they are entitled to the benefit of G.O.Ms.92. This contention is factually incorrect, for the simple reason that, it is a case of transfer of allotment made in February 2014, and not allotment by itself. Therefore, whatever benefit accrued in favour of the original lessees alone, the transferees would be entitled to enjoy. The original lease having been granted in the year 2003, the benefit of G.O.Ms.No.92 will not be applicable to the petitioners. Accordingly, Writ Petitions Nos.19324 to 19326 of 2015 are also dismissed.

13. In the result, all the Writ Petitions are dismissed, as stated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

True Copy

Sub Assistant Registrar

To

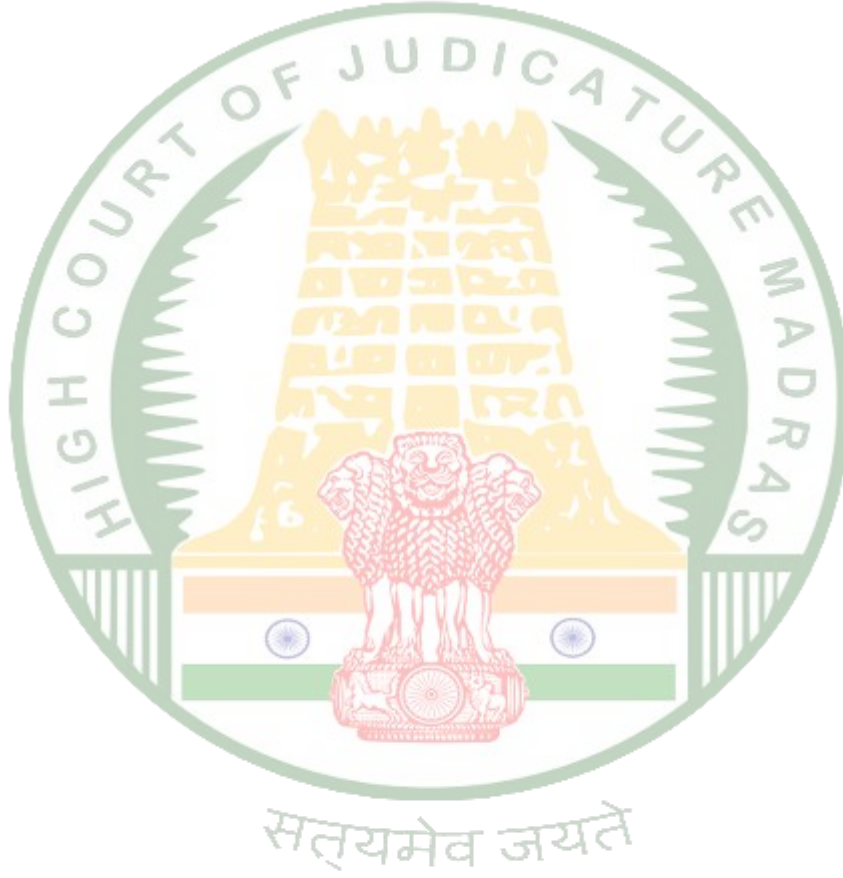
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Udumalpet.
3. The Commissioner,
Udumalpet Municipality Udumalpet.

+1cc to M/S.R.Nalliyappan, Advocate Sr.60183
+1cc to M/S.K.S.Kumar, Advocate Sr.60426
+1cc to M/S.C.Prakasam, Advocate sr.60677
+1cc to M/S.A.S.Thambusamy, Advocate Sr.60427
+1cc to M/S.Thiagarajan, Advocate sr.60883

+1cc to M/S.Aqtib shah, Advocate Sr.60508
+1cc to The Government Pleader Sr.60700

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