

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.7416 of 2013
and M.P.Nos.1 and 2 of 2013

T.M.Duraisamy

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep by its Secretary to Govt.,
Municipal Administration and Water Works Department,
Fort St.George,
Chennai -600 009.
2. The Commissioner,
Municipal Administration and Water Supply Department,
Ezhilagam, Chepauk,
Chennai-600 005.
3. The Assistant Director,
Chennimalai Town Panchayat,
Chennimalai,
Erode.
4. The Executive Officer,
Chennimalai Town Panchayat,
Chennimalai, Erode.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to renew the lease of the site in the South Eastern corner in the Tyagi Kumaran Chennimalai Bus Stand in Chennimalai, Erode District in which the petitioner has set up the "Murugan Chappal Shop" for a period of 3 years from 01.04.2013 till 30.03.2016 and thereafter in terms of G.O.Ms.No.92, Municipal Administration and Water Supply (Finance 4) Department dated 03.07.2007 and consequently forbear the respondents from evicting the petitioner from the said site as long as he pays the rent in terms of the said G.O.

For Petitioner : M/s.C.Uma
For Respondents : Mr.V.Jayaprakash Narayan
Spl. Govt Pleader for R1 to R3
Mr.N.Ponraj for R4

O R D E R

The petitioner seeks for issuance of a Writ of Mandamus directing the respondents to renew the lease of the site in the South Eastern corner in the Tyagi Kumaran Chennimalai Bus Stand in Chennimalai, Erode District in which the petitioner has set up the "Murugan Chappal Shop" for a period of 3 years from 01.04.2013 till 30.03.2016 and thereafter in terms of G.O.Ms.No.92, Municipal Administration and Water Supply (Finance 4) Department dated 03.07.2007 and consequently forbear the respondents from evicting the petitioner from the said site as long as he pays the rent in terms of the said G.O.

2. It is stated that on 20.03.2007, the fourth respondent conducted auction for lease of vacant sites measuring 160 sq. feet situated in Tyagi Kumaran Bus Stand in Chennimalai in Erode District for setting up shops. The petitioner was the successful bidder and he obtained lease initially for a period of 3 years from 01.04.2007 to 30.03.2010. Thereafter the 1st respondent issued G.O.Ms.No.92 dated 03.07.2007 stipulating conditions to the effect that lease will be renewed after the 1st three year period for a further period of 3 years and will be renewed for a total period of 9 years with enhanced lease rental of 15% of every 3 years period. As per the G.O.Ms.No.92 dated 03.07.2007, the petitioner sent a request to the fourth respondent for renewal of lease for further period of 3 years from 01.04.2013 till 30.03.2016, agreeing to pay the enhanced lease rental 15% more than the existing lease rental, but the fourth respondent did not respond to his request and insisted the petitioner to vacate the shop. Therefore, the petitioner has filed this writ petition.

3. It is to be noted that the shop is in occupation of the existing lessee/petitioner and in the light of G.O.Ms.No.92 has been passed by the Government, the respondent Town Panchayat is bound to consider the same before bringing the shop for public auction. The learned counsel for the respondent Town Panchayat relied on the judgment of the Division Bench of this Court in P.Muthusamy v. State of Tamil Nadu [(2014) 5 MLJ 129], wherein it has been held that the object of letting out the shops is to collect more revenue for the Municipality, which is meant to be used for welfare measures and since the transactions are commercial in nature, the petitioners therein being licensees, cannot insist that the rent, which as they think, just and proper alone is liable to be paid. Further by

considering G.O.Ms.No.92 and other Government Orders, the following observation was made:

"21..... 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 licensee 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."

4. Similar writ petitions were filed by three other leasees in W.P.Nos.27471, 28382 and 29473 of 2012 and those writ petitions were disposed of by this Court on 20.02.2015 with certain directions in consonance with the Division Bench Judgment cited supra and the same is extracted hereunder:

"5. In the light of the above, these writ petitions may be disposed of with a direction to the respondent Town Panchayat to intimate the petitioners the proposed lease rent which the Panchayat is willing to offer to the petitioners and if the petitioners are willing to accept such offer, then the lease shall be granted in favour of them. The above direction would be in public interest as it would fetch huge revenue and it is also in consonance with the direction given by the Hon'ble Division Bench in the above cited judgment.

6. Accordingly, these writ petitions are disposed of with a direction to the respondent Town Panchayat to indicate the petitioners the lease rent which the Town Panchayat proposes to fix for the shops in question presently occupied by the petitioners and if the petitioners are willing to accept the offer, then the respondent Town Panchayat shall consider the same and grant lease to the petitioners and if they are not willing, it is open to the respondent Town Panchayat to issue fresh tender cum public auction notification and proceed in accordance with law. No. costs. Consequently, connected miscellaneous petitions are closed."

5. In the light of the above, this writ petition is disposed of with a direction to the respondent Town Panchayat to indicate the petitioner the lease rent which the Town Panchayat proposes to fix

for the shop in question presently occupied by the petitioner and if the petitioner is willing to accept the offer, then the respondent Town Panchayat shall consider the same and grant lease to the petitioner and if the petitioner is not willing, it is open to the respondent Town Panchayat to issue fresh tender cum public auction notification and proceed in accordance with law. No. costs. Consequently, connected miscellaneous petitions are closed.

jvm

-s/d-

Assistant Registrar(CO)

Dt:27/2/2015

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Govt.,
State of Tamil Nadu,
Municipal Administration and Water Works Department,
Fort St.George, Chennai.
2. The Commissioner,
Municipal Administration and Water Supply Department,
Ezhilagam, Chempauk,
Chennai-600 005.
3. The Assistant Director,
Chennimalai Town Panchayat,
Chennimalai,
Erode.
4. The Executive Officer,
Chennimalai Town Panchayat,
Chennimalai,
Erode.

+ 1 cc to M/s.C.Uma, Advocate SR 9826

+ 1 cc to Mr.N.Ponraj, Advocate SR 10114

br(co)
prk27/2

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