

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.02.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.Nos.4633 to 4639 of 2015
4793 to 4796 of 2015
and
M.P.Nos.1 & 2 of 2015 (in all W.Ps)

S.Selvam	....	Petitioner in WP.4633/2015
S.Kandasamy	...	Petitioner in WP.4634/2015
M.Muniappan	....	Petitioner in WP.4635/2015
G.Mathesh	....	Petitioner in WP.4636/2015
R.Indirani	....	Petitioner in WP.4637/2015
B.Viswanathan	....	Petitioner in WP.4638/2015
P.Kandasamy	....	Petitioner in WP.4639/2015
K.S.Murali	....	Petitioner in WP.4793/2015
V.Arumugam	....	Petitioner in WP.4794/2015
K.Sundara Ganesan	....	Petitioner in WP.4795/2015
T.A.Subramaniam	....	Petitioner in WP.4796/2015

vs.

1. The Executive Officer,
Selection Grade Town Panchayat,
Tharamangalam, Omalur Taluk,
Salem District.
2. The President,
Selection Grade Town Panchayat,
Tharamangalam, Omalur Taluk,
Salem District ... Respondents in WP.4633 to 4639/2015
1. The Assistant Director of Town
Panchayat, Salem.
2. Tharamangalam Selection Grade
Town Panchayat rep. by
Executive Officer, Tharamangalam
Salem District.
3. The Chairman,
Tharamangalam Selection Grade
Town Panchayat, Tharamangalam,
Salem District. ... Respondents in WPs.4793 to 4796/2015

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records relating to the Public Auction Notice in Na.Ka.No.3/2015/A1 dated 13.2.2015 on the file of the respondents quash the same in so far as the Shop No.3, 4, 9, 10, 11, 3 and 14 respectively in Sl.No.8 of the Auction Notice is concerned and direct the respondent to renew the lease of the Shop No.14 in Sl.No.8 of the Auction Notice for the period 2015-16 to 2017-18.

WP.4793 to 4796 of 2015: This Petition to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned public auction advertisement notice in Na. Ka. No.3/2015/A1 dt 13.2.2015 (served on 20.2.2015 to the petitioner) issued by the 2nd respondent and quash the same in respect of the petitioners shop viz. Shop No.1, 13, 2 and 5 situated at Tharamangalam Bus Stand (I.U.D.P) Omalur Taluk Salem District consequently direct the respondents to extend the lease period as per G.O.Ms. No.92 Municipal Administration and Water Supply Department (MA 4) dt 3.7.2007 in respect the said shop without any break of lease or/and in any manner vacating the petitioner from the said shop without conduction any auction on 25.2.2015 or on any other date.

For Petitioners : Mr.S.Doraisamy
in W.P.Nos.4633 to 4639 of 2015

Mr.R.Neelakandan for
Mr.N.Sathyamoorthi
in W.P.Nos.4793 to 4796 of 2015

For Respondents : Mr.R.Ravichandran,A.G.P. and
Mr.R.Vijayakumar,A.G.P.
in all W.Ps.

COMMON ORDER

Heard Mr.S.Doraisamy, learned counsel for the petitioners in W.P.No.4633 to 4639 of 2015 and Mr.R.Neelakandan for Mr.N.Sathiyamoorthi, learned counsel for the petitioners in W.P.Nos.4793 to 4796 of 2015 and Mr.R.Ravichandran, learned Additional Government Pleader and Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents in all the writ petitions and with the consent of the parties, the writ petitions are taken up for final disposal at the admission stage.

2. In all these writ petitions, the petitioners, who are lessees of respective shops, owned by the respondent Town Panchayat, have sought for issuance of a writ of certiorarified mandamus to quash the Notification issued by the respondent Town Panchayat, bringing for public auction the leasehold right in respect of various properties owned by the respondents, including the shops in question.

The only ground on which the impugned order has been challenged is by contending that as per G.O.Ms.No.92, Municipal Administration and Water Supply Department (MA4), dated 3.7.2007, the petitioners are entitled to continue for three more years as lessees, subject to increase in payment of the lease amount. It is stated that suits have been filed before the District Munsif Court, Omalur and in the said suits, an order of status-quo has been granted, protecting the petitioners possession of the shops in question.

3. The petitioners would challenge the impugned Notification on the ground that all of them have exercised options, as per G.O.Ms.No.92, requesting for renewal of lease and agreeable for enhanced lease amount. The petitioners would also rely upon the communication of the Assistant Director (Panchayats), Salem Division, addressed to the Director of Municipal Administration, dated 9.3.2013, stating that the lease granted in favour of the petitioners would be extended up to 2017.

4. The First Bench of this Court in the case in P.Muthusamy vs. State of Tamil Nadu, rep.by its Secretary to Government, Municipal Administration and Water Supply Department, Chennai and another (2014) 5 MLJ 129 has held in paragraph No.21 as follows:

"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."

5. If the aforementioned decision is applied to the facts of this case, it is clear that the petitioners cannot dictate terms that they alone should be entitled to continue as lessees and they will only pay the lease amount as determined by them. The respondent being a local body is entitled to augment its resources by increasing the lease rental on reasonable basis, by following the norms fixed by the Government or the Public Works Department and the petitioners being lessees of the shops, though have a right to seek for extension, by virtue of G.O.Ms.No.92, the Honourable First Bench has held that it is not an absolute or indivisible right. The right is exercisable subject to restrictions and bearing in mind the financial well being of the Town Panchayat.

6. Thus, by applying the decision of the Honourable First Bench, referred to supra, these writ petitions are disposed of by directing the first respondent Town Panchayat to intimate to the petitioners the lease amount, which they should agree to pay, which according to the respondents is as per the norms fixed by the Government/P.W.D for determination of the lease amount of public buildings. On such intimation being given to the petitioners, the petitioners shall exercise option and if they are willing to accept the amount, then the respondent Town Panchayat shall extend the lease for further period of three years on such agreed terms and on such payment of enhanced lease amount. On the contrary, if the petitioners are unwilling to accept the offer made by the Town Panchayat, then the respondent Town Panchayat is entitled to bring the shops for public auction and the petitioners should vacate and handover possession of the shops to the respondent. Since the auction is scheduled to be conducted on 25.02.2015, the respondent/Panchayat shall intimate the lease rental, which they propose to fix, before conduct of auction on 25.2.2015.

7. The writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CO)

Dt:24/2/2015

True Copy

Sub-Assistant Registrar

To

1. The Executive Officer,
Selection Grade Town Panchayat,
Tharamangalam, Omalur Taluk,
Salem District.
2. The President,
Selection Grade Town Panchayat,
Tharamangalam, Omalur Taluk,
Salem District
3. The Asst. Director of Town Panchayat
Salem
4. Tharamangalam Selection Grade
Town Panchayat rep. by
Executive Officer, Tharamangalam
Salem District.

5. The Chairman,
Tharamangalam Selection Grade
Town Panchayat, Tharamangalam,
Salem District.4. Tharamangalam Selection Grade

+ 2 ccs to Mr.R.Ravichandran, Advocate SR 10044

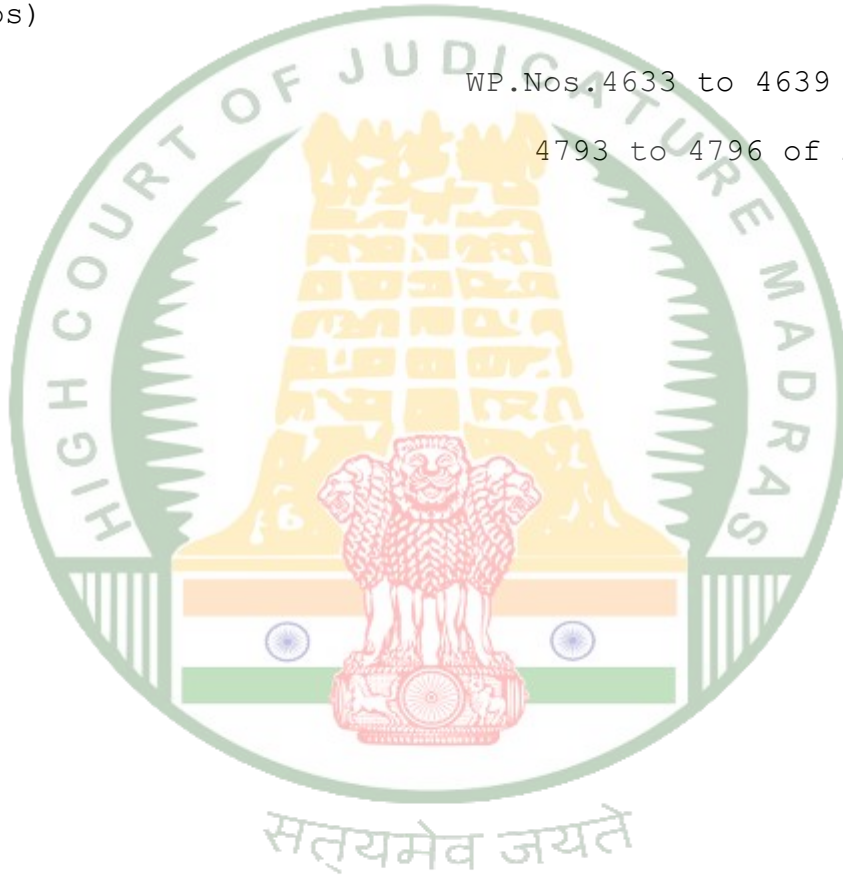
+ 1 cc to Mr.N.Sathiamurthy, Advocate SR 9902

+ 1 cc to Mr.S.Doraisamy, Advocate SR 10042

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