

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2015

CORAM

THE HONOURABLE Mr. JUSTICE T.S. SIVAGNANAM

W.P.No.8252 of 2015
and
M.P.Nos.1 and 2 of 2015

R.Kannaiayan

... Petitioner

vs.

1. The Director,
Commissioner of Municipal Administration,
Elizhagam, Chepauk,
Chennai-600 005.

2. The Regional Director of
Municipal Administration,
JG Nagar, 1st street,
Kumara Nanthapuram,
Tiruppur.

3. The Commissioner,
Palladam Municipality,
Palladam,
Tiruppur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue Writ of Certiorarified Mandamus calling tender as per notification vide V.A.No.79/2015/Se.Ma.Tho.A/Thiruppur/dated 12.03.2015, S.No.2 and to quash the same in so far as S.No.2 of the tender notice is concerned and consequently direct the respondent to consider the petitioner representation dated 04.02.2015 and to extend the period of petitioner lease of running the two wheeler parking shed for a further period.

For Petitioner :

Mr.M.Gnanasekar
for M/s.S.P.Mullai

For Respondents :

Mr.V.Jayaprakash Narayanan
Spl. G.P. for R1 & R2
Mr.B.Anand for R3

ORDER

Heard Mr.M.Gnanasekar, learned counsel for M/s.S.P.Mullai, learned counsel appearing for the petitioner and Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.B.Anand, learned counsel appearing for the 3rd respondent.

2. The petitioner seeks the following relief:-

"For the reason stated above in the accompanying the affidavit, it is therefore prayed that this Hon'ble Court may be pleased to issue appropriate Writs, Orders or Direction and in particular issue a Writ in Nature of Certiorarified Mandamus after calling tender as per notification vide V.A.No.79/2015/Se.Ma.Tho.A/Thiruppur, dated 12.03.2015, S.No.2 and to quash the same in so far as S.No.2 of the tender notice is concerned and consequently direct the respondent to consider the petitioner representation dated 04.02.2015 and to extend the period of petitioner lease of running the two wheeler parking shed for a further period and pass such further orders to meet the ends of justice Award costs and thus render justice."

3. The petitioner was granted licence to run a two wheeler parking stand attached to Palladam Municipal Bus Stand. The petitioner would state that he was unable to enjoy the fruits of the licence for the full period on account of the fact that the bus stand was closed for renovation and for developmental works.

4. The fact that the bus stand was closed has not been disputed by the respondents and the respondents would state that the bus stand was closed for a period of six months.

5. The petitioner, therefore, requested the respondents to extend the licence period since admittedly, he was not able to enjoy the full licence period for the reason not attributable to him. Since representation of the petitioner dated 04.02.2015 was pending with the Commissioner, Palladam Municipality and not considered, the petitioner has filed W.P.No.3414 of 2015 and by order dated 11.02.2015, this Court directed the respondent to consider the representation of the petitioner on merits and in accordance with law on or before 19.02.2015. Thereafter, on 16.02.2015, the petitioner submitted a representation to the 3rd respondent to consider his representation and pass orders. Since the 3rd respondent has not passed orders on the representation of the petitioner and proposed to conduct auction on 20.02.2015 in respect of the two wheeler parking

shed, the petitioner has filed W.P.No.4355 of 2015 forbearing the respondents not to conduct the auction for two wheeler parking shed. The said writ petition was dismissed by this Court vide order dated 20.02.2015 holding that writ of mandamus cannot be issued to implement the earlier direction issued by this Court and the direction sought for by the petitioner cannot be granted. However, the said order made will not prevent the petitioner from participating in the auction proceedings. According to the petitioner, without considering the representation of the petitioner dated 16.02.2015, the impugned tender notification was issued.

6. Today when the matter is heard, the learned counsel for the 3rd respondent Municipality has produced before this Court the copy of the order dated 20.02.2015 rejecting the petitioner's representation. On a perusal of the order of the 3rd respondent dated 20.02.2015, it is seen that there is no reason assigned by the 3rd respondent for rejection of the petitioner's representation. The facts pleaded by the petitioner has not been considered. The petitioner has specifically stated that he could not enjoy the licence period fully because of the closure of the bus stand, has not been considered by the 3rd respondent. Therefore, the order passed by the 3rd respondent dated 20.02.2015 is clearly contrary to the letter and spirit of the direction given by this Court in the earlier W.P.No.4355 of 2015, dated 20.02.2015. Therefore, the order dated 20.02.2015 passed by the 3rd respondent is held to be unsustainable in the eye of law. Though the petitioner has not specifically sought for quashing the order dated 20.02.2015 passed by the 3rd respondent, the petitioner cannot be faulted because the said order is yet to be received by the petitioner. It is the duty of the 3rd respondent to communicate the said order to the petitioner which according to them has been despatched.

7. In the light of the above, this Court is inclined to mould the relief sought for and accordingly, the writ petition is disposed of by setting aside the order dated 20.02.2015 passed by the 3rd respondent in Na.Ka.No.1422/2014/A1 and there will be a direction to the respondents to defer the auction/tender in respect of item No.2 of the impugned tender notification with a further direction to the respondents to consider the petitioner's representation afresh taking note of the facts pleaded by the petitioner and also take note of the fact that the bus stand has been closed for a period of six months and pass orders on merits and in accordance with law within a period

of ten (10) days from the date of receipt of a copy of this order after issuing notice to the petitioner herein. No costs. Consequently, M.P.Nos.1 and 2 of 2015 are closed.

bbr

-s/d-
Assistant Registrar(CO)
Dt:26/3/2015

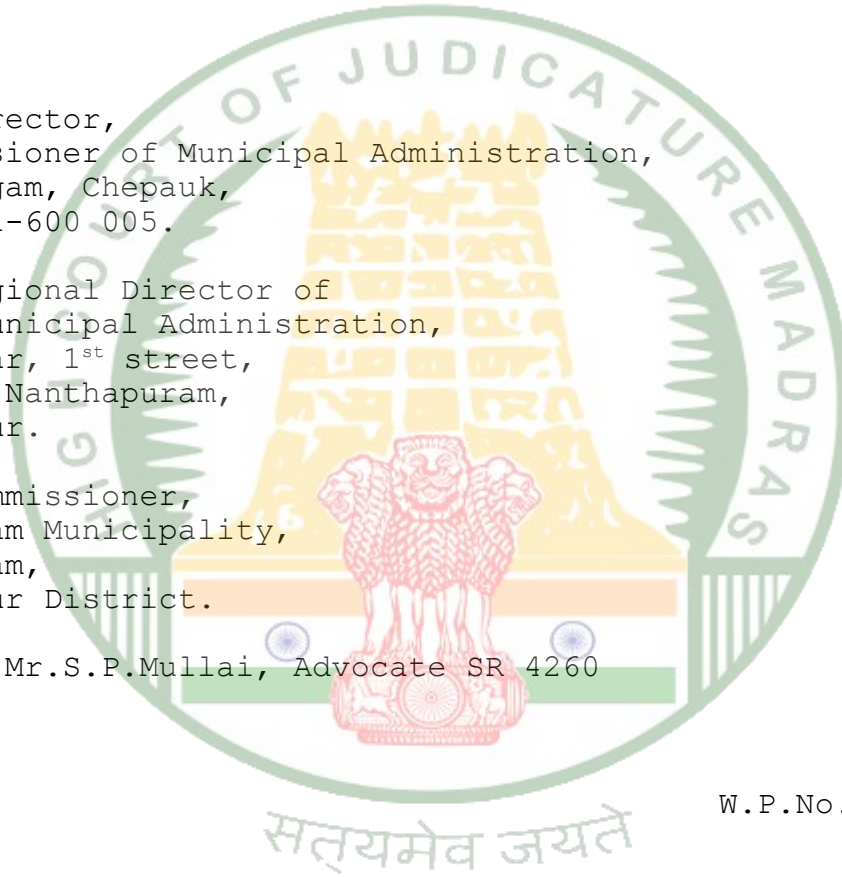
True Copy

Sub-Assistant Registrar

To

1. The Director,
Commissioner of Municipal Administration,
Elizhagam, Chempauk,
Chennai-600 005.
 2. The Regional Director of
Municipal Administration,
JG Nagar, 1st street,
Kumara Nanthapuram,
Tiruppur.
 3. The Commissioner,
Palladam Municipality,
Palladam,
Tiruppur District.
- + 1 cc to Mr.S.P.Mullai, Advocate SR 4260

(co)
prk26/3



W.P.No.8252 of 2015

WEB COPY