

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.27471, 28382, 29473 of 2012
and M.P.No.1 to 3 of 2012 (3 cases)

T.M.Duraisamy .. Petitioner in W.P.No.27471/2012

Mrs.N.Johara Biwi .. Petitioner in W.P.No.29473/2012

Smt.S.Savithri .. Petitioner in W.P.No.28382/2012

Vs.

1. The State of Tamil Nadu,
Rep by its Secretary to Govt.,
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 (Town Panchayats),
Chennimalai Town Panchayat,
Chennimalai,
Erode District.
4. The Executive Officer,
Chennimalai Town Panchayat,
Chennimalai,
Erode District. .. Respondents 1 to 4 in
W.P.Nos.27471 & 29473/2012
5. S.P.Shabhi .. 5th Respondent in
W.P.No.29473/2012
6. State rep. By
The Executive Officer,
Chennimalai Town Panchayat,
Chennimalai, Erode District-638 051.

7. The Secretary, Municipal Administration &
Water Supply, Fort St.George,
Chennai-600 009.

8. The Assistant Director,
Town Panchayats, Erode.

.. Respondents 1 to 3 in
W.P.No.28382/2012

Prayer in W.P.No.27471 of 2012: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 4th respondent relating to tender cum public auction notice having Ref.No.Na.Ka.No.350/2012/A3 dated 01.10.2012 to be held on 18.10.2012 or any other date and quash the same in so far as it relates to Shop No.13 and the Vegetarian Restaurant at Chennimalai Bus Stand Commercial Complex at Chennaimalai, Erode and consequently direct the 4th respondent to extend the lease for the Shop No.13 and the Vegetarian restaurant in the name of Annapoorna at Chennimalai Bus Stand Commercial Complex at Chennimalai, Erode in favour of the petitioner in terms of G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007 read with the Letter No.6655/Na Ni 4(2)/09-1 dated 12.03.2009 issued by the Municipal Administration and Water Supply Department.

Prayer in W.P.No.29473 of 2012: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 4th respondent pertaining to the tender cum public auction of Shop No.1 in Chennimalai Bus Stand Commercial Complex at Chennimalai, Erode held on 18.10.2012 pursuant to tender cum auction notice dated 01.10.2012 having Ref.No.Na.Ka.No.350/2012/A3 and the consequential proceedings of the 4th respondent dated 01.10.2012 having Ref.No.Na.Ka.No.350/2012/A3 directing the petitioner to vacate shop No.1 before 31-10-2012 and quash the same and consequently direct the 4th respondent to extend the lease for the Shop No.1 at Chennimalai Bus Stand Commercial Complex at Chennimalai, Erode in favour of the petitioner in terms of G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007 read with the Letter No.6655/Na Ni 4(2)/09-1 dated 12.03.2008 issued by the Municipal Administration and Water Supply Department.

Prayer in W.P.No.28382 of 2012: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in the impugned tender cum public auction notice in Na.Ka.No.350/2012/A3 dated 01.10.2012 issued by the 1st respondent, quash the said notice, as far as petitioner's shop No.10 situated in Thiyagi Kumaran Bus Stand commercial complex at Chennimalai is concerned directing the respondents to renew the lease shop No.10 situated in Thiyagi Kumaran Bus Stand Commercial Complex at Chennimalai for the period from 01.11.2012 to 31.10.2015 in

consonance with the guidelines given by the 2nd respondent in G.O.Ms.No.92 dated 03.07.2007 and in letter No.6655/Na Ni4(2)-09-1 dated 12.03.2009.

For Petitioner : Mrs.C.Uma
in W.P.Nos.27471 & 29473/2012

Mr.C.S.Dhanasekaran
in W.P.No.28382/2012

For Respondents : Mr.V.Jayaprakash Narayan
Spl. Govt Pleader for R1 to R3 in WP.27471 and
29473/2012 RR2 and 3 in WP.28382/12.

Mr.N.Ponraj
for R4 in W.P.Nos.27471 and 29473/2012
for R1 in W.P.No.28382/2012

Mr.S.Dhanasekaran
for R5 in W.P.No.29473/2012

C O M M O N O R D E R

The petitioners in these writ petitions seek for issuance of a Writ of Certiorarified Mandamus to quash the tender cum auction notification issued by the first respondent dated 01.10.2012 in respect of shops in Chennimalai Bus Stand Commercial Complex at Chennimalai Erode, held on 18.10.2012.

2. It is stated that there are 10 shops in the bus stand and the fourth respondent issued tender cum public auction notification dated 01.10.2012, bringing those 10 shops for public auction and vide proceedings dated 01.10.2012 has directed the petitioners to vacate the shops. Four occupants of the shops filed these writ petitions by contending that they are entitled to extension of their lease, as per G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007. When a representation was made by the petitioners in this regard, the respondent did not consider the same, but directed them to vacate the shops and therefore, the petitioners have filed these writ petitions challenging the tender cum public auction notification as well as the consequential order directing them to vacate the shops and seek for permission to extend lease in their favour by applying G.O.Ms.No.92 dated 03.07.2007.

3. It is seen that the remaining six shops have also been brought up for public auction and bidders have paid varying amounts ranging from Rs.10,000/- to Rs.16,000/-. It is submitted that in respect of shop No.1 occupied by Mrs.N.Johara Biwi, namely the petitioner in W.P.No.29473/2012, as the fifth respondent who was the

successful bidder was not interested and given up his claim, the petitioner therein continues to be in possession.

4. It is to be noted that the shops are in occupation of the existing leasees 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 shops 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."

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.

jvm

-s/d-

Assistant Registrar(CO)

Dt:27/02/2015

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, Chepauk,
Chennai-600 005.
3. The Assistant Director (Town Panchayats),
Chennimalai Town Panchayat,
Chennimalai,
Erode District.
4. The Executive Officer,
Chennimalai Town Panchayat,
Chennimalai,
Erode District

+ 3 ccs to Mr.N.Ponraj, Advocate SR 10113, 10116, 10112

+ 1 cc to Govt. Pleader High Court, Madras SR 9643

+ 1 cc to M/s.C.S.Dhanasekaran, Advocate SR 9558

+ 1 cc to M/s.C.Uma, Advocate SR 9827

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prk27/2

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