

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P. No.19710 of 2016
and
W.M.P No.17055 of 2016

S.Kuzhandaivel

... Petitioner

Vs.

1. The Secretary to Government of Tamil Nadu
Municipal Administration and Water Supply Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Municipal Administration,
Ezhilagam,
Chennai - 600 005.

3.The District Collector,
Villupuram,
Villupuram District.

4.The Commissioner,
Kallakurichi Municipality,
Salem Main Road,
Kallakurichi Post & Taluk,
Villupuram District.

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India for issue of writ of mandamus directing the 4th respondent to re-allot the Shop No.4 in Eastern side of the Kallakurichi Bus Stand, New Commercial Complex, based on the existing lease period from the year between 01.04.2015 to 31.03.2018 which was renewed by the 4th respondent dated 29.01.2015 and to give priority basis on re-allotment in pursuance of relevant Government Orders, i.e. G.O (2D) No.85 MA&WS Department dated 19.07.2000 and G.O.Ms.No.92 MA & WS Department dated 30.07.2007 and pass order on the same within a reasonable time.

For Petitioner : Mr.P.Rajavel

For Respondent : Mrs.P.Kavitha,
Government Advocate

O R D E R

The petitioner has approached this Court seeking writ of mandamus directing the respondents to re-allot Shop No.4 in Eastern side of the Kallakurichi Bus Stand, New Commercial Complex, based on the existing lease period from the year 01.04.2015 to 31.03.2018, as per G.O.Ms.No.92 MA & WS Department dated 30.07.2007.

2. The case of the petitioner is that he was doing business in Shop No.4 in Eastern side of the Kallakurichi Bus Stand, New Commercial Complex for the past seven years. After expiry of the lease period, i.e 31.03.2015, the lease was not extended, in fact, in June 2015, it is admitted by the learned counsel for the petitioner, that the said shop was handed over to the Municipality for the purpose of demolition and re-construction and the same was demolished and re-constructed now. Therefore, seeking re-allotment of the shop, the petitioner has given representations on 13.04.2016 and 07.06.2016 however, the same was not considered by the respondent and in fact the Municipality has come up with auction notice to auction the shops. Hence, the petitioner has approached this court for the above relief.

3. Mr.P.Rajavel, learned counsel appearing for the petitioner would submit that the petitioner has been granted extension of lease, by virtue of receipt dated 29.01.2015 . Moreover, the petitioner is entitled to the benefit under G.O. (2D) No.85 MA&WS Department dated 19.07.2000 and G.O.Ms.No.92 MA & WS Department dated 30.07.2007. If the shop is not allotted, atleast priority should be given to the petitioner, in the matter of allotment. Moreover, the petitioner offers to pay more than the highest bid amount which would be fetched during the auction.

4. Heard Mrs.P.Kavitha, learned Government Advocate appearing for the respondents.

5. A perusal of the records would show that the petitioner was conducting business in Shop No.4 in Eastern side of the Kallakurichi Bus Stand, New Commercial Complex till 31.03.2015 and since the building was not in good condition, he was vacated in July 2015 and thereafter demolition was made. Now, new construction has come up and when new construction has come up, every one has got right to participate in the auction including the petitioner. The petitioner is no more a lessee and he is only a third party and hence he cannot rely upon a receipt issued by the respondent on 29.01.2015 stating that the lease has been renewed.

6. A perusal of the receipt dated 29.01.2015 would show that the petitioner has paid the lease renewal fees and got the receipt. It is a common knowledge that anybody can go to any Government office and by way of paying the amount, they can get a receipt and no one would refuse to receive the amount, if it is in respect of a property. The lease is not automatically granted based on the receipt issued by the respondent and it is granted based on the decision taken by the 4th respondent/Municipality. No such decision or order has been produced before this Court by the petitioner and therefore, it is impossible to believe that the lease was renewed in favour of the petitioner for the period from 2015 to 2018, by virtue of receipt dated 29.01.2015.

7. Assuming for a moment that the receipt is valid, even according to the petitioner, he vacated the premises in July 2015 itself and till date, he is not in possession of the said shop. When such is the position, this receipt cannot confer any right whatsoever on the petitioner. The 4th respondent had already issued a tender notification on 30.05.2016, as evident from Page No.21 of the typed set of papers, offering the property for public auction. When the property is auctioned, it is open to the petitioner and others to take part in the auction. If the petitioner is so particular to get the said shop, after concluding of the auction, he has to offer more than the bid amount offered by the successful bidder. In that case, the petitioner's case can be considered by the 4th respondent Municipality only on the basis of the amount to be offered by him and it is not automatic renewal. It always depends upon the discretion of the 4th respondent and therefore, the prayer sought for by the petitioner cannot be granted. Accordingly, the writ petition is liable to be dismissed and the Municipality can proceed with the auction.

8. In the result, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.
rgr

s/d-

Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government of Tamil Nadu
Municipal Administration and Water Supply Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner of Municipal Administration,
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3.The District Collector,
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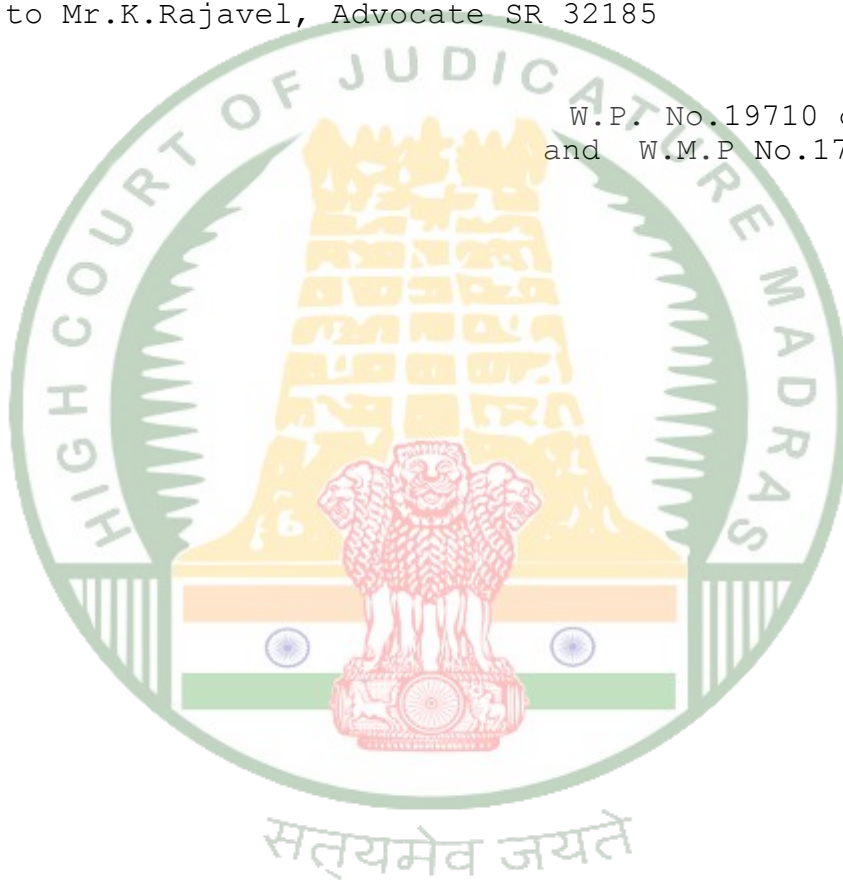
4.The Commissioner,
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Villupuram District.

+ 1 cc to Govt.Pleader SR 31680

+ 2 cc to to Mr.K.Rajavel, Advocate SR 32185

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