

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2016

Date of Reserving the Order	Date of Pronouncing the Order
28.01.2016	18.02.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.39436 of 2015

Punjai Puliampatti Municipality
Shopping Complex Lessee
Welfare Association,
Rep., by its President
Mr.V.R.Thirumoorthy,
Having office at No.313, Main Road,
Punjai Puliampatti,
Erode District - 638 459.

... Petitioner

Vs

1 The Commissioner of Municipalities
Administration,
Ezhilagam - Annex Building,
6th Floor, Chepauk,
Chennai - 600 005.

2.The Commissioner
Punjai Puliampati Municipality,
Punjai Puliampatti,
Sathiyamangalam Taluk,
Erode District.

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records relating to the impugned Auction-cum-Tender Notification issued by the second respondent in his proceedings Na.Ka.No.1135/2015/A1, dated 27.11.2015 and quash the same as illegal and further direct the second respondent to follow the G.O.92, dated 03.07.2007, strictly.

For petitioner .. Mr.R.Gandhi Senior counsel for
Mr.S.Parthasarathy

For Respondents .. Mr.P.H.Aravindh Pandian
Additional Advocate General
Assisted by Mr.A.S.Thambuswamy &
Mr.B.Anand

O R D E R

The petitioner is an association registered under the provisions of the Tamil Nadu Societies Registration Act, 1975, with registration No.24 of 2015. It is said to consist of members, who are lessees of shops owned by the Punjai Puliyampati Municipality (hereinafter referred to as the respondent Municipality).

2. The petitioner association seeks for issuance of a Writ of Certiorarified Mandamus, to quash the auction-cum-tender notification issued by the respondent Municipality, dated 27.11.2015, by which the respondent Municipality has brought for auction, the leasehold right in respect of 71 shops owned by the respondent Municipality within its Municipal limits. The petitioner also seek for a consequential direction to the respondent Municipality to follow G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007.

3. Mr.R.Gandhi, learned Senior counsel appearing for the petitioner submitted that the members of the petitioner association are carrying on different business activities in the shops owned by the respondent Municipality ever since 2007 and they have been promptly paying the monthly rent without default. It is submitted that the lease which was granted in favour of the members of the petitioner association was extended once in three years on an increased lease rent of 15% by following G.O.Ms.No.92 and the lease period is to come to an end on 31.03.2016. It is further submitted that in terms of G.O.Ms.No.92, three months prior to the expiry of the lease, rental value of the shops has to be reassessed and the existing lessees should be given priority to seek for renewal. However, the respondent Municipality without following such procedure had issued the impugned tender notification fixing the date of auction-cum-tender on 18.12.2015. It is submitted that failure to scrupulously follow the directions issued by the Government in G.O.Ms.No.92, vitiates the impugned notification and the respondent Municipality should not be permitted to proceed further with the auction. It is further submitted that the members are carrying on business in the shops since 2007 and where with the fond hope that the lease would be extended in

terms of G.O.Ms.No.92, but the respondent Municipality did not abide by the directions issued by the Government and therefore, the impugned notification has to be held to be illegal. The learned Senior counsel has drawn the attention of this Court to the Government Order in G.O.Ms.No.92 and in particular clause (iv) of the said Government Order and also referred to the Government letter dated 12.03.2009 and submitted that the members are entitled to further renewal for a period of nine years.

4. Mr.A.S.Thambuswamy, the learned counsel appearing for the Municipality raised a preliminary objection as regards the maintainability of the Writ Petition by an association. It is submitted that most of the lessees have sub-let the shops and receiving huge amounts from the sub-tenants and paying only a meagre rent to the Municipality. It is further submitted that the lease in respect of seven shops at Jawahar Main Road expired on 31.03.2015 and the Municipal Council decided to conduct auction for grant of fresh lease from 01.04.2015. Pursuant to such resolution auction notification was issued dated 27.05.2015. Five lessees filed Writ Petition before this Court in W.P.Nos.15021 to 15025 of 2015, challenging the notification, however without instruction from the Municipality, a Government Counsel had accepted notice and based on the representation, the Writ Petitions were allowed by order dated 21.05.2015. On coming to know of the said order, the respondent Municipality filed Review Application Nos.98 to 102 of 2015 and the Review Applications were allowed and the Writ Petitions were heard afresh and taking into consideration the affidavit filed by the petitioners therein requesting for extension of lease upto 31.03.2016, on payment of enhanced rent of Rs.5500 per month, they were permitted to continue till 31.03.2016 and the respondent Municipality was directed to conduct auction well before the said date, permitting the petitioners therein to participate in the auction and if they are successful, lease may be granted in their favour, failing which they should hand over possession on or before 31.03.2015 and if they failed to vacate, the Municipality can evict them with Police aid. Further, it is submitted that since lease period expired on 31.03.2016, the Municipality decided to conduct public auction for all 71 shops and passed a resolution to that effect and date of auction was fixed on 18.12.2015. Another notification was issued fixing the date of auction for seven shops on 16.12.2015 as per the order passed by this Court dated 27.08.2015, made in W.P.Nos.15021 to 15025 of 2015. It is submitted that the list of members submitted before this Court is incorrect, three lessees who are no more are shown to be existing members and out of 53 members given in the list, 31 of them have sub-let the shops and in view of the sub-letting, they are not entitled for any renewal. Further, it is submitted that the petitioner has suppressed material facts and filed this Writ Petition and they are not entitled for any

relief. It is further submitted that auction was held on 16.12.2015 and 18.12.2015 and auction was held on 29.12.2015 for the shops which did not fetch the upset price fixed by the Municipality. After the auction, the Municipality has been able to secure a sum of Rs.12,54,410/- as monthly rent, as against the rent paid at present namely Rs.2,23,344/- and on account of the auction, the Municipality has received earnest money deposit of Rs.74,00,000/- and Rs.1,42,05,720/-, as 12 months advance rent for 74 shops which will be used for the welfare of the public.

5. In support of his submissions, the learned counsel for the petitioner placed reliance on the decision in the case of P.N.Chinnaswami vs. Assistant Director of Town Panchayat, Coimbatore District and Ors., reported in 2011-1-CTC-584 and the decision of the Hon'ble Division Bench of this Court in the case of P.Muthusamy vs. State of Tamil Nadu Rep., by Secretary to Government Municipal Administration Department and Anr., reported in 2014-5-MLJ-129, the order passed by the Hon'ble Supreme Court is in Special Leave to Appeal (C) No.34543 of 2014, dated 18.12.2014, confirming the decision of the Hon'ble Division Bench of this Court in W.A.No.1471 of 2014, dated 12.11.2014. The decision of the Hon'ble Division Bench in the case of S.Murugan and two Ors., vs. Sathiyamangalam Municipality, in W.A.No.1508 to 1510 of 2015, dated 11.03.2015, the decision of this Court in the case of P.V.Subramanian and Another vs., Secretary to Government, State of Tamil Nadu, Water Supply Department, reported in 2015-4-MLJ-164, the decision in the case of the respondent Municipality in Writ Petitions filed by the members of the petitioner Association in W.P.No.15021 to 15025, dated 27.08.2015. The decision of this Court relating to Udumalpet Municipality in the case of M/s.M.Vijayakumari and two others vs. Secretary to Government and others in W.P.No.29710 to 29712 of 2015, dated 22.09.2015, which was confirmed by the Hon'ble Division Bench in W.A.Nos.1524 to 1526 of 2015, dated 15.10.2015. The decision in the case of Udumalpet Municipality in S.Vanjikumar & Ors., vs. Secretary to Government, in W.P.No.18346 of 2015, etc., dated 03.11.2015.

6. Heard the learned counsels appearing for the parties and perused the materials placed on record.

7. The petitioner is an association said to have been formed by persons who are lessees of shops owned by the respondent Municipality. It is an admitted fact that each of the member who is said to have been a lessee has entered into individual transaction with the respondent Municipality in respect of each shop. Thus, the leasehold right, which the members claim is an individual right of the member and as such an association being a collective body cannot represent the cause of such individual lessee for the relief sought for in the present Writ Petition.

8. Admittedly, the challenge in the present Writ Petition is not to a policy decision, but in respect of an auction-cum-tender notification issued by the respondent Municipality bringing for auction, the leasehold rights of 71 shops owned by them. Therefore, the Writ Petition at the instance of the petitioner association has to be necessarily held to be not maintainable. Consequently, the Writ Petition has to be dismissed.

9. Nevertheless since this Court heard elaborate submissions made by the learned Senior counsel for the petitioner and the learned counsel for the respondent Municipality, this Court proposes to deal with the other contentions as well.

10. Before I proceed further in the matter, it has to be pointed out that the five persons had approached this Court earlier in W.P.Nos.15021 to 15025 of 2015, they being M.Sambath Kumar, T.Velusamy, P.Balasubramaniam, K.Rani and P.Jaganathan respectively. The first four persons are members of the petitioner association as seen from the list of members filed by the petitioner in the typed set of papers with membership Sl.Nos.6, 39, 27, 32 respectively. It appears that P.Jaganathan, is not a member of the petitioner association. In the said Writ Petition, it was contended that they are continuing as lessees of the shops for 12 years and after 31.03.2015, they claimed to have paid 15% enhanced lease rent and therefore, contended that they are entitled to continue as lessees till 2017, by placing reliance on the G.O.Ms.No.92. Thus, it is clear that the earlier Writ Petitions were filed by those members virtually on the same ground as canvassed in this Writ Petition. The Court did not grant the relief sought for, but granted them a reprieve in its order dated 27.08.2015, directing them to pay enhanced monthly rent of Rs.5500/- from 01.04.2015 to 31.03.2016. There was a further direction to the petitioners to hand over possession of the shops on or before 31.03.2016, failing which the respondent Municipality was at liberty to evict them using Police force. Further, it was observed that even before 31.03.2016, if auction is to be conducted, it is open to those petitioners to take part in the auction and if they are successful, they can be allowed to continue in the same premises and in case, they are unable to match the highest bidder, they shall vacate the premises on or before 31.03.2016. There was a further specific direction to the respondent Municipality to conduct auction on or before 31.03.2016. It was made clear that the said order, shall not be taken as a precedent. Thus, when four of the members of the petitioner association had approached this Court and there is a direction by this Court to conduct auction before 31.03.2016. Therefore, they along with others under the umbrella of an association cannot seek to nullify the earlier direction issued. In fact, the petitioner association ought to have candidly disclosed the filing of the earlier Writ Petition by four of its members. Non-disclosure amounts to suppression of material facts.

11. The respondent Municipality in compliance with the direction issued in the earlier Writ Petition had conducted the public auction and from the particulars furnished, it is seen that substantial revenue has been generated by the respondent Municipality. To quote one such case being the leasehold right in respect of shop No.9 in M.G.R., market. The existing lessee is one Tmt.Santhamani, who is member Sl.No.25 of the petitioner association and she was paying a lease rent of Rs.11,628/- and the highest bidder at the auction is one A.Subramani, who had offered a sum of Rs.65,000/-. The annexures filed along with the counter affidavit of the respondent Municipality shows that substantial revenue has been generated on account of the auction, which was conducted. Therefore, the procedure adopted by the respondent Municipality is fair and proper and it seeks to protect the financial interest of the respondent Municipality.

12. The petitioner association stated that their members were inducted as lessees during 2007 whereas from the counter affidavit, it is seen that they all became lessees in the year 1982 and this contention has not been specifically denied by the petitioner association. The allegation of sub-letting, has also not been specifically denied as the respondent Municipality have stated that the lease with membership Sl.Nos.2 to 9, 11 to 13, 15, 17, 20, 22, 23, 27, 29, 30, 32, 39, 40, 45, 48, 49, 50, 52 and 53 have sublet the shops. If these members of the petitioner association have sub-let the shops to third parties during the subsistence of lease which came to an end during March 2015, it amounts to violation of the lease condition and the respondent Municipality is entitled to disqualify them from participating in any of the future auctions. It is further seen that individual representations made by the lessees on 05.12.2015, has been rejected by order dated 11.12.2015, assigning reasons and this order has become final.

13. In the case of P.N.Chinnasamy (supra), this Court while considering the effect of G.O.Ms.No.92, pointed out that the lease having been extended for nearly thrice the period stipulated in the Government Order, the question of further extension with low rate of rent does not arise and that though the Government Order was for laudable objects, it will not help people who want to squat over the property for years together without opportunity to others and thereby preventing augmentation of revenue of the Town Panchayat. Reference was also made to the decision of the Hon'ble Division Bench in the case of A.Sathar vs. District Collector, Coimbatore & Anr., reported in AIR 1998 Madras 217, where the Hon'ble Division Bench pointed out that the extension granted earlier by the Panchayat would not mean that appellant therein is entitled to continue in possession of the premises in question for ever by paying ridiculously low rent and extension of lease to the said appellant is against the interest of the Panchayat. Thus, it was held that the interest of the

Panchayat cannot be jeopardised by permitting the appellant therein to continue in possession of the premises in question at the enhanced rate of 15%. Further reference was made to the decision of the Hon'ble Supreme Court in the case of Ram & Shyam & Co., vs. State of Haryana and Ors., reported in (1989) 3 SCC 267, wherein it was held that disposal of public property partakes the character of a trust in that in its disposal, there should be nothing hanky panky and it must be done at the best price, so that larger revenue coming into the coffers of the State Administration would serve public purpose. Further, identical grounds raised before the Hon'ble Division Bench of this Court in W.A.No.1471 of 2014, was rejected by judgment dated 12.11.2014 and confirmed by the Hon'ble Supreme Court by order dated 18.12.2014. The other decisions referred to by the learned counsel for the respondent, are in support of the conclusion taken by this Court, which ultimately can lead to the only decision in rejecting the prayer sought for.

14. Hence, for all the above reasons, the petitioners have not made out any case for granting the relief sought for and accordingly, the Writ Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1 The Commissioner of Municipalities Administration,
Ezhilagam - Annex Building,
6th Floor, Chepauk,
Chennai - 600 005.

2.The Commissioner
Punjai Puliampati Municipality,
Punjai Puliampatti,
Sathiyamangalam Taluk,
Erode District.

1 cc to M/s.A.S. Thambusamy, Advocate, Sr. 10489

1 cc to M/s. S. Parthasarathy, Advocate, Sr., 11490

W.P.No.39436 of 2015

PPA (CO)

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