

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.41019 of 2015

and

M.P.No.1 of 2015

M.Kanthamani

W/o.Mohan

.. Petitioner

vs.

The Commissioner,
Tambaram Municipality,
Tambaram,
Chennai - 45.

.. Respondent

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in Na.Ka.No.7799/2011/A1 dated 23.12.2015 passed by the respondent and quash the same and consequently, direct the respondent to permit the petitioner to continue the lease right of pay and use toilet, backside to the Municipality Bus Stand up to March 2016 without insisting to pay further amount based on the petitioner's representation dated 15.12.2015.

For Petitioner : Mr.M.Rajendiran

For Respondents: Mr.P.Srinivas

O R D E R

Heard Mr.M.Rajendiran, the learned counsel for the petitioner and Mr.P.Srinivas, the learned standing counsel for the respondent.

2. The petitioner has filed this writ petition seeking quash of proceedings in Na.Ka.No.7799/2011/A1 dated 23.12.2015 passed by the respondent and consequently, direct the respondent to permit the petitioner to continue the lease right of pay and use toilet, backside to the Municipality Bus Stand up to March 2016 without insisting payment of further amount based on the petitioner's representation dated 15.12.2015.

3. The petitioner was granted a license for a period of three years to collect fees from the users of the pay and use toilet in the Municipality Bus Stand. The period of three years admittedly came to an end on 31.03.2015. Thereafter, the petitioner did not vacate. It appears that there was a proposal to demolish the pay and use toilet which was licensed to the petitioner and to construct some other super structure. Since that proposal was pending the petitioner was granted permission to continue on the same premise as licensee till 31.03.2016. Thus, this extension was in the discretion of Municipality and not by way of public auction and it appears to be a temporary arrangement. Now, the respondent Municipality proposed to issue fresh license by conducting auction. This has sought to be challenged by the petitioner raising two contentions. The first contention is that during the period of license, the petitioner has paid exorbitant amount and not many users to the pay and use toilet since in the opposite bus stand another pay and use toilet facility is available. As the petitioner's pay and use toilet was in the rear side of the bus stand there was not much patronage. Secondly, the water supply has been disconnected in the toilet and the petitioner has to incur an expense of Rs.1,700/- per day for purchasing water.

4. The learned standing counsel for the respondent Municipality submitted that the petitioner is a defaulter. Further, it is submitted that the respondent Municipality proposes to give the license by conducting fresh auction and it is open to all the persons to participate in the same.

5. In the light of these facts, challenge to the impugned proceedings has to necessarily fail since what was granted to the petitioner is only a license with no right of renewal and the license granted to the petitioner has already been expired on 31.03.2015.

6. With regard to the plea raised by the petitioner that he suffered financial loss, it is pointed out by the learned standing counsel for the respondent Municipality that for over three years, no complaint was received from the petitioner stating that the license fee demanded from him was either high or exorbitant and therefore, it is contended that this contention has been raised for the first time before this Court and hence, it lacks bonafide. In any event, if the petitioner is able to establish that he has suffered loss on account of stoppage of water supply or lack of patronage, etc. with sufficient proof, the petitioner is permitted to give a representation to the respondent. If such a representation is given, it is open to the respondent to consider whether the petitioner can be granted any remission of license fee at least for the period when he has not been provided with water facilities.

This Writ Petition is disposed of with the above direction.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gm

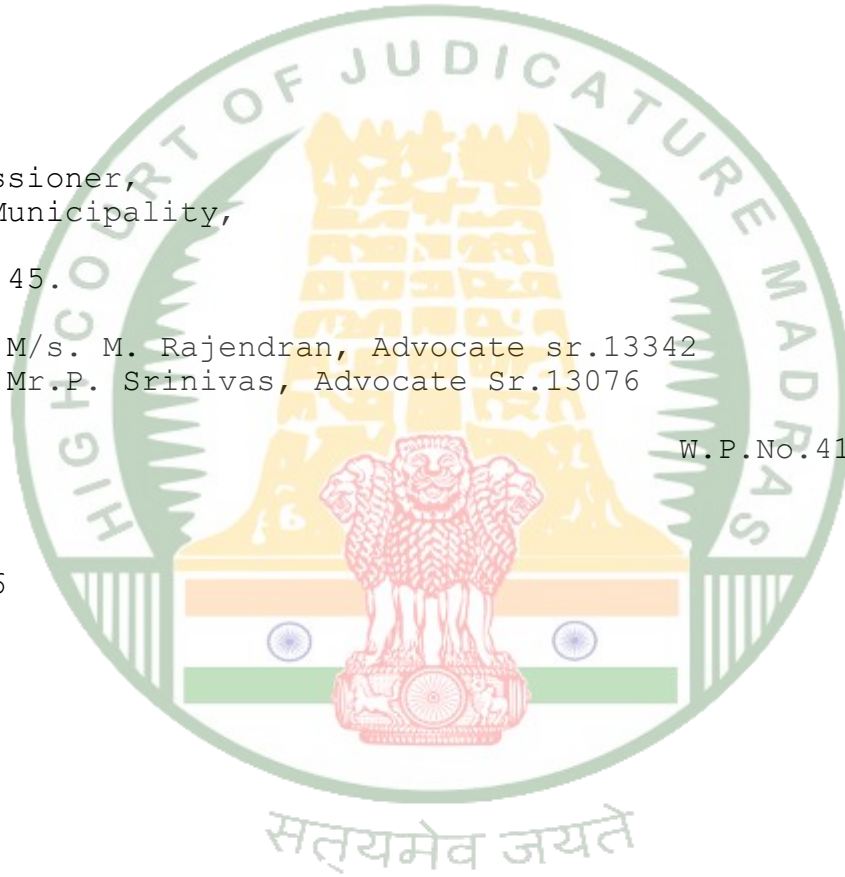
To

The Commissioner,
Tambaram Municipality,
Tambaram,
Chennai - 45.

+ 1 cc to M/s. M. Rajendran, Advocate sr.13342
+ 1 cc to Mr.P. Srinivas, Advocate Sr.13076

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SAI (CO)
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