

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. Nos. 22459, 26793, 27274 of 2016

&

W.M.P. Nos. 19170, 19171, 23449 & 23450 of 2016

W.P. No. 22459 of 2016

1. P. Sarojini
 2. Eshwaran
 3. B. Rekha
 4. M. Nirmala
 5. R. Palanisamy
 6. M. Nirmala
 7. K. Viswanathan
 8. Palanisamy
 9. S. Loganathan
 10. Krishnamurthy
 11. R. Palanisamy
 12. Jose
 13. Palanisamy
 14. Jose
 15. T.M.S. Palanisamy
 16. Selvaraj
 17. Boopathy
 18. Rajkumar
- ...Petitioners

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Municipal Administration and Water
Works Department,
Fort St. George, Chennai.
2. The Commissioner,
Municipal Administration and Water Works
Department,
Ezhilagam, Chepauk,
Chennai - 600 005.

3. The Commissioner,
The Palladam Municipality,
Municipal Administration and
Water Supply Department,
Palladam.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent relating to tender cum auction notice having Ref. No. Na.Ka. No. 1422/2014/A1 dated 100.06.2016 to be held on 30.06.2016 or on any other date and quash the same in so far as it relates to East Facing Shops with Shop No.1 (Veg. Restaurant), Shop No.2 (Non-Veg. Restaurant), Shop No.1,2,3,4,5,6,7 North Facing Shops No. 1,3,4 and West Facing Shops No. 1,3,4,5 and cable shop at Anna Perundhu Nilayam, Palladam Bus Stand and Shop No.13, West Facing Shop, Varasanthai Vennega Valagam and consequently direct the 3rd respondent to extend the lease for the East Facing Shops with Shop No.1 (Veg. Restaurant), Shop No.2 (Non-VEg. Restaurant), Shop No.1,2,3,4,5,6,7, North Facing Shop Nos. 1, 3, 4 and West Facing Shop Nos. 1, 3, 4, 5 and cable shop at Anna Perundhu Nilayam, Palladam Bus Stand and Shop No: 13, West Facing Shop, Varasanthai Vannega Valagam in favour of the petitioners herein in terms of G.O.Ms. No. 92, Muniapiapal administration and Water Supply Department dated 03.07.2007.

For Petitioner :: Mr.S. Rajmakesh

For Respondents:: Mr.V. Jayaprakash Narayanan,
Special Govt. Pleader for R1 & R2
Mr.A.S. Thambuswamy for R3.

W.P. No. 26793 of 2016

T. Bhoopathy

..Petitioner

Vs.

1. The Commissioner,
Municipal Administration and
Water Works Department,
Ezhilagam, Chennai 600 005.

2. The Commissioner,
Palladam Municipality,
Palladam.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the 2nd respondent to hand over shop No.2, facing eastern side at Palladam Bus Stand, to the petitioner, on the basis of the petitioner's representation dated 20.07.2016.

For Petitioner :: Mr.M. Gnanasekar

For R1 :: Mr.V. Jayaprakash Narayanan,
Special Government Pleader

For R2 : Mr.A.S.Thambuswamy

W.P. No. 27274 of 2016

A. Eswaran

..Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Municipal Administration and
Water Works Department,
Fort St. George, Chennai.
2. The Commissioner,
Municipal Administration and Water
Works Department, Ezhilagam,
Chepauk, Chennai.
3. The Commissioner,
The Palladam Municipality,
Municipal Administration cum
Water Supply Department,
Palladam, Thiruppur District.

4. T. Boopathi

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records pertaining to the Tender Cum Auction Notice 30.06.2016 in Na.Ka. No. 1422-2014-A1 in respect of Serial No.2 (East Facing Shop No.2, Non Veg. Restaurant), Anna Bus Stand, Palladam, Tiruppur District and quash the same and directing the 3rd respondent to permit the petitioner to continue the lease on receiving the higher amount than the 4th respondent.

For Petitioner :: Mr.S. Kumar

For Respondents:: Mr.V. Jayaprakash Narayanan,
Special Government Pleader for
R1 and R2
Mr.A.S. Thambusamy for R3
Mr.M. Gnanasekar for R4

O R D E R

W.P. No. 27274 of 2016

The 2nd respondent is the owner of the building in which the petitioner in the above writ petition is running a Non-Vegetarian (East Facing Shop No.2) Restaurant, Anna Bus Stand, Palladam, T. District. The leasehold right/licence of the said shop was taken in auction conducted by the 3rd respondent Municipality about 9 years ago. The petitioner has been paying the rent regularly. While so, the 3rd respondent issued a tender cum auction notice dated 10.06.2016 to conduct auction for various items mentioned at S.Nos. 1 to 11 in the said notice including the petitioner's shop No.2. The said auction notice is the subject matter of challenge in W.P. No. 22459 of 2016 and an interim order was granted in W.M.P. No. 19171 of 2016 on 29.06.2016 and an order dated 29.06.2016 was passed by this Court to the following effect:

"Considering the above submissions, the 3rd respondent is at liberty to issue a fresh notification giving all the details with regard to the auction of the shops and proceed with the auction. The Petitioners are at liberty to take part in the auction and they are also at liberty to offer more than the highest amount which would be fetched in the auction and in that event, the petitioners lease will be continued. If any of the petitioner is not agreeable to pay more than the amount that would be fetched as highest amount in the auction, the respective petitioner shall vacate and hand over the possession to the 3rd respondent. Till the above mentioned processes are completed, the possession of the petitioners shall not be disturbed."

Pursuant to the said order, a fresh auction cum tender notice dated 30.06.2016 was issued and the auction was conducted on 19.07.2016. In order to participate in the tender, the petitioner took Demand Draft on 18.07.2016 for a sum of Rs.2 lakhs in favour of the 3rd respondent and applied for "No Objection" Certificate with regard to the dues of property tax, water charges and service charges and paid a sum of Rs.1000/- to the 3rd respondent vide receipt No.1601941 dated 18.07.2016.

Since the petitioner is an aged person, he depended on his Manager Boopathi, the 4th respondent herein, to act on his behalf.

2. On 19.07.2016, when the petitioner went to attend the auction, the petitioner was not allowed to enter the venue stating that the property tax for the period 2016-2017 was pending and on that ground, "No Objection" Certificate was not issued. Thereafter, the petitioner was informed that the 4th respondent took part in the auction and he was allotted shop No.2 for a sum of Rs.30,500/- , since he quoted the highest bid amount. Aggrieved over the auction proceedings and the allotment made in favour of the 4th respondent, the petitioner has filed the above writ petition challenging the tender cum auction notice dated 30.06.2016 in so far as shop No.2 (East Facing) Non-Vegetarian Restaurant) is concerned.

3. Heard Mr. S. Kumar, learned counsel for the petitioner, Mr. V. Jayaprakash Narayanan, learned Special Government Pleader for respondents 1 and 2, Mr.S. Thambusamy, learned counsel for R3 and Mr.M. Gnanasekar, learned counsel for the 4th respondent.

4. It seems that there is a dispute between the petitioner and the 4th respondent with regard to the running of shop No.2. The petitioner contends that he appointed the 4th respondent as his Manager and he has been carrying on the business on his behalf. However, with mala fide intention, the 4th respondent himself took part in the auction as if he runs the shop independently and was successful in getting the auction in his favour. Therefore, the auction has to be set aside.

5. However, Mr.M. Gnanasekar, learned counsel for the 4th respondent would submit that the 4th respondent already purchased the leasehold right/licence from the petitioner and the petitioner has got no connection with the shop in question or the business.

6. Be that as it may. This is a matter to be gone into only by the Civil Court and this Court is not inclined to go into the said dispute.

7. Taking note of the fact that the auction was already concluded that the 4th respondent was the successful bidder, for a sum of Rs.30,500/- and that the petitioner offered more amount before this Court, than the bid amount of the 4th respondent, to take the shop, when the matter came up before this Court on 05.08.2016, this Court conducted auction on 05.08.2016. Finally, the petitioner quoted a sum of Rs.70,000/- whereas the 4th respondent quoted Rs.69,000/- for the said shop No.2. After quoting Rs.69,000/-, the 4th respondent did not offer any amount

over and above Rs.70,000/- quoted by the petitioner. Therefore, the sum of Rs.70,000/- was fixed as the highest amount and the petitioner was directed to file an affidavit, that he is ready to pay the monthly licence fee of Rs.70,000/-, for which purpose, the matter was adjourned to this day.

8. However, when the matter is taken up today, the petitioner appeared and submitted that he is unable to pay the amount as there is a dispute between him and his son regarding the amount quoted by him and therefore, he is not in a position to make the payment. Such a conduct, on the part of the petitioner, has to be deprecated. Thereafter, when this Court enquired as to whether the 4th respondent is ready to pay Rs.69,000/-, the amount quoted by him, on 05.08.2016, he also expressed his inability to pay the amount quoted by him. It has to be remembered that the 4th respondent is in possession of the shop.

9. It is very clear from the above facts that both the petitioner and the 4th respondent had enacted a drama before this Court and taken this Court for a ride. It is not as if the petitioner and the 4th respondent are minors, who are unable to understand what is happening. The petitioner is aged about 80 years and the 4th respondent is aged about 31 years and they would have gained rich experience as businessmen. That being so, deliberately, the petitioner and the 4th respondent, made this Court to believe, as if they are interested in taking the shop and quoted their respective bid amounts. This Court as well as the counsel for both parties, bona fide, believed that the parties are interested, conducted auction and fixed Rs.70,000/- as the highest amount.

10. However, as neither the petitioner nor the 4th respondent is willing to pay the bid amount, quoted by them and take over the shop and are now trying to retract from their earlier stand, this Court is not inclined to grant any relief, to the petitioner as well as to the 4th respondent. Therefore, W.P. No. 27274 of 2016 stands dismissed.

W.P. No. 26893 of 2016

11. For the very same reasons stated above, W.P. No. 26893 filed by the 4th respondent in W.P. No. 27274 of 2016 also stands dismissed.

W.P. No. 22459 of 2016

12. As far as W.P. No. 22459 of 2016 is concerned, since the notification challenged before this Court by the petitioners therein has already been withdrawn, the writ petition itself has become infructuous and therefore, the writ petition is dismissed as infructuous.

13. Since the period of lease has already come to an end on 19.07.2016 and the 4th respondent in W.P. No. 27274 of 2016/petitioner in W.P. No. 26893 of 2016 is not ready to pay Rs.69,000/- quoted by him on 05.08.2016, he is directed to hand over possession of shop No.2 (East Facing) Non-Vegetarian Restaurant, within 48 hours, failing which the official respondents, with the help of police protection, shall evict him.

14. For having interfered with due process of law, by quoting bid amounts before this Court and for wasting the precious judicial time of this Court, a sum of Rs.25,000/- is imposed as costs, each on the petitioner and the 4th respondent in W.P. No. 27274 of 2016, payable to the Chief Justice Relief Fund, within a period of two weeks from the date of receipt of a copy of this order, failing which, the Tahsildar, Pallavaram, is directed to take action under the Revenue Recovery Act and recover the amount from the petitioner as well as from the 4th respondent in the said writ petition, either directly, or in the event of failure of pay the amount, auction any of their properties and from the said proceeds, the amount imposed as costs shall be recovered and a report shall be filed before this Court to that effect, within a period of four weeks thereafter.

15. The Commissioner, Palladam Municipality, shall conduct fresh auction for shop No.2, forming the subject matter of W.P. No. 27274 of 2016, by calling for fresh tenders and fixing the upset price and only if the bid amount quoted is higher than the upset price, the shop can be allotted to the bidder concerned. Otherwise, the said shop shall be kept under lock and key by the authority concerned. No costs. Connected W.M.Ps are closed.

16. Post on 16.09.2016 as regards compliance of first condition.

सत्यमेव जयते

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

nv
To

1. The Secretary to Government,
Municipal Administration and Water
Works Department,
Fort St. George, Chennai.

2. The Commissioner,
Municipal Administration and Water Works
Department,
Ezhilagam, Chepauk,
Chennai - 600 005.

3. The Commissioner,
The Palladam Municipality,
Municipal Administration and
Water Supply Department,
Palladam.

4. The Section Officer
Writ Section High Court Madras

+1 cc to Government Pleader sr.45575

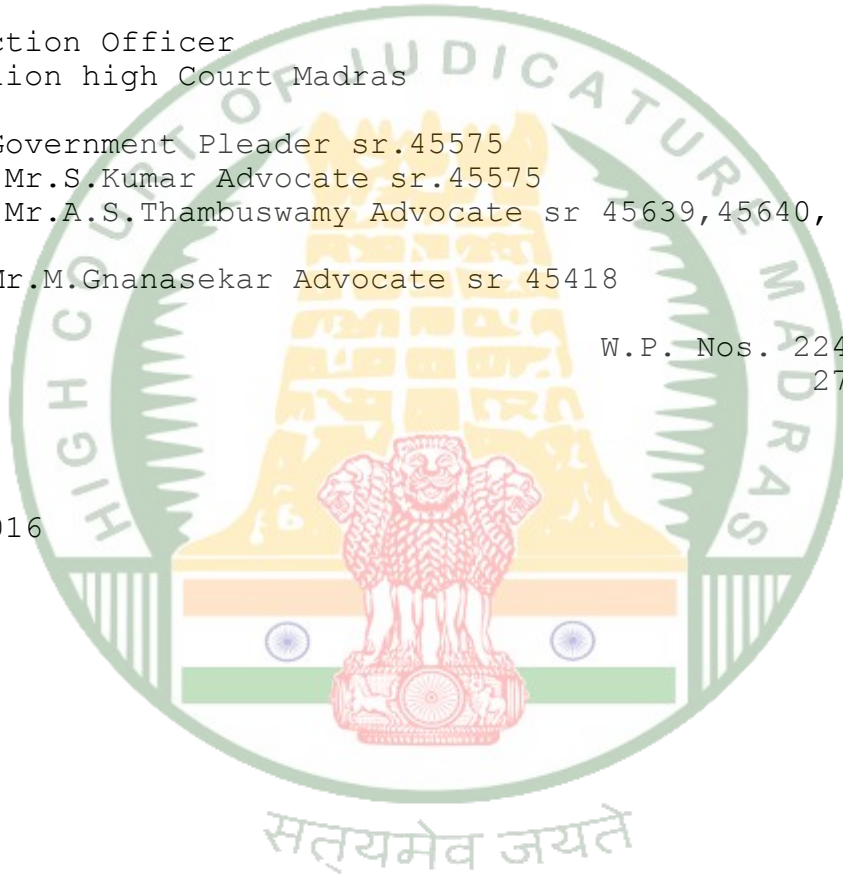
+2 ccs to Mr.S.Kumar Advocate sr.45575

+3 ccs to Mr.A.S.Thambuswamy Advocate sr 45639,45640,
45633

+1 cc to Mr.M.Ghanasekar Advocate sr 45418

W.P. Nos. 22459, 26793,
27274 of 2016

aa26/08/2016



WEB COPY