

In the High Court of Judicature at Madras

Reserved on : 16.03.2016

Pronounced on : 29.03.2016

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and

The Hon'ble Mr.Justice M.VENUGOPAL

W.A.Nos.165 to 168 of 2016 and
C.M.P.Nos.2321 to 2327 of 2016

M.Sambathkumar
S/o.Late Muthusamy Chettiar
Sri Vignesh Jewellers
Old Shop No.5-A,
Door No.295, Jawahar Street,
Punjai Puliampatti,
Sathyamangalam,
Erode District

...Appellant in W.A.No.165 of 2016

P.Balasubramaniam
S/o.Palanisamy
Old Shop No.6A,
Jawahar street,
Punjai Puliampatti
Sathyamangalam
Erode District

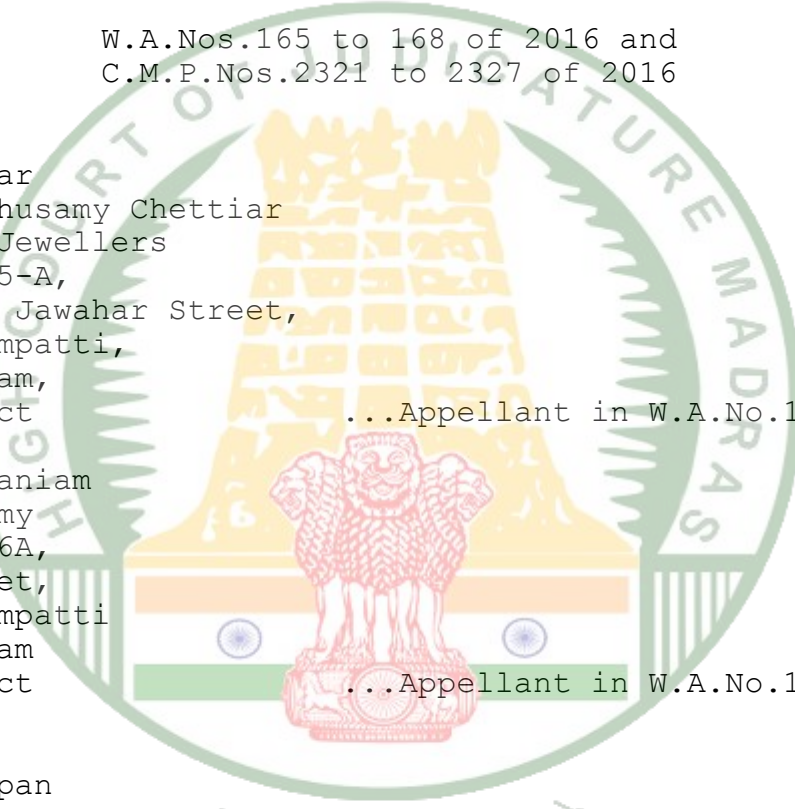
...Appellant in W.A.No.166 of 2016

K.Rani
W/o.K.Mariappan
Old No.12,
M.G.R.Vanigaivalagam,
Punjai Puliampatti,
Sathyamangalam
Erode District

...Appellant in W.A.No.167 of 2016

P.Jagannathan,
S/o.R.Ponnusamy Mudaliar
Old Shop No.5-B,
Door No.297, Jawahar Street,
Punjai Puliampatti,
Sathyamangalam,
Erode District

...Appellant in W.A.No.168 of 2016



Vs.

1. The Commissioner of Municipal Administration
Ezhilagam, Annex Building, 6th Floor,
Chepauk, Chennai - 600 005
2. The Commissioner,
Punjai Puliampatty Municipality,
Punjai Puliampatty,
Sathyamangalam Taluk,
Erode District ..Respondents in W.A.Nos.165 to168 of
2016

Prayer: Writ Appeals filed under Clause 15 of Letters Patent praying to set aside the Common Order in W.P.Nos.15021, 15023, 15024 and 15025 of 2015 passed by this Court and allow the same.

All Petitions are filed Under Art 226 of the Constitution of India for the Issuance of a Writ of certiorari Calling for the records relating to the impugned auction cum tender Notification issued by the 2nd Respondent in his proceedings in O.Pu.No.200/2015/Se.Ma.Tho.Aa/Erode dated 08/5/2015 and quash the same as illegal.

For Appellants :	Mr.S.Parthasarathy
For Respondent :	Mr.P.S.Sivashanmugasundaram
No.1	Special Government Pleader
For Respondent :	Mr.A.S.Thambusamy
No.2	

C O M M O N J U D G M E N T

M.VENUGOPAL, J.,

The Appellants have preferred the instant intra-Court Writ Appeals as against the Common Order dated 27.08.2015 in W.P.Nos.15021, 15023, 15024 and 15025 of 2015.

2. According to the Learned Counsel for the Appellants, the Learned Single Judge ought not to have dismissed the Writ Petitions and in fact in terms of G.O.(S) No.92 dated 03.07.2007 issued by the Government of Tamil Nadu, initially a shop would be allotted by means of public auction for a period of three years and thereafter for every three years renewal rent was increased to 15%.

3. The Learned Counsel for the Appellants urges before this Court that 'Renewal Lease' can be effected initially for a period of nine years and that the premises has to be renewed in favour of the Lessee based on a 'Re-assessed value'.

4. It is represented on behalf of the Appellants that the lease period expires only on 31.03.2016 but three months prior to the expiry of the said period, the auction notice was issued, which is against Law and an arbitrary one.

5. The Learned Counsel for the Appellants proceeds to take a plea that the 2nd Respondent should have provided an opportunity to the Appellants for further renewal of nine years period based on the G.O.(S) No.92 dated 03.07.2007.

6. The Learned Counsel for the Appellants takes a stand that in similar Municipalities G.O.(S) No.92 dated 03.07.2007 was followed. However, the 2nd Respondent/ Municipality with malafied intention had initiated fresh auction, which is against Law.

7. Expatiating his submission, the Learned Counsel for the Appellants contend that the Learned Single Judge without considering the G.O.(S) No.92 dated 03.07.2007 had directed the Appellants to vacate the premises by 31.03.2016 and further directed the Respondents to conduct fresh auction, which are clearly unsustainable in Law.

8. Conversely, it is submission of the Learned Counsel for the 2nd Respondent/Municipality that the Lease in question expired on 31.03.2015 and the Appellants / Petitioners' occupation of the shops can only be termed as an unauthorised one.

9. The Learned Counsel for the 2nd Respondent forcefully contends that in terms of the ingredients of G.O.(S)No.92 Municipal Administration and Water Supplies (A4) Department dated 03.07.2007, the Orders regarding the revised norms in respect of Lease and Renewal of Lease of shops and lands owned by Municipality Local Bodies were issued. Further the rent for the shops occupied by the Appellants in W.P.Nos.15021, 15023 and 15025 was determined at Rs.15,000/- per month and in respect of the shop occupied by the Appellant in W.P.No.15024 of 2015, the monthly rent was determined at Rs.12,000/-.

10. That apart, the Learned Counsel for the 2nd Respondent / Municipality brings it to the notice of this Court that the Punjai Puliampatti Nagar Council had passed a Resolution No.130 on 11.06.2014 (Subject No.22), whereby and whereunder permission was granted to extend the license only for a period of one year

from 01.04.2014 to 31.03.2015 (in respect of the Lease period of seven shops situated in commercial complex belonging to the Municipality, which expires on 31.03.2014 and placed for perusal and order of the Council for extension of lease period for a further tenure of three years from 01.04.2014 to 31.03.2017 and to fix the rent by enhancing 15% of the present rent.

11. It is represented on behalf of the 2nd Respondent that the renewal of license for the shop mentioned in the proceedings of the Commissioner of the 2nd Respondent dated 31.07.2014 speaks of the Renewal of License for a period of one year from 01.04.2014 to 31.03.2015 with an increased of 15% of earlier year (2013-2014) license fee. Also it was mentioned in the proceedings that the license holder of the shop should vacate the shop on 31.03.2015 within 9.00 p.m. and handover the vacant possession to the Municipality. In short, the proceedings of the 2nd Respondent / Municipality in respect of renewal of license for the period of one year was issued in favour of the Appellants.

12. The Learned Counsel for the 2nd Respondent invites the attention of this Court to the affidavit of undertaking dated 18.08.2015 filed by the respective Appellants in and by which they had inter alia stated that as soon as the period of the expiry of the Lease period, they would vacate the shops without seeking renewal and they would participate in the auction to be conducted.

13. The Learned Counsel for the 2nd Respondent / Municipality refers to the common dates and events in respect of the Appellants, which run as under :-

1	W.A.Nos/ Shop Numbers	Date of Original Allotment	Name of Sub-tenant	Rent before Auction / Rent as per Court Order (In Rs.)	Highest Bid in the public auction held on 16.12.2015 as per Court Order in W.P.nos.15021 to 15025 of 2015 (In Rs.)	Difference in old rent per month (In Rs.)	Difference in old rent and present rent per year (In Rs.)
1	M.Sampathkumar Old Shop No.5A, Jawahar main Road, W.A.No.165 of 2016 in W.P.No.15021 of 2015	01.05.99	-	2,793.00 5,500.00	14,700.00 K.Veluchamy	11,907.00	1,42,884.00
2	P.Jaganathan Old Shop No.5B, Jawahar Main Road, W.A.No.168 of 2015 in W.P.No.15025 of 2015	01/04/02	Sampathkumar (Srgam Shoe Mart)	2,786.00 5,500.00	15,700.00 M.Ugamurthy	12,914.00	1,54,968.00

1	W.A.Nos/ Shop Numbers	Date of Original Allotment	Name of Sub-tenant	Rent before Auction / Rent as per Court Order (In Rs.)	Highest Bid in the public auction held on 16.12.2015 as per Court Order in W.P.nos.15021 to 15025 of 2015 (In Rs.)	Difference in old rent per month (In Rs.)	Difference in old rent and present rent per year (In Rs.)
3	B.Balasubramanian Old Shop No.6A, Jawahar Main Road, W.A.No.166 of 2015 in W.P.No.15023 of 2015	01.05.99	R.Palaniappan (Valli Finance)	2,801.00 5,500.00	17,700.00 R.Palaniappan, Sub-Tenant - Now Successful bidders	14,899.00	1,78,788.00
4	K.Rani - Shop No.12, M.G.R. Shopping Complex - W.A.No.167 of 2015 in W.P.no.15024 of 2015	15.05.99	Dhanalakshmi (Vegetable Shop)	1,786.00 5,500.00	15,800.00 M.Ganesan	14,014.00	1,58,168.00

Before auction yearly Rent was Rs. 1,65,912.00
Present yearly rent after auction is Rs.10,83,600.00
Difference in rent per year Rs. 9,17,688.00
dated at Chennai on this 12th day of December, 2016

14.The Learned Counsel for the 2nd Respondent emphatically points out that the Writ Court in the Order dated 27.08.2015 in W.P.No.15021 to 15025 of 2015 had taken into account the over all circumstances and determined the monthly rent for the rest of the periods, i.e., up to 31.03.2016 at Rs.5,500/- payable by the respective Petitioners (Appellants) to the 2nd Respondent and the possession and further observed that the possession would be handed over to the 2nd Respondent by the respective Petitioners (Appellants) on or before 31.03.2016 failing which, it was open to the 2nd Respondent to evict them by using police force. Added further, the Writ Court had also opined that even before 31.03.2016 if the auction is to be conducted, it was open to the Petitioners (Appellants) to take part in the auction and if they are successful, they can be allowed to be continued in the same premises. In case the Petitioners are unable to match the highest bidders they would vacate the premises on or before 31.03.2016 and that the Respondents were directed to conduct the auction on or before 31.03.2016.

15. The Learned Counsel for the 2nd Respondent submits that one of the Appellants had died and others had not taken part in the auction conducted by the 2nd Respondent / Municipality.

16.The Learned Counsel for the 2nd Respondent relies on the Division Bench decision of this Court P.Muthusamy V.State of Tamil Nadu rep. by its Secretary to Government, Municipal

Administration and Water Supply Department, Chennai and Another reported in (2014) 5 MLJ at Page Nos. 129 and 130 whereby and whereunder, it is observed as follows:-

"The petitioners have been given only a licence to run the shops. Just because the word "lease" has been mentioned, a licence cannot ipso facto be converted into a lease. Admittedly, the licence issued has fixed terms. Therefore, the Petitioners do not have a legal or a vested right to continue in occupation for ever.

The object of letting out the shops is to collect more revenue for the Respondent - Municipality, which is meant to be used for welfare measures. The resolution has been passed after making detailed discussion and it was also passed as a consequence of the earlier order by which rent was fixed. Since the said rent so fixed was not paid, the Respondent - Municipality was made to pass the impugned resolution. Therefore, it cannot be said that the impugned resolution has been unilaterally passed and as such, the said decision is in accordance with the Government Orders passed, which confer the power on the Respondent - Municipality to take action towards the eviction from the shops in the event of non-payment of rent payable. Respondent-Municipality has got its own duty and obligation to perform. Appointments will have to be made to the public office and salaries will have to be paid. Money will have to be spent towards the welfare measures. The assessment made also indicates that the proposed auction would bring more money. The best way to get the maximum revenue is by way of public auction. Therefore, this Court does not find any arbitrariness in the action of the Respondent - Municipality. The Petitioners, being the defaulters, cannot content that they should be allowed to continue forever."

17. The Learned Counsel for the 2nd Respondent cites the Division Bench Judgment of this Court in W.A.No.1471 of 2014 (between C.Vinoba and 34 others V. The Commissioner, Palladam Municipality, Palladam, Thiruppur District and Two Others at Paragraph No.5 it is observed as follows:-

"5. There is no dispute that the rent paid by the appellants as compared with the present market rent is nominal. It is also not in dispute that under G.O.Ms.No.92, Municipal Administration and Water Supply department dated 03.07.2007, the appellants have a right to continue for a maximum period of nine years on a lease of three years subject to renewal. The appellants have been occupying the shops for a very long period on payment of the rent of a meagre amount. Thus, the appellants cannot claim renewal as a matter

of right. The Municipality has several functions to perform for the welfare of the people of the locality. The collection of market rent is one of the source of income of the municipality. Thus, the municipality cannot be permitted to allot shops on nominal rent without assessing the market value of the same. It is well certain that auction is the best mode of allotment of shops."

18. The Learned Counsel for the 2nd Respondent seeks in aid of the Division Bench Judgment of this Court in W.A.No.686 of 2015 dated 24.07.2015 (between T.M.Duraisamy V. The State of Tamil Nadu rep. by its Secretary to Government, Municipal Administration and Water Works Department, Fort.St.George, Chennai - 600 009 and Three Others) wherein at Paragraph Nos.12, 13 and 14, it is observed and held as follows:-

"12.We have examined the facts of the case from all angles. There is no dispute that the appellant was granted a vacant site on a meagre payment of Rs.400/- per month, which was enhanced to Rs.451/- in 2010. It is stated at the Bar that the market value as on date is much more than what has been paid. Even otherwise, in identical matters, this Court has taken a view that renewal cannot be claimed as a matter of right. However, since the appellant was granted lease, the learned Single Judge, in the review, has directed the respondent Town Panchayat to intimate the appellant, the proposed lease rent and that, if the appellant is willing to accept the said offer, the lease be granted in favour of the appellant.

13. We are of the considered view that the said order passed by the learned Single Judge is reasonable and in larger public interest. The ultimate purpose of arranging revenue is only for the purpose of public welfare by the Town Panchayat. It is also not in dispute that the market rental value is much more than what is being offered by the appellant on the basis of rent fixed way back in 2007. Thus, we do not find any error in the order of the learned Single Judge sought to be impugned herein.

14. Resultantly, the writ appeal fails and is accordingly dismissed. Costs made easy. Connected Miscellaneous Petitions are closed."

19. The Learned Counsel for the 2nd Respondent refers to the decision of this Court in P.V.Subramanian and Another V. Secretary to Government, State of Tamilnadu, Municipal Administration and Water Supply Department, Chennai - 600 009 and Others) in (2015) 4 MLJ at Page 164 and at Special Page 167

wherein in Paragraph No.8, it is observed as follows:-

"8. Bearing this principle in mind, G.O.Ms.No.92, gives a discretion to the local body in the matter of extension / renewal of lease beyond the period of nine years. If the interpretation given by the petitioner is to be accepted and if it is to be held that the existing lessee can endlessly continue, as a lessee of Government property, the object behind grant of lease by way of public tender to fetch the highest price would stand defeated. No person has a vested right to insist that he shall continue to remain as a lessee for 18 years merely on the ground that he was declared as a successful bidder about one decade ago. The Government Order provides for re-determination of the lease rent payable. Therefore, such re-determination can at best be the upset price that could be fixed so as to invite offers higher than such upset price. This procedure alone would ensure fairness transparency and satisfy the requirements of the provisions of the Tamil Nadu Transparency in Tenders Act. After coming into force of the said Act, it is incumbent for the Government or a limb of the Government to dispose of public property by inviting tender, the local body is accountable to the public, they are bound to augment the revenue to better enable them to serve the public. Therefore, the interpretation given by the petitioner to G.O.Ms.No.92, is thoroughly misconceived. Competitive bidding ensures high possibility of fetching a better price. Rule of law requires publicity to be given before giving away public property, no matter which mode is adopted. Therefore, the petitioner has not made out any case for interference with the impugned order.

20. It may not be out of place for this Court to make a significant mention that a perusal of the Common Order dated 27.08.2015 in W.P.Nos.15021 to 15025 of 2015 passed by the Writ Court (In the Writ Petitions filed by the Appellants as Petitioners) indicates that the enhanced monthly rent of Rs.5,500/- would be paid by the respective Petitioners from 01.04.2015 onwards till 31.03.2016.

21. At this stage, one cannot brush aside an important fact that 2nd Respondent/Municipality is the appropriate authority to decide what rent a particular shop of the Panchayat may fetch and it is well settled principle in Law that a Lease cannot be extended much to the detriment of Panchayat, as opined by this Court.

22. It is to be remembered that keeping in mind Article 14 of the Constitution of India, a 'State' within the meaning of

Article 12 of the Constitution of India cannot distribute its 'Largesse' at its sweet will, as opined by this Court.

23. In this connection, this Court pertinently points out the decision of Hon'ble Supreme Court in Shri Sachidanand Pandey and another V. The State of West Bengal and Others reported in AIR 1987 Supreme Court at page 1109 and at Special Page 1133 at Paragraph No.39 wherein it is observed as follows:-

"39. On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established: State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism."

24. Continuing further, this Court points out the decision of Hon'ble Supreme Court in Nagar Nigam Meerut V. AL Faheem Meat Exports (P) Ltd., and Others reported in (2006) 13 Supreme Court Cases at page 382 and at special pages 384 and 385 whereby and where under it is observed and laid down as follows:-

"It is now a well-settled principle of law that having regard to the provisions of Article 14 of the Constitution, State within the meaning of Article 12 thereof cannot distribute its largesse at its own sweet will. The court can ensure that the statutory functions are not carried out at the whims and caprices of the officers of the Government / local body in an arbitrary manner. But the court cannot itself take over functions. Not finding any arbitrariness, discrimination or malafides, the High Court had no justification for interfering with the advertisement inviting fresh offers for the contract in question.

All contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well-known newspapers having wide circulation, so that all eligible persons will have an opportunity to bid in the auction, and there is

total transparency. This is an essential requirement in a democracy, where the people are supreme, and all official acts must be actuated by the public interest, and should inspire public confidence. The Supreme Court has been insisting upon that rule, not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities. The State or its instrumentalities should not give contracts by private negotiation but by open public auction / tender after wide publicity. Although the Nagar Nigam had advertised the contract, the High Court has directed that it should be given for 10 years to a particular party (Respondent 1). The contract had not only been given by way of private negotiation, but the negotiation had been carried out by the High Court itself, which is impermissible.

Having regard to the nature of the trade or largesse or for some other good reason, a contract may have to be granted by private negotiation, but normally that should not be done as it shakes the public confidence. However, in rare and exceptional cases, for instance during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through "private negotiations" .

25. At this juncture, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in Delhi Science Forum and Others V. Union of India and Another reported in (1996) 2 Supreme Court Cases 405, at Special Page 409, wherein it is observed as under:-

"The question of awarding licences and contracts does not depend merely on the competitive rates offered; several factors have to be taken into consideration by an expert body which is more familiar with the intricacies of that particular trade. While granting licences a statutory authority or the body so constituted should have latitude to select the best offers on terms and conditions to be prescribed taking into account the economic and social interest of the nation. Unless any party aggrieved satisfies the court that the ultimate decision in respect of the selection

has been vitiated, normally courts should be reluctant to interfere with the same."

26. Also this Court aptly points out the decision of Hon'ble Supreme Court in Mahabir Auto Stores and Others V. Indian Oil Corporation and Others reported in AIR 1990 Supreme Court 1031 at Special Page 1032 whereby and whereunder it is observed as follows:-

"The State acts in its executive power under Art.298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercise of power. Therefore, the action of State organ can be checked under Art.14. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So whatever be the activity of the public authority, it should meet the test of Art.14 of the Constitution. If a Governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. Rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination. It is well settled and there can be "malice in law". Existence of such "malice in law" is part of the dimension of the rule of relevance and reason as well as the rule of fair play in action.

27. Apart from that, this Court points out the decision in A.Sathar V. The District Collector, Coimbatore and another reported in AIR 1998 Madras 217 and 218 wherein at Paragraph No.2, it is observed as follows:-

"..... We are of the view that the appellant has no vested right to continue in occupation of the premises in question. Admittedly, the premises in question belong to the second respondent / panchayat which is entitled to lease out the properties owned by it by public auction. As rightly pointed by the learned single judge, properties owned by the Municipality are also a source of revenue to the Municipality and the interest of the Municipality has to

be balanced as against the interest of the shop owner lessee. It cannot be disputed that the lessees may also be entitled to a fair term and the Government had, therefore, allowed the lessees to continue their occupation for a second term. As already seen the appellant was given extension of lease period from time to time from the year 1988 to 31.02.1997 on terms. Even the last lease was extended for three years by enhancing the rent by 30 percent. Under these circumstances, it is not fair on the part of the appellant to ask for the extension of the lease for further term of three years from 1-4-1997 to 31.03.2000 on an enhancement of 15 per cent of the previous rent. The extension granted earlier by the Panchayat, to the appellant would not mean that the appellant is entitled to continue in possession of the premises in question for ever by paying ridiculously low rent. We are of the view that the extension of the lease to the appellant is against the interest of the Panchayat. As already noticed the rental income from the properties owned by the Panchayat is one of the sources of income to the Panchayat. Therefore, the interest of the Panchayat cannot be jeopardised by permitting the appellant to continue in possession of the premises in question at the enhanced rate of 15 per cent as prayed for. There are absolutely no merits in this writ appeal and the same is dismissed."

28. On a careful consideration of respective contentions and also this Court taking note of a primordial fact that the Appellants / Petitioners in Law do not have either a legal or vested right to continue in occupation of the shops belonging to the 2nd Respondent / Municipality and moreover in the present case, the Appellants admittedly had not participated in the public auction conducted by the 2nd Respondent / Municipality on 16.12.2015 and added further, the public auction had brought in the highest bidders raising the coffers of the Municipality, this Court comes to an inescapable and irresistible conclusion that the Appellants are not entitled to any relief in the Writ Appeals filed by them, because of the fact that the 2nd Respondent/ Municipality cannot be a loser on any count. Viewed in that perspective, the Writ Appeals fail.

In fine, the Writ Appeals are dismissed, leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssd

To

1. The Commissioner of Municipal
Administration
Ezhilagam, Annex Building, 6th Floor,
Chepauk, Chennai - 600 005
2. The Commissioner,
Punjai Puliampatty Municipality,
Punjai Puliampatty,
Sathyamangalam Taluk,
Erode District

+1 cc to Mr.S.Parthasarathy Advocate sr.19417
+1 cc to Mr.A.S.Thambusamy Advocate sr.20017

Order made in
W.A.Nos.165 to 168 of 2016

aa18/04/2016

सत्यमेव जयते

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