

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :18.03.2016

Delivered on :29.03.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.339 of 2016
and
C.M.P.No.5005 of 2016

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.
... Appellant/Petitioner

Vs.

- 1.The Commissioner of Municipalities Administration,
Ezhilagam - Annex Building,
6th Floor, Chepauk, Chennai - 600 005.
- 2.The Commissioner,
Punjai Puliampatti Municipality,
Punjai Puliampatti,
Sathiyamangalam Taluk
Erode District.
... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 18.02.2016 made in W.P.No.39436 of 2015.

W.P.No.39436 of 2015:- Dated 18/02/2016

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 Appellant : Mr.L.Chandrakumar
For 1st Respondent : Mr.G.Saibaba
Government Advocate
For 2nd Respondent : Mr.A.S.Thambusamy

JUDGMENT

The Appellant/Association has filed the present intra-Court Writ Appeal as against the order dated 18.02.2016 in W.P.No.39436 of 2015 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order on 18.02.2016 in W.P.No.39436 of 2015 (filed by the Appellant/Petitioner/Association) at paragraph 13 had observed the following:

"13. 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."

and resultantly, dismissed the Writ Petition.

3.The Learned Counsel for the Appellant/Welfare Association submits that the order of the Learned Single Judge in dismissing the Writ Petition is against all canons of law and violative of well settled principles and therefore, liable to be quashed in the eye of Law.

4.The Learned Counsel for the Appellant urges before this Court that the Learned Single Judge had failed to note that membership of the four Petitioners who were litigants in the earlier writ petitions in W.P.Nos.15021 to 15025 of 2015 and thereby being members of the Appellant/Association which had chosen to challenge the subsequent impugned notification of the Respondent/Municipality and that too when the cause which was focused in the said writ petitions were totally and materially different could not be stated to have been granted any reprieve in so far as the impugned notification which is against the G.O.Ms.No.92 dated 03.07.2007 and that of the clarificatory Letter No.6655/Na Thi 4(2/09-1) dated 12.03.2009.

5.It is represented on behalf of the Appellant that the Learned Single Judge had committed an error in dismissing the Writ Petition on technicalities as well as on merits without recourse to the factual matrix.

6.Added further, it is the stand of the Appellant that the 2nd Respondent/Municipality under the garb of revenue for it so as to use the said for the welfare of the public had chosen to resort to an innovative method of conducting auction cum tender which would ultimately result in the competitive price of the highest bidder becoming impracticable of performance and resultantly the Municipality's exchequer being put to loss.

7.The Learned Counsel for the Appellant projects an argument that if the members of the Appellant/Association were made to accept for a reasonable increase rather than what was prescribed in the Government Order so as to say 100% increase from that of the present monthly rent than what is being paid would have given a quietus to the issue rather than resorting to any litigation.

8.The Learned Counsel for the Appellant takes a stand that the Appellant/Association is entitled to challenge the auction cum tender notification dated 27.11.2015 (for and on behalf of

its members) and therefore, the contra view taken by the Learned Single Judge to the effect that the Writ Petition filed by the Appellant is incorrect in Law.

9.The Learned Counsel for the Appellant draws that attention of this Court to the fact that the Writ Petitioners (in W.P.Nos.15021 to 15025 of 2015) challenged the similar auction notification dated 08.05.2015 and in the present Writ Petition in W.P.No.39436 of 2015 (filed by the Appellant/Association), the challenge was to a subsequent notification dated 27.11.2015, but these vital aspects were not appreciated by the Learned Single Judge at the time of passing the impugned order in the Writ Petition.

10.The Learned Counsel for the Appellant contends that resorting to an exorbitant increase of about over 250% to 300% by the Municipality in and by which the livelihood of the earnings of small shops such as News mart, tea shops, petty shops, saloon shops, milk vendors, etc. would exhibit unreasonableness on the part of the Municipality. However, this aspect was not borne in mind by the Learned Single Judge at the time of passing the order in the Writ Petition.

11.The Learned Counsel for the Appellant submits that in terms of the Government Order in G.O.Ms.No.92 dated 03.07.2007 and that clarificatory Letter No.6655/Na Thi 4(2/09-1) dated 12.03.2009, the period of Licence/Lease was extended on the basis of reassessment etc. and therefore the members of the Appellant/Association who are identically circumstanced are to be showered with similar benefits, so as to avoid infraction of Articles 14 and 16 of the Constitution of India.

12.In response, the Learned Counsel for the 2nd Respondent/ Municipality submits that the Writ Petition filed by the Appellant/ Association is not maintainable. Continuing further, it is represented on behalf of the 2nd Respondent/Municipality that most of the lessees have sublet the shops and receiving enormous amounts from the sub-tenants and in turn paying only a low rent.

13.The Learned Counsel for the 2nd Respondent proceeds to take a plea that it is not correct to state that members of the Appellant/ Petitioner's Association are entitled to renew the period of lease in terms of G.O.Ms.No.92 dated 03.07.2007. Equally, it is incorrect to state that the members of the Appellant/Association should be given priority in granting license for the shops in occupation. As a matter of fact, the members of the Appellant/Association are not entitled to renewal of lease on assessment of market rent in respect of the shops under their occupation.

14. Expatiating his submissions, the Learned Counsel for the 2nd Respondent contends that the licensees were in occupation of the shops for quite a long time starting from the year 1982 onwards and they were paying very low amount as rent and most of the licensees had sublet the shops for which they obtained license because of the fact that the 2nd Respondent/Municipality is not receiving the proper market rent and is unable to carry on the welfare schemes for the benefit of general public. Therefore, the Municipal Council had decided to auction the license for the purpose of getting more revenue and as such, the Resolution No.354 dated 25.11.2015 was passed by the Municipality. Only in terms of the Resolution passed by the 2nd Respondent/Municipality, the auction was conducted on 16.12.2015 and 18.12.2015 which were valid and in this regard, there is no breach of any of the Government Orders much less G.O.Ms.No.92 dated 03.07.2007.

15. The Learned Counsel for the 2nd Respondent submits that the letter dated 12.03.2009 issued by the Secretary to Government, Municipal Administration and Water Supply (MA4) Department and relied on by the Appellant/Association cannot enure to its benefit because of the reason that the said letter came up for consideration before the Division Bench of this Court and it was held that circular could not overreach the Government Order.

16. The Learned Counsel for the 2nd Respondent strenuously contends that before the auction, the Municipality was in receipt of a sum of Rs.2,23,342/- and Rs.26,80,104/- per year as rent and with the amount which the 2nd Respondent/Municipality was receiving from 01.04.2016. Further, the present rent paid by the lessees (as per the highest bid), the Municipality would be deriving a monthly rent of Rs.12,54,410/- and has received Rs.74,00,000/- as EMD and Rs.1,42,057,20/- as 12 months advance rent for 74 shops and the Municipality would be utilising the same for the welfare of the people.

17. The Learned Counsel for the 2nd Respondent submits that the participants in the public auction and in sealed cover offered much more than the opposite members fixed by the 2nd Respondent/ Municipality.

18. The Learned Counsel for the 2nd Respondent/Municipality refers to paragraph 11 of the counter filed in W.P.No.39436 of 2015 by the Municipality [wherein it was mentioned that in the auction the following persons mentioned in the list participated through their relatives and some of them are successful], which runs as under:

Sl. No	Name of the Licensees and shop Numbers	Persons who participated and relationship	Highest Bid offered / Whether successful or not
1	Thiru Ravichandran 3 A. Jawahar Main Road Shopping Complex Punjai Pulampatti	A.Ravichandran	Successful Rs.25100 Jawahar Main Road Shopping Complex shop No.6
2	Thiru Ravichandran 3 A. Jawahar Main Road Shopping Complex Punjai Pulampatti	A.Ravichandran	Successful 16500 Panchayat union shopping complex shop no.1
3	Thiru Ravichandran 3 A. Jawahar Main Road Shopping Complex, Punjai Pulampatti	A.Ravichandran	Successful 21200 Panchayat union shopping complex shop no.2
4	Sarvodaya Sangam 10. Jawahar Main Road Shopping Complex, Punjai Pulampatti.	Thangamani Manager	3 rd party Successful Govindarajan Rs.19000
5	Thiru. Sadasivam 11, Jawahar Main Road Shopping Complex, Punjai Pulampatti	G.Dharmalingam (Brother)	Successful Rs.19200 Jawahar Main Road Shopping complex shop no.12
6	Thiru V.R.Thirumoorthy 12, Jawahar Main Road Shopping Complex, Punjai Pulampatti	V.R.Murugesan (Brother)	Un Successful Rs.18700/- 3 rd party Successful G.Dharumalingam Rs.19200

Sl. No	Name of the Licensees and shop Numbers	Persons who participated and relationship	Highest Bid offered / Whether successful or not
5	Thiru.A.Ravi 18, Jawahar Main Road Shopping Complex, Punjai Puliampatti	Sivachandran (Brother)	Successful Rs.17300 Jawahar Main Road Shopping Complex shop No.15
6	Thiru.N.K.Gopal 19, Jawahar Main Road Shopping Complex, Punjai Puliampatti	N.K.Gopal	Un Successful HB: 18800/- 3 rd party successful Sammema Banu Rs.19500
7	Thiru S.Anbu Karthikeyan 20, Jawahar Main Road Shopping Complex, Punjai Puliampatti	S.Anbu Karthikeyan	Un Successful HB:27300/- 3 rd party successful R.Dinesh Kumar Rs.27500
8	Thiru. N.K.Gopal 21Jawahar Main Road Shopping Complex, Punjai Puliampatti	K.G.Satheesh (Son)	Successful Rs.27000 Jawahar Main Road Shopping Complex shop no.21
9	Thiru.Sivajothi 23, Jawahar Main Road Shopping Complex, Punjai Puliampatti	J.Dhivakar	Successful Rs.6100 Jawahar Main Road Shopping Complex shop No.2
		Sivajothi	Not offered
10	Thiru.M.Rajappan 24, Jawahar Main Road Shopping Complex, Punjai Puliampatti	R.Saravanan (Son)	Successful Rs.23100 Jawahar Main Road Shopping Complex Shop No.23

Sl. No	Name of the Licensees and shop Numbers	Persons who participated and relationship	Highest Bid offered / Whether successful or not
11	Thiru M.Rajappan 25, Jawahar Main Road Shopping Complex, Punjai Puliampatti	R.Shanmugasundaram	Successful Rs.20500 Jawahar Main Road Shopping Complex Shop No.24
12	Thiru.S.Abdul Raheem 26, Jawahar Main Road Shopping Complex, Punjai Puliampatti.	S.Abdul Raheem	Successful 13800 Jawahar Main Road Shopping Complex shop No.29
	Thiru. Saleem 28 Jawahar Main Road Shopping Complex, Punjai Puliampatti	Saleem	Successful Rs.21100 M.G.R. Shopping Complex Shop No.5
	Thiru. Saleem 28 Jawahar Main Road Shopping Complex, Punjai Puliampatti	Saleem	Successful Rs.26000 M.G.R. Shopping Complex Shop No.6
14	Thiru.Srinivasan 30 Jawahar Main Road Shopping Complex, Punjai Puliampatti	Shanthi (wife)	Successful Rs.21100 Jawahar Main Road Shopping Complex Shop No.30
15	Thiru S.A.Askar Ali 1 M.G.R. Shopping Complex, Punjai Puliampatti	S.A.Liyahath Ali (Brother)	Successful Rs.20600 M.G.R. Shopping Complex Shop No.1
16	Thiru S.A.Askar Ali 2 M.G.R. Shopping Complex, Punjai Puliampatti	S.A.Liyahath Ali (Brother)	Successful Rs.20500 M.G.R. Shopping Complex Shop No.2

Sl. No	Name of the Licensees and shop Numbers	Persons who participated and relationship	Highest Bid offered / Whether successful or not
17	Thiru. Senthilkumar 3 M.G.R. Shopping Compelx, Punjai Puliampatti	T.Senthilkumar	Not offered 3 rd Party Successful G.Velusamy Rs.22100
18	Thiru. Senthilkumar 4 M.G.R. Shopping Compelx, Punjai Puliampatti	T.Senthilkumar	Not offered 3 rd Party Successful G.Velusamy Rs.22100
19	Thiru.M.Nanjundan 5. M.G.R. Shopping Complex, Punjai Puliampatti	M.Nanjundan	Not offered 3 rd Party Successful M.Saleem Rs.21100
20	Thiru.Mydeen 6 M.G.R. Shopping Complex Punjai Puliampatti	Sathick Batcha (Brother)	Successful Rs.13900 Jawahar main road shopping complex shop No.28
21	Thiru. Senthilkumar 7 M.G.R. Shopping Compelx, Punjai Puliampatti	T.Senthilkumar	Not offered 3 rd Party Successful R.Kanagaraj Rs.22100
22	Thiru.Vijaya K. Raval 8 M.G.R. Shopping Complex, Punjai Puliampatti	M.Gandhilal (Husband)	Successful Rs.25100 M.G.R. Shopping complex shop No.8
23	Thiru. Selvaraj 10, M.G.R. Shopping Complex, Punjai Puliampatti	Poongodi (Daughter in law)	Successful Rs.20100 M.G.R. Shopping complex shop No.10

Sl. No	Name of the Licensees and shop Numbers	Persons who participated and relationship	Highest Bid offered / Whether successful or not
24	Thiru.Kuppusamy 1, Maraimalai Adikal Street, Shopping Complex, Punjai Puliampatti	P.Yuvaraj (Grand Son)	Successful Rs.2600 Maraimalai Adigal Shop No.1
25	Thiru Chinraj6. Thiru.Vee.Kaa Thidal Shopping Complex, Punjai Puliampatti	K.Natarajan (Brother in Law)	Successful Rs.17500 Thiru.Vee.Kaa Street Thidal Shopping Complex Shop No.6
26	Tmt.Kalaivani 10. Thiru.Vee.Kaa Thidal Shopping Complex, Punjai Puliampatti	Kalaivani	Not offered 3 rd Party Successful Selvaraj Rs.14600
27	Thiru.P.N.Rajendran 2 Weekly Shandai Shopping Complex Godown	Arun Prasath (Son in law)	Successful Rs.24000 M.G.R. Shopping complex shop No.15
28	Thiru.Ganapathy 5, Weekly Shandai Shopping Complex Godown, Punjai Puliampatti	Ganapathy	Successful Rs.3100 Weekly Shandai Shopping Complex Stair Case Shop No.9
29	Thiru.Varatharaj 6 Weekly Shandai Shopping Complex Godown, Punjai Puliampatti	Balasubramanian (Brother) Varatharaj	Successful Rs.8100 Weekly Shandai Shopping Complex shop No.6
		Varatharaj	Not offered

Sl. No	Name of the Licensees and shop Numbers	Persons who participated and relationship	Highest Bid offered / Whether successful or not
30	Thiru.Amanullah 7, Weekly Shandai Shopping Complex Godown, Punjai Puliamatti	Sarammal (Wife) (participated on behalf of his wife)	Successful Rs.8100 Weekly Shandai Shopping Complex shop No.4
		Sarathkumar (Brother in Law)	Successful Rs.8100 Weekly Shandai Shopping Complex Shop No.6

19.In effect, the stand of the 2nd Respondent/Municipality is that by virtue of the conduct of auction, the financial resources of the Municipality had increased substantially, thereby the financial interest of the Municipality is very much taken care of.

20.The Learned Counsel for the 2nd Respondent/Municipality cites the Division Bench decision of this Court in 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 129 [where one of us S.K.A., J. is a member] wherein it is held 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."

21. At this juncture, this Court aptly points out the decision of the Hon'ble Supreme Court in *Shri Sachidanand Pandey and another V. The State of West Bengal and Others* reported in AIR 1987 Supreme Court 1109 at Special Page 1133 at paragraph 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."

22.Also, this Court refers to the decision of the 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 and held 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.

23.Furthermore, in 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 laid down as follows:

"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."

24. Moreover, this Court worth recalls and recollects the decision in A.Sathar V. The District Collector, Coimbatore and another reported in AIR 1998 Madras 217 and 218, wherein at paragraph 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 meant 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."

25. Apart from that, this Court relevantly points out the decision of the 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 & 385, whereby and whereunder, 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."

26. There is no two opinion of a vital fact that the 2nd Respondent/Municipality is the competent/appropriate authority to determine 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 and in any event, the panchayat cannot be a loser on any score.

27. It cannot be forgotten that bearing in mind Article 14 of the Constitution of India, a 'State' within the meaning of Article 12 cannot distribute its 'Largesse' at its sweet will and pleasure.

28. Besides the above, this Court significantly points out the Division Bench Judgment of this Court in W.A.No.1471 of 2014 (between C.Vinoba and others V. The Commissioner, Palladam Municipality, Palladam, Thiruppur District and Others) wherein at paragraph 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."

29. As far as the present case is concerned, the filing of the Writ Petition by the Appellant/Association seeking to quash the auction-cum-tender notification issued by the 2nd Respondent/Municipality dated 27.11.2015, in and by which, the Municipality had brought the lease hold right of the 71 shops in auction (owned by the Municipality within its municipal limits etc.) is not per se maintainable because of the latent and patent reason that an Association cannot in Law espouse the cause of individual members/shop owners/lessees/licensees. Viewed in that perspective, the Writ Petition sans merits. Even otherwise, the individual shopkeepers of the Appellant/ Association do not have either a legal or vested right to continue in occupation of the shops belonging to the 2nd Respondent/Municipality. The paramount interest of the 2nd Respondent/Municipality cannot be put to peril by permitting the shopkeepers of the Appellant/Association to continue in possession of the premises in the subject matter in issue at an increased rate of 15%. No wonder, the rule of Law requires competitive bidding which paves way for obtaining a paper price in relation to a public property which is in the nature of a trust. Therefore, the public property is to be put into auction by inviting tender so as to enable the Municipality to obtain the highest offer in a fair and transparent manner. Only then, the public welfare of a particular Town Panchayat can augment its revenue to the optimum level, as opined by this Court. Looking at from any angle, the Appellant is not entitled to any relief in the Writ Appeal filed by it. Consequently, the Writ Appeal fails.

30.In the result, the Writ Appeal is dismissed, leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

Sgl

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

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

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

+ 1 cc to Mr.L.Chandrakumar, Advocate Sr 19297

KR/4/4/16

W.A.No.339 of 2016

सत्यमेव जयते

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