

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Appeal No.804 of 2016
& C.M.P.No.10527 of 2016

C.Shanmugaraj ...Appellant
Vs.

1. The Commissioner
Udumalpet Municipality
Udumalpet

2.The Revenue Divisional Officer
Udumalpet
Tiruppur District

3.S.NagarajRespondents

(3rd respondent impleaded by order
dated 06.09.2016 in C.M.P.13784/2016)

Writ Appeal filed against the order passed in W.P.No.19784 of
2016 dated 13.06.2016 on the filed this Court.

Writ Petition filed Under Article 226 of the Constitution of
India for the issuance of a Writ of Certiorari Calling for the
records on the file of the 1st respondent in respect of the
tender published in Dinathanthi "Tiruppur Edition" dated
28.05.2016 issued by the 1st respondent bringing for auction to
fix the lease rent for the Community Hall situated at Chairman
Kanagarajan Salai Udumalpet Tiruppur District and quash the
same.

For Appellant : Mr.T.Thyageswaran
for Mr.Waraon and Sai Rams

For respondents : Mr.A.S.Thambusamy for R1
Mr.K.Dhanjayan, Spl.G.P. for R2

JUDGMENT

(Judgment of the Court was made by HULUVADI G. RAMESH, J.)

Heard the learned counsel appearing for the respective parties for some time and also the learned counsel appearing for the newly impleaded 3rd respondent.

2. This Writ Appeal is filed as against the order passed by the learned Single Judge dated 13.06.2016 in W.P.No.19784 of 2016, wherein, the writ petitioner's prayer seeking to quash the tender publication dated 28.05.2016 issued by the first respondent-Commissioner, Udumalpet Municipality, was rejected.

3. The pleading before the learned Single Judge put forth by the Writ Petitioner is that he has taken on lease the Community Hall constructed by the 1st respondent in pursuant to the lease granted to him on 07.06.2007 for a period of three years and vide representation dated 12.04.2010, he requested the 1st respondent to extend the licence for a further period of 9 years from June 2010 for the reason that he has already spent more than Rs.20.00 lakhs for improvement and renovation of the Hall. The Writ Petitioner relied on G.O.Ms.No.92, Municipal Administration Department dated 03.07.2007 and submitted that he is entitled to renewal for a further period of 9 years from the date of expiry of the original licence during June 2010.

4. The learned Single Judge, by following the decision of this court reported in (2015) 4 MLJ 164 [P.V.Subramanian and Another Vs. Secretary to Government, State of Tamil Nadu, Municipal Administration and Water Supply Department, Chennai and Others], held that as a matter of right, the Writ Petitioner cannot ask for further extension of lease period, as facts of the case would disclose that he managed to run the Community Hall constructed by the 1st respondent for 9 years and dismissed the Writ Petition.

5. It appears that the impleaded respondent/Nagarajan, has quoted the highest offer and also complied with the terms of the auction Notification by paying the Earnest Money Deposit.

6. The learned counsel appearing for the appellant submits that Clause No.4(III) of G.O.Ms.No.92 dated 03.07.2007 clearly states that after the expiry of 9 years, the 1st respondent shall

revise the rent in accordance with the prevailing market rate and give first opportunity to the existing lessee and in the event of the lessee refused to accept the revised rent, the 1st respondent shall proceed with the auction. However, the 1st respondent, without issuing any notice had given tender notification for auction to fix the rent for the Community Hall, which is against the very provision of G.O.Ms.No.92 dated 03.07.2007.

7. The further contention of the learned counsel for the appellant is that as per G.O.Ms.No.92, the appellant is entitled for automatic renewal of licence upto 2019 and without passing any orders on his representation, licence fee tendered has been accepted for nearly 7 years and thereby implied the acceptance for the continuation of licence in terms of the above said Government Order.

8. It is pertinent to note that the appellant was originally granted licence on 07.06.2007 for a period of three years and in pursuant to the accommodation given by the first respondent, he continued for another six years from the date of expiry of the licence during June 2010 and thus, he has completed 9 years.

9. It is also seen that paragraph No.43 of G.O.Ms.No.92 has given a discretion to the local body to re-determine the lease amount of the shop or land after the expiry of nine years period and an option has been given to the local body to offer the same to the existing lessee at the re-determined lease amount and that the benefit of extension of lease could be granted by giving preference to the existing lessees. However, there is also a provision that the first respondent local body to conduct auction to get more revenue than of extending the licence to the existing lessee.

10. In the case on hand, the stand of the appellant herein is that as per G.O.Ms.No.92, Municipal Administration Department, dated 03.07.2007, he should have been given the preference of preemption in respect of extension of licence, however, the local body without issuing notice to him, issued tender notification and the first respondent thus failed to follow G.O.Ms.No.92 and conducted auction.

11. The learned counsel appearing for the first respondent submitted that the discretion of issuing tender notification and conducting auction is exercised by the local body to fetch better income and for sustaining the interest of the local body. It is submitted that the matter has been deliberated in the council meeting held and to augment the revenue of the Corporation, they decided to go for auction.

12. The stand taken by the 1st respondent/Corporation in this case is that issuance of notice to the existing lessee for further extension of lease period, cannot be asked by the appellant, as a matter of right and thus he cannot seek to quash or stop the auction. He also submitted that the appellant had committed default in payment of arrears of Electricity charges, which would seriously affect and burden the successful bidder in the auction.

13. Reliance was also placed by the learned counsel for the 1st respondent on the decision of the Division Bench of this court reported in (2014) 5 MLJ 129, [P.Muthusamy Vs. State of Tamil Nadu, rep. By its Secretary to Government, Municipal Administration and Water Supply Department, Chennai and another], particularly the summary of findings in paragraph No.22, wherein it is stated as under:-

"The fact that the Commissioner of Municipal Administration directed the respondent-Municipality directed the respondent-Municipality to fix the market rent as the rent payable based upon the Government Orders which in turn was complied with would also show that there is no quarrel with the position that the market rent shall be the basis for the fixation of the rent payable by the licensees. In any case, the petitioners, being the defaulters, cannot contend that they should be allowed to continue forever. As the orders impugned have been passed by taking into consideration of the relevant materials, we do not find any room for interference."

14. The learned counsel appearing for the impleaded 3rd respondent sought to contend that the 3rd respondent is the successful bidder and complied with the terms of the auction Notification by depositing Rs.5,00,000/- being 12 months advance rent besides Rs.5,00,000/- Earnest Money Deposit and the monthly rent payable by the 3rd respondent is Rs.41,666/- to the Municipality. The learned counsel thus contended that in the absence of any irregularity or illegality in the process of calling for the bid or in the compliance of the tender notification, the appellant cannot seek for further auction.

15. The question that arises for consideration in this Writ Appeal is as to whether in terms of G.O.Ms.No.92, Municipal Administration Department, dated 03.07.2007, the 1st respondent is required to give the right of preemption to the existing

lessee or to go for independent Public Auction for leasing out the property.

16. The G.O., although contemplates that after the expiry of 9 years, the lease amount has to be reassessed; the present lease holders be given preference to extend the lease period on the basis of the reassessment of the lease amount based on the present market value, it further contemplates that if they do not agree for the same, then the said property has to be leased out on Public Auction.

17. On the comprehensive reading of the G.O., it is very clear that even though the G.O., was introduced bringing revised procedures in respect of the leasing out of the shops and land belonging to Urban Local body, it also protects the local body to redetermine the rent which would ultimately ensure fetching higher rate of rent. Even though the G.O., mandates notice to the existing lessee, in the case on hand, the appellant is the defaulter in payment of electricity charges for more than Rs.3 lakhs. That apart, the appellant himself has not chosen to participate in the tender process. Thus, the appellant, being the defaulter in payment of necessary electricity charges in respect of the said community hall, seeking, issuance of notice or preference as per the terms of the G.O., before going for fresh tender, by way of right of preemption, cannot be claimed as a matter of right.

18. We find that the petitioner is the chronic defaulter and failed to make payment towards consumption of Electricity and on that score itself, the appellant is disqualified for the extension of lease period. On the said premise, the 1st respondent would not have exercised the option of preference in favour of the appellant, as to whether he is agreeable for reassessment of the lease amount based on the present market value. Further more, when the appellant himself not chosen to participate in the tender process, by exercising the option of quoting present market value in the tender, cannot now seek for extension of lease and on that score, the appellant/Writ Petitioner's right to preemption stands ousted. The impleaded respondent/3rd respondent, on the other hand, had quoted highest bid amount and thus rightly, he was granted lease.

19. The learned counsel appearing for the appellant submits that already he had offered the community hall for marriage and other functions for the ensuing 2 months.

20. For the said proposal, the learned counsel appearing for the 1st respondent submits that as the booking of community hall by the private parties had already been made, the celebration on such dates may go on as per the privity of contract exists between the lessee and the occupant on the ensuing dates, however, the rent fixed shall be payable either to the 1st respondent/Municipality or the successful bidder as the case may be.

21. The said statement of the counsel for the 1st respondent is recorded. In view of the foregoing reasonings, we find no proper ground to interfere with the order of the learned Single Judge. Accordingly, the order passed in W.P.No.19784 of 2016 dated 13.06.2016 stands confirmed. The Writ Appeal is devoid of merits and hence the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Udumalpet Municipality,
Udumalpet.

2.The Revenue Divisional Officer,
Udumalpet,
Tiruppur District.

+lcc to Mr.Waraon & Sairams, Advocate sr.50438
+lcc to Mr.N.Ponraj, Advocate Sr.50610
+lcc to Mr.A.S.Thambuswamy, Advocate Sr.50349
+lcc to the Government Pleader SR.50563

W.A.No.804 of 2016

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