

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5/2/2016

C O R A M

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.4463 of 2016

R. Vijayakumar

...Petitioner

Vs

1. The Secretary to the
Government of Tamil Nadu
Municipal Administration and
Water Supply Department
Fort St. George
Chennai 600 009.

2. Udumalpet Municipality
rep. By its Commissioner
Udumalpet
Tiruppur District.

...Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the impugned notice dated 1/2/2016 in Na.Ka.No.874/2015/A1 issued by the second respondent, quashing the same and consequently direct the respondents herein to extend the period of lease to the petitioner for the third time from 1/4/2015 to 31/3/2018 following G.O.(Ms)No.92 dated 3/7/2007 issued by the first respondent.

For Petitioner ... Mr.K.IElango

For respondents... Mr.M.L.Mahendran
Government Advocate
for R.1.

Mr.A.S.Thambuswamy
for R.2.

O R D E R

With the consent of the learned counsel appearing on either side, this writ petition is taken up for final disposal, at the admission stage itself.

2. Heard Mr.K.Elango, learned counsel for the petitioner, Mr.M.L.Mahendran, learned Government Advocate for the first respondent and Mr.A.S.Thambuswamy, learned counsel for the second respondent.

3. This writ petition has been filed, praying to quash the impugned notice, dated 1/2/2016, in Na.Ka.No.874/2015/A1, issued by the second respondent and consequently, direct the respondents to extend the period of lease, to the petitioner for the third time from 1/4/2015 to 31/3/2018, following G.O.(Ms) No.92, dated 3/7/2007, issued by the first respondent.

4. The petitioner, who is a lessee of Municipal land has challenged the proceeding, dated 1/2/2016, by which the petitioner's request, for grant of extension of lease, was rejected.

5. The land in question was originally leased out to one Ramanathan, but said to have transferred in the name of the petitioner and such transfer was recognised and accepted by the respondent Municipality, vide proceeding, dated 20/2/2009.

6. The petitioner would state that subsequently, the lease was extended and it was valid till 31/3/2015. In this regard, the learned counsel for the petitioner referred to the proceedings of the second respondent, dated 9/12/2011. It is pointed out that in the impugned order, a stand has been taken that the lease has expired, on 31/3/2012.

7. When this was pointed out, the learned counsel for the second respondent clarified that it was a typographical mistake and the respondent Municipality, accepts that the writ petitioner's lease was extended upto 31/3/2015. The petitioner, now seeking for further renewal of three years, by following G.O.Ms.No.92 dated 3/7/2007. The correctness of the plea raised by the petitioner is required to be decided by this Court in this writ petition.

8. In fact, identical issue was considered in a batch of case in W.P.No.18346 of 2015 etc., batch (S.Vanjikumar and seven others Vs. The Secretary to Government, Municipal and Water Supply Department, Fort St. George, Chennai 9) and the writ petitions were dismissed, by a common order, dated 3/11/2015. In the said decision, this Court has considered as to what would be the right of a transferee of lease being transferred in his name and it was held that though the lease stood transferred after due approval, the date on which the first lease was entered into would be relevant. Therefore, in the case on hand, the date on which lease was granted to Ramanathan alone would be relevant and the date on which the lease was transferred to the petitioner i.e., on 20/2/2009 is of no significance.

9. There appears to be a dispute, as to the date on which Ramanathan became a lessee, as the Municipality would state that he became a lessee in 1998 and the petitioner would state that it is from 2001.

10. Be that as it may, while implementing G.O.Ms.No.92, it was decided by the Government that whatever date the person has become a lessee of a Municipal building or land, one should give effect to G.O.Ms.No.92 dated 3/7/2007 from the date of issuance of the Government order. If the same is applied to the petitioner's case, then the petitioner is not entitled to any automatic renewal beyond 31/3/2015. Therefore, the prayer sought for by the petitioner, to grant renewal of lease has to be necessarily rejected.

11. The learned counsel appearing for the respondent Municipality, submitted that the extent of lease which was originally leased to Ramanathan was 2,500 sq.feet, but the petitioner is said to be in enjoyment of about 3600 sq.feet and it is stated that there is an encroachment. If that be the case, nothing prevents the respondent Municipality from initiating action for eviction from the unauthorised portion. Further, there is a submission made by the respondent Municipality that the land is proposed to be used for formation of road.

12. The learned counsel for the petitioner submitted that the petitioner is ready and willing to pay Rs.10,000/- as lease rent. This submission is resisted by the learned counsel appearing for the second respondent, stating that in the previous auction, which has been injuncted by a Civil Court, the offer received by the Municipality in the tender-cum-auction was around Rs.60,000/-. However, there is one other issue, which prevents the second respondent Municipality from calling for fresh auction-cum-tender. This is on account of the suit which had been filed by one Chinnaraj, Councillor, filed O.S.No.215 of 2015, on the file of the Sub-Court, Udumalpet and had obtained an order of injunction, on 10/8/2015. It has stated that the suit could not be disposed of, since earlier in another writ petition, the Court directed the original records in the suit to be called for and even though those writ petitions were dismissed, the said records had not gone back to the Civil Court. If the submission is correct, then it is a very serious matter and the learned counsel for the second respondent Municipality is directed, to move the Registry, by way of a representation, setting out full facts.

13. In the light of the injunction which has been granted by the Civil Court, there appears to be a stalemate in the matter. However, this should not be a reason why the Municipalities interest should suffer.

14. In view of the above, this writ petition is disposed of. Liberty is granted to the petitioner, to offer a reasonable increase, which can be considered by the second respondent Municipality, for a temporary period till the suit is disposed of. However, this Court is not issuing any positive direction and it is for the respondent Municipality, to take a decision on merits and in accordance with law. The petitioner is granted liberty to file a representation in this regard, before the second respondent, within a period of two weeks, from the date of receipt of a copy of this order and on receipt of the same, the second respondent, shall take a reasoned decision, on the representation, within a period of two weeks, thereafter. Till then, the petitioner shall not be evicted.

No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Secretary
The Government of Tamil Nadu
Municipal Administration and Water Supply Department
Fort St. George
Chennai 600 009.
2. The Commissioner
Udumalpet Municipality
Udumalpet
Tiruppur District.

+1cc to Mr.K. Elango, Advocate, S.R.No.7701
+1cc to Mr.A.S. TGhambuswamy, Advocate, S.R.No.7577
+1cc to the Government Pleader, S.R.No.7902

W.P.No.4463 of 2016

SVI (CO)
EU 23.02.16