

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.02.2016
Coram

The Hon'ble Mr. Justice T.S. Sivagnanam

Writ Petition Nos. 5362 and 5506 of 2016
and
W.M.P. Nos. 4676 and 4843 of 2016

1. The Avadi Market Vegetable and Fruit
Sellers Association,
reg. No. 102/2007,
rep. by the President S. Raja,
No. 9, N.M. Road,
Venkatesa Perumal Temple,
Avadi, Chennai - 600 054.
... Petitioner in W.P. No. 5362 of 2016
 2. G. Munusamy ... Petitioner in W.P. No. 5506 of 2016
- Vs.
1. The Commissioner of Municipalities,
Local Body Administration,
Ezhilagam, Chepauk, Chennai - 600 001.
... Respondent No. 1 in W.P. No. 5506 of 2015
 2. The District Collector,
Thiruvallur District, Thiruvallur.
... Respondent No. 1 in W.P. No. 5362 of 2015
 3. The Commissioner of Avadi Municipality,
Avadi, Chennai - 54.
... Respondent 2 in both W.Ps.
 4. The Chairman of Avadi Municipality,
Avadi, Chennai - 54.
... Respondent 3 in both W.Ps.

Prayer in W.P. No. 5362 of 2016

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus directing the respondents to allot the shops at Avadi Market to the members of the Association based on the representation, dated 05.02.2016.

Prayer in W.P.No.5506 of 2016 :

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records from the file of the second respondent, Tender Notification, reference No.Na.Ka.No.11740/A7/2013, dated 22.01.2016, and to quash the same, and to direct the second respondent to call for fresh tender by fixing a reasonable amount as a security deposit enabling the poor vendors to participate in the tender.

For Petitioner in

W.P.No.5362 of 2016 : Mr.C.Umashankar

For Petitioner in

W.P.No.5506 of 2016 : Mr. Rajkumar Ashok Singh

For Respondent-1

: Mr.R.Rajeswaran

Special Government Pleader

For Respondents 2 & 3

: Mr.R.Lakshmi Narayanan

Additional Government Pleader

COMMON O R D E R

This judgment shall dispose of the following Writ Petitions, as the relief sought herein are inter-connected :-

Sl.No.	Case No.	Name of the petitioner
1	W. P.No.5362 of 2016	Avadi Market Vegetable and Fruit Sellers Association,
2.	W.P.No.5506 of 2016	G.Munusamy

2. Writ Petition No.5362 of 2016 has been filed by an Association, called "Avadi Market Vegetable Fruit Sellers Association", seeking for issuance of Writ of Mandamus upon the respondent/Municipality to allot the shops at Avadi Market to the members of the Association based on the representation, dated 05.02.2016.

3. Insofar as the another Writ Petition is concerned, viz., W.P.No.5506 of 2016, the same is filed seeking to quash the notification, dated 22.01.2016, issued by the respondent/Municipality and to direct the second respondent/Avadi Municipality to call for fresh tender by fixing a reasonable amount as a security deposit, so as to enable the poor vendors to participate in the tender.

4. Heard Mr.C.Umashankar and Mr. Rajkumar Ashok Singh, the learned counsels appearing for the petitioners respectively, and Mr.R.Rajeswaran, learned Special Government Pleader, who accepts notice for first respondent in both Writ Petitions, and Mr.R.Lakmi Narayanan, the learned Additional Government Pleader, who accepts notice for second and third respondents in both the Writ Petitions, and with their consent, the main Writ Petitions are taken up for final disposal.

5. Mr.V.Srinivasan, the Municipal Engineer, Avadi, is present in Court, and also gave instructions in the matter on the factual aspects.

6. The facts of the case, which led to the filing of these Writ Petitions are as follows:-

i) The petitioners are small vegetable and fruit sellers, who were earlier trading on road margin and kerb, near Avadi Municipality for more than 40 years. All of a sudden, the respondent/Municipality requested the vendors to vacate the premises, and it is stated that they were given assurance that the shops have been constructed, and each sellers would be given one shop, and reposing faith on the assurance given by the respondent/Municipality, the petitioners and others sellers have vacated the premises. It is stated that 68 shops have been constructed for such small vegetable traders. Size of the shop is stated to be 5 feet by 5 feet. It is seen that there has been several litigations on the very same tender, which commenced in the year, 2014, and till now, the respondent/Municipality has been prevented from completing the entire tender process. The first notification was issued on 27.6.2014, in which, 44 persons have participated, but the tender proceedings were stalled, as Mrs.S.Ayisha, filed a Writ Petition, being W.P.No.18387 of 2014, seeking to quash the said tender notification in respect of the tender to be held on 27.06.2014. However, the said Writ Petition was dismissed as closed on the ground that the Authorities are calling for fresh tender. But the fact remains that the tender was conducted, and forty four persons have made the deposit amount in respect of 35 shops, and four persons have returned. The remaining shops were put to tender on 26.06.2014. This was again put to challenge by filing Writ Petition, which was dismissed. Thereafter, another Writ Petition was filed, viz. W.P.No.16705 of 2014, which was also dismissed on 26.06.2014, and the petitioners therein were allowed to participate in the auction. After that, another Writ Petition was filed by one Chandran and five others, being W.P.No.22863 of 2015, seeking direction upon the respondent/Municipality to grant lease for a period of three

years, pursuant to the declaration of the result made by the Municipality on 26.06.2014, and also as per the tender notification, dated 10.06.2014, and the same was also dismissed by this Court on 20.11.2015, as the petitioners therein have not evinced any interest in pursuing the matter. Now the present Writ Petitions have been filed, impugning the tender notification, which concerns the issue on 22.01.2016.

7. After hearing the learned counsels appearing for the parties and perusing the materials placed on record, it could be easily inferred that the grievance of the petitioner is only with regard to the deposit amount of Rs.3,00,000/-, which has been insisted upon by the respondent/Municipality towards security for grant of leasehold right to the petitioners/traders.

8. The learned counsels appearing for petitioners in both Writ Petitions would state that the petitioners are small traders, and they would be unable to muster so much amount within a short span of time, and they requested for consideration of reduction of the deposit amount, viz., Rs.3,00,000/-. Thus, technically, there is no challenge to the auction, scheduled to be held on 16.02.2016, but their request is only to give some concession by reducing the deposit amount.

9. The learned Additional Government Pleader appearing for respondent/Avadi Municipality as well as the Municipal Engineer, who is present in Court submitted that object of letting out of the shops is to collect more revenue for the Municipality, which is meant to be utilized for carrying out several welfare measures for the public, and if any concession has been granted, the respondent/Municipality would suffer financially, and therefore, they submitted that the amount fixed is very reasonable and not onerous.

10. After noting the factual details of the case, coupled with the further fact that the petitioners are small vegetable traders, who were earlier selling fruits and vegetables on the road margin, this Court is of the view that the respondent/Municipality may consider the feasibility of reducing the deposit amount, without granting them any concession, which shall be as per the tender norms.

11. Accordingly, while rejecting the prayer for quashing the impugned proceedings, dated 22.01.2016, there will be a direction to the second respondent/Commissioner of Avadi Municipality to consider the representation, dated 05.02.2016, given by the members of the petitioner-Association and consider the feasibility of reducing the deposit amount and take up a

pragmatic decision in the matter. Such a decision shall be taken within a period of one week from the date of receipt of a copy of this order. It is made clear that the members of the petitioner-Association in W.P.No.5362 of 2016, as also the individual petitioner in W.P.No.5506 of 2016, shall participate in the auction without prejudice to their rights of remitting lesser deposit amount, which this Court has directed the respondent/Municipality to consider within the time frame.

12. In the result, both the Writ Petitions are disposed of on the above terms. No costs. Consequently, connected W.M.Ps. are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Municipalities,
Local Body Administration,
Ezhilagam, Chepauk, Chennai - 600 001.
2. The District Collector,
Thiruvallur District, Thiruvallur.
3. The Commissioner of Avadi Municipality,
Avadi, Chennai - 54.
4. The Chairman of Avadi Municipality,
Avadi, Chennai - 54

+1cc to Mr.D.RajKumar Ashok Singh, Advocate, S.R.No.9563

+1cc to M/s.C.Umashankar, Advocate, S.R.No.9550

+1cc to the Government Pleader, S.R.No.9662,9603

Writ Petition Nos.5362 and 5506 of 2016

ppa (CO)
srg (16/02/2016)