



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2016

CORAM:

**THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HON'BLE MR.JUSTICE S.S.SUNDAR**

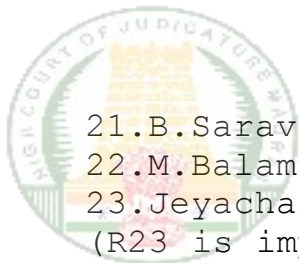
W.P. (MD) No.9096 of 2015

M.Rajendran

... Petitioner

Vs.

- 1.The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu,
Fort St.George, Chennai 600 009.
- 2.The Commissioner of Municipal Administration,
Chepauk, Chennai - 5.
- 3.The District Collector, Madurai District, Madurai.
- 4.The Director of Vigilance & Anti Corruption,
Greenways Road, Chennai.
- 5.The Commissioner,Thirumangalam Municipality,
Madurai, Madurai District.
- 6.Uma, The Chairman,
Thirumangalam Municipality,
Thirumangalam, Madurai.
- 7.V.Thangam
- 8.M.Karuppiah
- 9.T.Ravichandran
- 10.R.Ravi
- 11.L.Easwaramurthy
- 12.M.Karna
- 13.M.Mukesh
- 14.C.Valli Reka
- 15.M.Prabakaran
- 16.K.Deepa
- 17.C.Balaji
- 18.M.Sivakumar
- 19.C.Inbam
- 20.S.Chidambaram



21.B.Saravanan

22.M.Balamurugan

23.Jeyachandra Devar

... Respondents

(R23 is impleased vide Court

order dated 08/12/2015 in MP(MD)No.4/2015)

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PRAYER: The Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 6th respondent in Resolution Nos.1060 to 1077 and Resolution No.1081, dated 29.05.2015, quash the same and consequently, direct the respondents 1 to 4 herein to issue fresh auction - cum - tender for leasing out the proposed shops in front of the Municipal Bus stand, Thirumangalam and consequently to direct the 4th respondent to conduct a detailed investigation on the illegal contract of lease issued by the 6th respondent in favour of respondents 7 to 22 in accordance with law.

For Petitioner : Mr.Veerakathiravan, S.C.,

For Respondents : Mr.K.Chellapandian,
(R1 to R3) Addl.Advocate General
Assisted by
Mr.A.K.Baskarapandian
Special Govt.Pleader

For Respondent-4 : Given up

For Respondent-23 : Mr.B.Muthuprakash

For Respondents : Mr.D.Shanmuga Raja Sethupathi
(R7 to R13)

For Respondents : Mr.P.Santhosh Kumar
(R14,15,17 to 21)

For Respondent (R22) : Mr.K.Hema Karthikeyan

For Respondent (R16) : Mr.Kumar

For Respondent (R6) : M/s.A.L.Gandhimathi

For Respondent (R5) : Mr.D.Muruganandam, (AGP)

ORDER

(Order of this Court was made by S.S.SUNDAR, J.)

The above Writ Petitions have been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of the 6th respondent in Resolution Nos.1060 to 1077 and Resolution No.1081, dated 29.05.2015 and consequently, to direct the respondents 1 to 4 herein to issue a fresh auction-cum-tender, for leasing out the proposed shops, in front of the Municipal Bus stand, Thirumangalam and consequently, to direct the 4th respondent to conduct a detailed investigation, on the illegal contract of lease issued by the 6th respondent, in favour of respondents 7 to 22.



2. The petitioner, who once served as Vice-Chairman of Thirumangalam Municipality, Madurai District and who is interested in taking the lease of 18 shops belonged to the Municipality, which are constructed in front of the Municipal Bus-stand, Thirumangalam, has filed the above Writ Petition. The case of the petitioner is that without conducting public auction and without even publishing auction notice in any of the newspaper, 18 shops to be constructed by Thirumangalam Municipality are given to respondents 7 to 22, by way of lease, by the impugned Resolution of Thirumangalam Municipality, by confirming the alleged auction conducted for 18 shops, on 15.05.2015, as per the decision of 6th respondent.

3. It is the case of the petitioner that there was an Agenda in the meeting convened by the 6th respondent, the Chairman of Thirumangalam Municipality pertaining to the confirmation of auction conducted for 18 shops on 15.05.2015 wherein, respondents 7 to 22 seemed to have participated and that the petitioner was shocked, as there was no such public auction or auction notice published in any of the newspaper or any communication to the existing contractors about the said public lease. It is further stated by the petitioner that it is a fraudulent agreement between respondents 5 to 22 and they created false records, as if there were advertisements and ultimately, the proposed 18 shops were leased out in favour of the close relatives of 6th respondent and other political office bearers and staff of Thirumangalam Municipality. It is alleged that even before commencement of construction of the shops, the shops were leased out by creating records. The lease in favour of respondents 7 to 22 is an illegal contract out of the conspiracy made between respondents 5 to 22. According to the petitioner, if a proper enquiry is conducted by the Director of Vigilance and Anti Corruption, Chennai, the 4th respondent, truth will come out and will prove the illegal nexus between the respondents 5 to 22 resulting in heavy loss to the Municipality.

4. The petitioner's specific case is that the lease were granted in favour of respondents 7 to 22 by the impugned Resolution without following any of the procedures contemplated, under the District Municipalities Act, and the confirmation of lease by the impugned Resolution, is against the interest of Thirumangalam Municipality and public. The following are the factual details that were given by the petitioner in the affidavit filed in support of the Writ Petition:-

a. The 22nd second respondent, one M.Balamurugan is a close relative of the Vice-Chairman of Thirumangalam Municipality and ~~he~~ <https://hdsr.ecdn.ecdn.gov.in/services> given the contract, for the construction of shops proposed. The same Balamurugan, the 22nd respondent, has also secured the lease of some of the shops in the alleged auction.



b. One M.Kanrna, the 12th respondent, is one of the successful allottee of the shops, who is the son of sitting MLA of Thirumangalam Constituency viz., Thiru. Muthu Ramalingam.

c. One Mr.M.Mukesh is the successful allottee of one of the shop and the same Mukesh is the son of Chariman's sister-in-law.

d. One Ms.K.Deepa, the 16th respondent, has been allotted one of the shop and she is the sister of a staff of Thirumangalam Municipality, by name Madan Raj.

e. There is an illegal nexus between the Chairman of Thirumangalam Municipality and some of the other allottees, who are either the office bearers of ruling party or relatives or the family members of staff and elected councilors of Thirumangalam Municipality.

f. The entire allotment of lease of shops was conducted in a fraudulent and collusive manner. The Thirumangalam Municipality is likely to suffer financial loss, as possibilities to get best price has been ruled out by the manner in which the allotment was made.

g. Though the shops were leased out for the amount between Rs.2200/- and Rs.2300/-, if the auction is conducted properly pursuant to a valid advertisement and publicity, the shops can fetch for huge amount.

h. Though the Municipal authorities submitted that they issued advertisement inviting the public for submitting the tenders and then public auction, not even a single tender was received by the Municipality.

I. Only two persons participated in the auction for every shops and the difference between the highest and lowest bid for a particular shop is around Rs.10 to 50.

j. The advertisement about the tender cum public auction is stated to have been published in a Newspaper called "Dr.Namathu MGR" on 25.04.2015. This Newspaper is an official news paper of ruling party.

k. There was formation of cartel among the participants of the tender cum public auction, as evident from the nature of things that happened.

l. Even before construction of the shops, the tender cum public auction of the shops have been completed and such proceedings would not yield the desired result namely, the highest rate for the shops.

5. The Commissioner, Thirumangalam Municipality has filed a petition in M.P.(MD)No.3 of 2015 to vacate the interim orders granted in M.P.(MD)No.1 of 2015 in W.P.(MD)No.9096 of 2015, dated 08.06.2015. In the counter affidavit filed by the 5th respondent he submitted that 10 number of shops were in existence in front of ~~the shops~~ stand and they were demolished, as they were in dilapidated condition. Thereafter, the Councilors of Municipality, has passed a Resolution No.389, on 30.01.2013, to

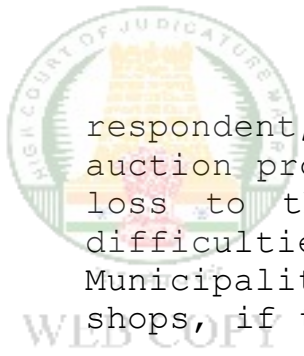


construct 18 shops in the same place, at the cost of Rs.50 Lakhs out of the general fund of the Municipality, to augment the revenue of the Municipality. It was further stated that building plan approval was obtained from the Deputy Director of Town and Country Planning, Madurai Region, by proceedings dated 28.01.2015 and the administrative sanction was granted by the Regional Director of Municipal Administration, Madurai Region, by proceedings dated 04.03.2015. Technical sanction was also granted to the construction of 18 shops, by the Regional Executive Engineer, Madurai on 26.03.2015.

6. It was the further case of 5th respondent that a letter was sent by the Commissioner of Thirumangalam Municipality, requesting the Director, Information and Public Relation Department, Secretariat, Chennai, to publish the auction-cum-tender Notification, in any one of the Tamil Daily throughout the State on or before 26.05.2015. Since the Commissioner of Municipal Administration has issued a Circular, dated 01.08.2006 to all the Municipalities, directing them to conduct pre-auction of shops, so as to ensure the financial viabilities of projects and reduce the loan burden, the Municipality decided to conduct pre-auction for issuing licence to the shops even before construction of the shops.

7. The 5th respondent has further stated in his counter that the Director, Information and Public Relation Department, has decided to publish the advertisement for leasing out the 18 shops by tender cum public auction in the Tamil Daily, "Dr. Namathu MGR" and the same was published on 25.04.2015. The tender cum public auction for the shops was also published in the Tamil Nadu State tender bulletin on 30.04.2015. The 5th respondent has also stated in his counter that the advertisement notice was also pasted in the notice board of the 5th respondent Municipality. Hence, it was contended by the 5th respondent that there was proper advertisements and intimation to the Public for tender cum public auction and that the petitioner, who did not participate in the tender cum public auction cannot challenge. Since no discrimination was shown to any one and these shops were allotted only to the persons whose offer is highest, there is no irregularities in the process of tender cum public auction. It was contended by the Commissioner that the Municipality has followed the procedures in accordance with law and followed the instruction given by the Commissioner of Municipal Administration and hence, the allegations made by the petitioner are baseless. Since the petitioner and his son belonged to a rival political party, the writ petition is filed with ill motive and the same lacks bonafide.

<https://hcservices.ecourts.gov.in/theservices> This service is the relationship between the successful bidders and the Chairman or other officials or political leaders belonging to a particular party are specifically denied by the 5th



respondent, it is not denied by other respondents. Since the auction proceedings were stalled and there is a likelihood of huge loss to the Municipality, the 5th respondent has expressed his difficulties and pleaded that there is no chance for the Municipality to meet out the expenses for the construction of shops, if the interim order is not vacated.

9. The 22nd respondent and 16th respondent, who were impleaded in their capacity, as successful bidders in respect of some of the shops have also filed counter. The 22nd respondent is also a contractor, who was given the contract to construct 18 shops in front of the Thirumangalam Municipal Bus stand. Respondents 16 and 22 also denied the allegations in the affidavit filed in support of the Writ Petition. However, they have not specifically denied the allegation about their relationships with the persons, who are in the realm of affairs relating to the Municipality. It was also their further case that the 5th respondent gave a paper publication in the daily, "Dr. Namathu MGR" on 25.04.2015 and that they participated only after seeing the advertisement.

10. Mr.Veerakathiravan, learned Senior Counsel appearing for the petitioner, after referring to the Tamil daily, "Dr. Namathu MGR" dated 25.04.2015 (Chennai Edition) submitted that in the Chennai Edition of Tamil daily, there was no publication of the advertisement relating to the tender cum public auction of 18 shops. He also referred to the Resolution of the Municipality, dated 29.05.2015 whereby, the councilors had resolved to pay a sum of Rs.30116/- to the Tamil daily "Dr. Namathau MGR" for publishing the Notification in relation to tender cum public auction, to lease out the 18 shops in the said daily on 25.04.2015, in all the editions throughout the State. Hence, the fact that the advertisement, dated 25.04.2015 published only in other edition baring Chennai edition is not proper. Pointing out that the Tamil daily "Dr. Namathau MGR" is a daily run by ruling political party, unless it is shown that the only news paper in which advertisement came has wide circulation in the locality, the contention of the 5th respondent that there was wide publicity of the tender cum public auction, cannot be accepted. He further submitted that the very fact that no one has submitted tender would show clearly that the Notification for the tender cum public auction has never reached the public. Pointing out the fact that for each shops, there were only two participants and the difference was only a small sum between Rs.10 to Rs.40 would support the case that there was formation of cartel among participants and that the confirmation of the Resolution approving the lease for inadequate consideration would result in great loss to Thirumangalma Municipality. The relationship between the ~~services to whom the lease had been approved and the~~ Chairman and other political leaders are not disputed. The learned Senior Counsel further contended that the shops proposed

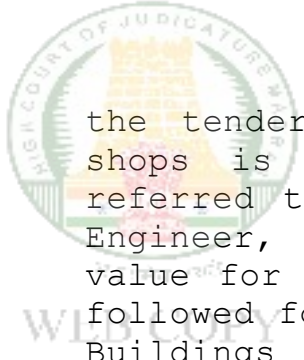


to be constructed were actually divided by the so called participants among themselves with the active collusion and connivance of respondents 5 and 6. Hence, it was submitted that the Resolution of the Municipality, is liable to be quashed in public interest.

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11. The learned Senior Counsel also pointed out that the petitioner gave a representation, dated 26.05.2015 to respondents 5 and 6 pointing out that there was no public auction and that he is willing to pay 100% more than the highest bids for some of the shops, if the shops are allotted to him. Similar representations were given to respondents 5 and 6 on 26.05.2015 by some other persons, who are willing to take the lease of other shops by paying 100% more than the price offered by the successful tenderers. Finally, the learned Senior Counsel appearing for the petitioner submitted that the shops have been grossly under valued only for the purpose of giving the lease in favour of respondents 7 to 22, at a very low price compared to the real market rate. Referring to some of the provisions of Tamil Nadu District Municipalities Act, and Government Orders, learned Senior Counsel submitted that respondents 5 and 6 failed to follow the procedures in letter and spirit so as to get the maximum income for the Municipality, by way of lease of the shops and this Court should exercise its power, under Article 226 of the Constitution of India, keeping in mind the public interest and to ensure the optimum income for the Thirumangalam Municipality.

12. Mr.K.Chellapandian, the learned Additional Advocate General appearing for the official respondents submitted that the Municipal Council decided to go for public auction even before construction of the shops, in compliance of the Circular issued by the Commissioner of Municipal Administration, dated 01.08.2006. The erstwhile lessees of the shops were obstructing the endeavour of Municipality to demolish the old dilapidated building and put up new building at different stages and that the present Writ Petition came to be filed only at the instigation of persons, who have vested interest and not for any bonafide purpose. He further submitted that the tender conditions pertaining to lease of properties of the Municipality and the persons who want reauction should pay an amount which is 20% more than the auction amount before 4.00 p.m., on the next day so that the reauction can be commenced from the offer of the persons, who have applied for reauction. Since the petitioner or other persons have not approached the Municipality by giving their offer and making the payment within the time stipulated in the tender conditions, they cannot approach this Court, for the relief prayed for in this Writ Petition. The learned Additional Advocate General referred to the advertisement that was published in the news daily, "Dr. News" dated 25.04.2015, at page No.6. The advertisement is published in the "Outside Chennai Edition" (Veliyoor Pathippu) of the said daily. In the State tender bulletin, dated 30.04.2015,



the tender cum auction Notification pertaining to the lease of shops is published. The learned Additional Advocate General referred to the calculation that was arrived at by the Municipal Engineer, Thirumangalam Municipality, fixing the market rental value for the shops at Rs.1578/- following the formula, which is followed for fixing a fair rent of the shops, under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. He relied upon the communication, dated 03.06.2015 sent to the petitioner and submitted that the request of the petitioner for reauction had already been rejected by the 5th respondent and that the petitioner is not entitled to maintain the Writ Petition, without challenging the said order / communication, dated 03.06.2015.

13. The learned Additional Advocate General has relied upon an unreported judgment of a Division Bench of this Court, dated 02.07.2014 rendered in **W.P. (MD) No. 10629 of 2014**, in the case of **A.Sing Vs. The Commissioner of Municipal Administration and others** wherein, the Division Bench of this Court has dismissed the Writ Petition challenging the Resolution passed by Kumbakonam Municipality, on the ground that the petitioner has a remedy of statutory appeal to the Government under Section 36 of Tamil Nadu District Municipalities Act. He also relied upon yet another Division Bench Judgment of this Court in **Kanagam Vs. Commissioner, Coimbatore and Others** reported in **(2008 (3) MLJ 185)** for the proposition that Section 49 of Coimbatore City Municipal Corporation Act, which is (in pari materia) similar to Section 36 of Tamil Nadu District Municipalities Act, is an effective alternative remedy and a person, who is aggrieved upon the Resolution passed by the Corporation should approach the Government instead of approaching this Court, under Article 226 of the Consitution of India. The learned Additional Advocate General further submitted that the Resolution of the localbody cannot be challenged in a Writ Petition relying upon the Judgment of a Division Bench of this Court in **Shantha Srinivasan Vs. The Secretary to Government, Housing and Urban Development** reported in **(2015 (2) CWC 366)**, wherein it has been held as follows:-

"3 It is a well settled proposition of law that a resolution, by itself, is not an order and the same cannot be given effect to, unless a proper formal order is passed on the basis of such resolution by the competent authority. Thus, a resolution, by itself, cannot have the force of law. Further, it is pertinent to point out that a resolution is only an expression of opinion in the form of recommendations, which will have a binding effect, only after the same is accepted and proper formal order is passed. It is also to be noted that a resolution cannot be subjected to judicial review, inasmuch as it is a simple minutes of the



proceedings.

4 In this regard, it would be apposite to quote the judgment rendered by one of us (Satish K. Agnihotri, J.) in Chhattisgarh High Court in Payal Travels vs. State of Chhattisgarh and Others, following a catena of decisions of the Supreme Court. The relevant portion of the said judgment reads thus:

"4. It is a trite law that a resolution is not an order and the same cannot be given effect to unless a proper formal order is passed on the basis of resolution by the competent authority. It has been held in a catena of decisions of the Supreme Court that resolution is a mere guideline or recommendation and the same is not effective ipso facto.

5 The aforestated judgment in Payal Travels case was subsequently followed by one of us in Vaswani Industries Ltd. vs. Souther Eastern Coalfields Ltd. AIR 2012 Chh 105 (W.P.C.No.3474 of 2011, in the order dated 7.2.2012).

6.The Supreme Court, in New India Assurance Company Ltd. vs. Nusli Neville Wadia and another¹, 2008 (3) SCC 279, while examining the effect of guidelines, observed that resolutions are mere guidelines and not controlled by the statutory provisions. The relevant observation runs thus:

"23. Issuance of such guidelines, however, is not being controlled by statutory provisions. The effect thereof is advisory in character and thereby no legal right is conferred upon the tenant."

7 Further, the Supreme Court, in Sethi Auto Service Station and another vs. Delhi Development Authority and Others, 2009 (2) LW 222 : 2009 (1) SCC 180, observed thus:

"14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officers of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for



outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.

8 Thus, applying the well settled principles of law, as summarised above, to the facts of this case, we have no hesitation to hold that the instant writ petition is premature, at this stage."

14. Regarding the allegation that there was cartel formation among the participants, the learned Additional Advocate General made submission that the 5th respondent Municipality has given wide advertisement and invited tenders by resorting to all the formalities and beyond that the 5th respondent cannot do anything and the Municipality is not concerned or responsible even if there is cartel formation among the participants.

15. We have heard the submission of other learned counsel for other respondents, who reiterated the submissions of learned Additional Advocate General and hence, we do not wish to elaborate.

16. It is also important to note that a sum of Rs.50,00,000/- has been sanctioned for construction of 18 shops. The cost of building for each shops comes to roughly around Rs.2,75 Lakhs. However, the Engineer of the Corporation has valued the market rental rate for the building by taking into account the value of the building at a low rate. This is another serious irregularities, while recommending to the Council to approve the lease for all the 18 shops.

17. One of the main contention raised by respondents relates to the maintainability of the Writ Petition, on the ground that the petitioner has an alternative remedy, as provided under Section 36 of the Tamil Nadu District Municipalities Act. It is well settled proposition of law that, when an alternative and equal efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative Writ. However existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a Writ, since existence of alternative remedy does not impinge on the jurisdiction of the High Court to hear the matter, if it is otherwise possible and the rule of exhaustion of statutory remedies before a Writ is granted is a rule of self-imposed limitation or a rule of policy or discretion rather than a rule of law. The Hon'ble Supreme Court <https://hccases.courts.gov.in/cases> again, recognized the maintainability of the Writ Petition in exceptional cases despite a statutory remedy. The discretionary power of the High Court to issue a prerogative Writ



against the action of the State or its instrumentality, when it is arbitrary and unreasonable, violating the constitutional mandate of Article 14 or for other valid and legitimate reason is always recognized by the Hon'ble Supreme Court in a catena of decisions. Similarly, when the statutory remedy cannot be said to be adequate having regard to the nature of dispute, High Court is expected to exercise its jurisdiction under Article 226.

18. Section 36 of the District Municipalities Act, reads as follows:-

"36. Power to suspend or cancel resolutions, etc. under Act. (1) The State Government may, by order in writing

(i) suspend or cancel any resolution passed, order issued, or licence or permission granted, or

(ii) prohibit the doing of any act which is about to be done or is being done in pursuance or under colour of this Act, if, in their opinion,

(a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorized, or

(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or of any other law, or

(c) the execution of such resolution or order, the continuance in force of such licence or permission or the doing of such act is likely to cause danger to human life, health or safety, or is likely to lead to a riot or an affray:

Provided that the State Government shall before taking action under this section on any of the grounds referred to in clauses (a) and (b) give the authority or person concerned an opportunity for explanation.

Provided further that nothing in this subsection shall enable the State Government to set aside any election which has been held.

(2) If, in the opinion of the District Collector, immediate action is necessary on any of the grounds referred to in clause (c) of subsection (1) he may suspend the resolution, order, licence, permission or act, as the case may be, and report to the State Government who may thereupon either rescind the Collector's order or after giving the authority or person concerned a reasonable opportunity of explanation, direct that it continues in force

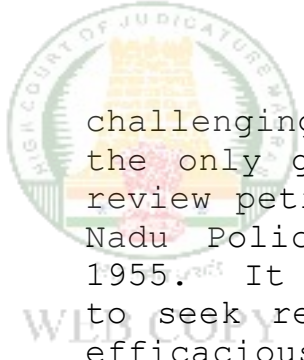


with or without modification permanently or for such period as they think fit."

19. No doubt, it is true that the State Government has power to suspend or cancel any resolution or order etc. However, the power is given to the State Government only if such resolution or order etc., has not been legally passed or such a resolution is in excess of the powers conferred to the Council by the Act or execution of such resolution or order is likely to cause danger to human life, health or safety or is likely to lead to a riot or an affray. Going by the provision of Section 36, we notice that the Government's power to suspend or cancel a resolution is circumscribed by three contingencies found in Section 36 (1)(a), 36(1)(b) & 36(1)(c).

20. The allegations of irregularities in the tender process are disputed by the respondents on the ground that all the formalities required for publication of the tender cum public auction notification were adhered to and that there is no procedural violation. The resolutions of the Municipality are not challenged on the ground that the Council had no power or it has acted against any express provisions of the Act or any other law. Similarly, there is no allegation that the resolutions passed by the Council, impugned in the Writ Petition, are likely to cause danger to human life, health or safety, or is likely to lead to a riot or an affray. However, serious irregularities in the decision making process are highlighted in the present Writ Petition. The allegation in the present case is that there was no proper publication of notification for tender cum public auction. Further it is alleged that respondents 5 to 22 conspired and formed a cartel by getting allotment of shops in favour of respondents 7 to 22, in an illegal manner. The further allegation is that the records are manipulated to make it appear that everything was done according to rules and Government Orders. The language of Section 36 indicates that it does not create any right in favour of any one to seek remedy questioning the resolution of the Council. Section 36 only speaks about the discretionary powers of State Government and it cannot be taken that it provides a remedy for any one to approach the Government questioning the resolution on any ground. Further, in the present case, serious allegations are made against respondents 5 and 6 for allotting the shops in favour of relatives of political cadets and office bearers of ruling party. Hence, it is difficult to conclude that the remedy provided under Section 36 of the Act is an effective remedy.

21. In the Judgment in **V.Vellaisamy Vs. Inspector General of Police, Tamil Nadu, Madras & Another** reported in **AIR 1982 SC 82**, the Hon'ble Supreme Court allowed the appeal against the order of High Court wherein the Writ Petition filed by a Police Officer



challenging the order of compulsory retirement was dismissed on the only ground that there is an alternative remedy of filing a review petition before the Government under Rule 15-A of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. It was observed by the Hon'ble Supreme Court that a right to seek review a proceeding by Government is not an alternative efficacious remedy to disentitle a petitioner to move the High Court under Article 226.

22. A Constitution of Bench of the Hon'ble Supreme Court in ***New Manek Chowk Spinning and Weaving Mills Co. Ltd., and Others Vs. Municipal Corporation of the City of Ahmedabad and Others*** reported in **(AIR 1967 SC 1801)** entertained a Writ Petition under Article 32 of Constitution of India challenging the validity of the assessment book relating to Special Property Section prepared and published by the Municipal Corporation of the City of Ahamadabad by which the Municipality seeks to impose property tax on properties described as special properties like textile mills, factories etc., on the basis of a flat rate per 100 Sq.ft of the floor area of the property situated within the Municipal limits. After finding that the flat rate method according to floor area would give rise to inequalities and that the Municipality did not observe the law and failed in its duty to determine the rateable value of each building and land in terms of Rule 9(b) of the rules, the Hon'ble Supreme Court issued a Writ of Mandamus in each case directing the Municipality to prepare fresh assessment for the disputed years after cancelling the assessment book for the years 1964-65, 1965-66 and 1966-67, challenged in the Writ Petition. The contention of Municipality that it was open to the assesseees to raise objections or file appeals against the decisions on rateable value to the authorities prescribed by the Act was rejected on the grounds that;

(a) The Municipality do not resort to any of the well known methods of valuation and cannot justify their arbitrary method;

(b). The Commissioner or a small cause court is not likely to pay heed to any complaint against the determination of rateable value based on Article 14 of the Constitution;

(c). Onerous condition is prescribed for filing appeal

23. In the present case, the impugned resolution ignoring the patent irregularities in the process of tender-cum-public auction disentitle the respondent to take the defence on the availability of alternative relief. Further, the alternative remedy is also not efficacious.

24. In the Judgment in ***the State of Uttar Pradesh Vs. Mohammed Nooh*** reported in **(AIR 1985 SC 1147)** it has been held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>..that there is no rule, with regard to certiorari as there is with mandamus, that it will



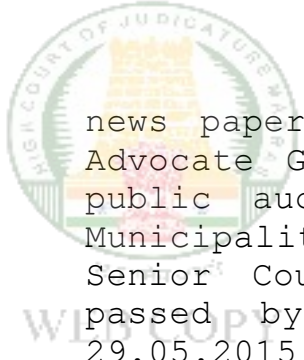
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lie only where there is no other equally effective remedy. It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister? The cliché of appeal from Caesar to Caesars wife can only be bettered by appeal from ones own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister? There was no answer and that by itself without anything more would be sufficient to set aside the judgment of the High Court."

Having regard to the serious allegation that respondents 7 to 22, the successful bidders are close relatives and associates of political leaders of ruling party assuming that Section 36 of District Municipalities Act provides an alternative remedy, we hold that it is not effective.

25. In the present case, the publication of the notice for tender cum public action was published in a daily "Dr. Namathu MGR", dated 25.04.2015. The daily that was produced before the Court refers to the fact that it is an edition of the daily outside Chennai [Veliyur Pathippu].

26. The learned Senior Counsel for the petitioner produced before this Court another news paper bearing the same date wherein, it is stated that it is Chennai Edition. The daily ~~produced before the Court~~ learned Senior Counsel for the petitioner disclose that there was no publication of the advertisement relating to the 18 shops belonged to Thirumangalam Municipality. However, the



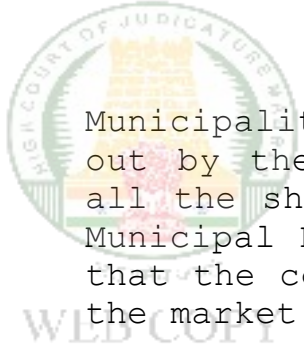
news paper produced before this Court by the learned Additional Advocate General shows that the notification for the tender cum public auction in respect of the 18 shops for Thirumangalam Municipality is published in Page No.6 of the daily. The learned Senior Counsel for the petitioner relied upon the resolution passed by the Council of Thirumangalam Municipality, dated 29.05.2015. As per the resolution, the Municipality resolved to permit the payment of Rs.30,116/- to one "Accord Advertising Agency" for publishing the tender notification in the news daily 'Dr.Namathu MGR', on 25.04.2015 in all the editions of the State. The Council was therefore mislead to believe that the advertisement was made in all the editions of the news daily throughout the State.

27. Perusal of the daily shows that the founder of the Tamil daily is Hon'ble Chief Minister of the State of Tamil Nadu and that it contains all the news relating to the political activities of ruling party and about the welfare measures of the ruling Government and very few news items. Important news, normally found in any other news daily having decent circulation are not seen in this news paper. Giving advertisement in news paper is for a specific purpose of inviting the public to participate in the tender cum public auction. In the present case, it is an admitted fact that not even a single tender was received pursuant to the advertisement of the tender notification. The practice of localbody to publish such tender notification in a political news daily need to be deprecated in the interest of public and in the interest of localbody. Further, the failure to publish the advertisement in Chennai Edition, as proved before this Court, is a serious irregularity having regard to the resolution passed by the Council on 29.05.2015.

28. The formation of cartel is evident in this case. The impugned resolution approving the lease in favour of respondents 7 to 22 shows that there are only two participants for each shop in the public auction and that the difference in the bids between highest and lowest is only between Rs.10 and Rs.100/-. The participation of two persons for each shop and the highest bids for all the 18 shops are almost same clearly indicates that there is formation of cartel or an illegal agreement among the participants, which is detrimental to the interest of Thirumangalam Municipality. Only for the purpose of attracting more public and to increase competition among the participants to achieve the best price for the shops, the lease of shops by the process of tender cum public auction is approved. Strangely, the very purpose behind proper advertisement and conducting public auction is ignored by the authorities and it is patent from the materials on record.

<https://hcservices.ecourts.gov.in/hcservices/>

29. The learned Additional Advocate General referred to the working sheet prepared by the Municipal Engineer of Thirumangalam



Municipality and argued that fair rent for each shop was worked out by the Municipal Engineer at Rs.1578/- and pointed out that all the shops fetched higher rent than that was determined by the Municipal Engineer. By showing the working sheet, he also argued that the contention of the petitioner that the shops did not fetch the market rate is not correct.

30. Going by the working sheet, we are surprised to see that the cost of building was taken as Rs.76,116/-. It is to be remembered that the Municipality has proposed to construct 18 shops by spending 50 Lakhs. This means that the cost of construction for each shop will be more than Rs.2,77,770/-. Adopting the same calculation, the Municipal Engineer ought to have fixed at least Rs.3,600/- as the rent. From the manner in which the expected rent was calculated we find that there is a serious irregularity in accepting / approving the bids on the basis of report or working sheet prepared by the Municipal Engineer of the Municipality.

31. Regarding the allegation that there was cartel / syndicate and that there was some illegal agreement between respondents 5 to 22, the facts and records clearly indicate that there was some kind of understanding among the participants of the so called public auction, which is detriment to the interest of Thirumangalam Municipality.

32. The Hon'ble Supreme Court has elaborately dealt with cartel in the Judgment in **Union of India Vs. Hindustan Development Corp.** reported in **(AIR 1994 SC 988 : 1993 3 SCC 499)**, In the case dealt with by the Hon'ble Supreme Court, tenders were invited for supply of cast steel bogies to Railways. Finding that identical price was quoted by the bidders, the authorities concluded that there was a cartel by the manufacturers and hence, their offers were rejected by the authority. The Hon'ble Supreme Court upheld the decision of the authorities. The Hon'ble Supreme Court observed that though quotation of identical price per se may not rise an inference as to cartel, the attitude of the bidders which gave rise to a suspicion that they formed such cartel is sufficient to justify the decision of the authorities, which could not be said to be malicious or actuated by extraneous consideration. The Judgment of the Hon'ble Supreme Court can be relied upon for the proposition that a fair suspicion about the existence of cartel is sufficient to reject the offers of tenders in public interest.

33. In the Judgment in **B.S.N.Joshi & Sons Ltd., Vs. Nair Coal Services Ltd., and Others** reported in **(2006 (11) SCC 548)** wherein it has been held that the building contractors cannot form a cartel. In dealing with situation like this, the Hon'ble Supreme Court has held that public interest to be given priority.



34. In continuation of the Judgment rendered by the Hon'ble Supreme Court reported in **(2006 (11) SCC 548)**, the Hon'ble Supreme Court had occasion to deal with the contempt petition and observed as follows:-

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"17. We are distressed to see that MAHAGENCO had been encouraging formation of a cartel and thus, allowing the rate of transportation of coal to go high up. Unless a power generating company takes all measures to cut down such malpractices, the generation cost of electricity is bound to go higher and ultimately the same would be passed on to the consumers of electricity. We hope a public sector undertaking would take adequate and appropriate measures to meet the said contingency in future. "

35. It is only to avoid cartel, this Court and the Hon'ble Supreme Court has upheld the e-tender process in relation to recovery proceedings by Banks. Since existence of a price fixing agreement [cartel] establishes the bidder's illegal objects to eliminate competition, such an association of bidders amounts to unfair trade practice and against public interest. We have come across several Government Orders and guidelines to reduce the unhealthy practices that are being followed by the persons involved in cartel and syndicate. Whenever an allegation of malpractice in a tender process is brought before Court, the Court ought to be more conscious so as to safeguard the public exchequer.

36. Materials produced before this Court and the attending circumstances clearly show that there was cartel among the participants and that there was no proper publication of notice for tender cum public auction. Having regard to the fact that the petitioner has given representation, dated 26.05.2015 and that similar representations have been received from other persons offering 100 % more than the offer of successful bidders in relation to the 18 shops, the respondents ought to have considered the same in the interest of the Municipality. Strangely, their representations were rejected by the respondents by referring to the tender conditions for making a request for re-auction within 24 hours. Hence, we find that the 5th respondent failed to bring into the notice of the Council about the better offers so as to reconsider the issue, particularly, when the formation of cartel or fraudulent agreement is a very good reason for resorting to re-auction.

37. From the facts and materials produced before this Court, we have no hesitation to conclude that publication of the advertisement relating to the tender cum public auction for the

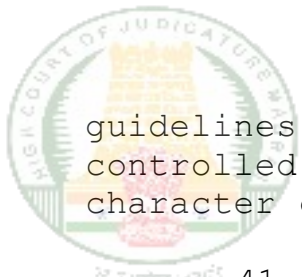


shops, which are the subject matter of the present Writ Petition is improper, ineffective and irregular and illegal. We further find that there is formation of cartel among the participants. We also find that there is serious irregularity in fixing the fair rent by the authority of Municipality.

38. In the factual background, we propose to examine the judgments cited by the learned Additional Advocate General. In an unreported Judgment, dated 02.07.2014 in W.P.No.10629 of 2014, a Division Bench of this Court has held that the petitioner has a remedy of statutory appeal to the Government, as against the resolution of the Municipality, under Section 36 of the Tamil Nadu District Municipalities Act and that the petitioner cannot directly rush to this Court. The prayer in the writ petition indicates that the resolution challenged before this Court relates to shifting of fish market to another area. This being a policy decision of the Council, the decision of Division Bench may well be justified. We also find that the provision of Section 36 of District Municipalities Act, was not even referred to in the said Judgment and there is no occasion for considering the scope of the power and discretion of the Government to cancel the resolution of the Municipality. In the Judgment reported in the case of **Kanagam and Others Vs. Commissioner, Coimbatore Corporation and Others** reported in **(2008 (3) MLJ 185)**, resolution challenged before this Court is the resolution declaring the private passage of the writ petitioner, as a common pathway. The above two judgments cannot be taken as authorities for the proposition that in no case writ petition challenging the resolution of the Municipality or Municipal Corporation can be entertained.

39. We have already held that the remedy provided under Section 36 of Tamil Nadu District Municipalities Act, is not an effective remedy having regard to the peculiar circumstances of the case. As it has been held in **AIR 1985 S.C. 1147** in the case of **Ram and Shyam Co. Vs. State of Haryana**, the remedy to go before the Government, is neither an effective remedy nor appropriate in the facts of this case.

40. One of the argument advanced by the learned Additional Advocate General is that the resolution of the council of the Municipal cannot be challenged by way of writ petition. He relied upon the Judgment of Division Bench of this Court reported in **2015 (2) CWC 366**. The Division Bench in that case has referred to the Judgment of Chhattisgarh High Court in **Payal Travels Vs. State of Chhattisgarh and Others** and another judgment of the Hon'ble Supreme Court in **New India Assurance Company Ltd., Vs. Nusli Neville Wadia & Anr.** reported in **(2008 (3) SCC 279)** and another Judgment of the Hon'ble Supreme Court in **Sethi Auto Service Station and another Vs. Delhi Development Authority and Others** reported in **(2009 (2) L.W.222)**. In the Judgment reported in **2008 (3) SCC 279 (cited supra)**, the Hon'ble Supreme Court has held that



guidelines issued by the Central Government, which are not being controlled by statutory provisions and which are only advisory in character cannot confer any legal right in favour of any one.

41. Similarly, in the Judgment reported in **(2009 (2) L.W.222)** (cited *supra*) the facts are relevant. In that case, Delhi Development Authorities rejected the proposal for relocation of the two Petrol pumps owned by the appellants. Petrol pumps had been earlier allotted to appellants. The recommendations of the Screening Committee was considered by the Vice Chairman of Delhi Development Authority and rejected the proposal for relocation of the two petrol pumps. Appellants before the Hon'ble Supreme Court filed Writ Petitions challenging the order rejecting the proposal by Delhi Development Authority, on the ground that the recommendation of the Technical Committee, vide its order dated 17.05.2002 for resitement of the appellants' petrol pumps is binding on Delhi Development Authority. Hence, the issue before the Hon'ble Supreme Court is about the binding nature of recommendations by noting in a department file without an official communication. The Hon'ble Supreme Court held that the recommendation of the Technical Committee did not ultimately fructify into an order or decision of Delhi Development Authority conferring any legal rights upon the appellants. The Hon'ble Supreme Court also held that mere favourable recommendations, at some level of the decision making process have no consequences and shall not bind Delhi Development Authority and upheld the decision of High Court stating that notings in the file did not confer any right and shall not bind Delhi Development Authority.

42. From the decision referred to by the Division Bench and the fact that the resolution challenged before the Division Bench was by the Chennai Metropolitan Development Authority, the said judgment is not applicable to the present case, particularly, having regard to the fact that the entire Municipal administration vest in the Council and that the resolution passed by the Council is final and binding on the executive authority. The impugned resolutions are not expressions of opinion in the form of recommendation. The contract of lease is finalized by the said resolutions.

43. Having regard to the specific findings rendered by us in the previous paragraphs we have no other option, but to allow the writ petition and the impugned order of the 6th respondent in Resolution Nos.1060 to 1077 and Resolution No.1081, dated 29.05.2015 are quashed and consequently, the respondents 1 to 4 are directed to issue a fresh auction - cum - tender, for leasing out the proposed shops in front of the Municipal Bus stand, Thirumangalam. The respondents 5 and 6 are further directed to ensure that the notification inviting offers from the public is published in any of the popular daily having wide circulation in



the locality as well as in other parts of the State.

44. Since we have noticed that there are serious irregularities in the manner of publishing the tender cum public auction notification, fixing fair rent at a low rate and permitting cartelisation, we also direct the 4th respondent namely, the Director of Vigilance and Anti-corruption, to hold an enquiry into the serious irregularities pointed out by us in this order against the erring officials concerned, including respondents 5 and 6, who are responsible for the loss of revenue to the Municipality, in accordance with law, after affording sufficient opportunity to them and file a report to the District Collector, Madurai and State Government for further action. However, there is no order as to costs.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu, Fort St.George, Chennai 600 009.
- 2.The Commissioner of Municipal Administration,
Chepauk, Chennai - 5.
- 3.The District Collector, Madurai District, Madurai.
- 4.The Director of Vigilance & Anti Corruption,
Greenways Road, Chennai.
- 5.The Commissioner, Thirumangalam Municipality,
Madurai, Madurai District.
- 5.The Commissioner, Thirumangalam Municipality,
Madurai, Madurai District.
- 6.Uma,
The Chairman, Thirumangalam Municipality, Thirumangalam, Madurai.
+1 cc to M/s.K.Hema Karthikeyan, Advocate in SR.No.25239/16
+1 cc to M/s.C.Jeganathan, Advocate in SR.No.25318/16
MPK
CSL/PEK/SAR-I/02.06.2016 :20P/9C

W.P. (MD) No. 9096 of 2015
29.04.2016