

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION Nos. 6263 to 6268 of 2017
and WMP Nos.6750 to 6761 of 2017

P.PurushothamanPetitioner in WP.6263/17
R.PadmavathiPetitioner in WP.6265/17
I.Muneer AhmedPetitioner in WP.6266/17
N.SellappanPetitioner in WP.6267/17
P.RathinaveluPetitioner in WP.6268/17
A.AzeesPetitioner in WP.6268/17

Vs.

The Commissioner,
Yercaud Panchayat Union,
Yercaud, Salem DistrictRespondent in all WPs

Common Prayer: These writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other appropriate writ, direction or order in the nature of a writ, to call for the records of the respondent in his proceedings in Na.Ka.332/2017/A2 dated .03.2017 and quash the auction dated 16.03.2017 widely published in Dhinamani Daily Newspaper on 07.03.2017 in respect of Shop No.3,4,5,6,8,11, Ondikadai Commercial Complex, Yercaud.

For Petitioner
in all W.Ps

: Mr.J.Franklin

For Respondents

W.P.Nos.6263 & 6264/2017: Mr.R.Venkatesh
Government Advocate

W.P.Nos.6265 & 6266/2017: Mr.C.C.Rangarajan
Government Advocate

W.P.Nos.6267 & 6268/2017: Mr.O.Selvam
Government Advocate

C O M M O N O R D E R

Considering the commonality of issues involved in all these writ petitions, they have been taken up and disposed off by a common order.

2.All the petitioners herein have allotted shops for a period of one year by way of license/lease in the year 2014. Two renewals have been granted as per the Government Order issued in G.O.Ms.No.277, Rural Development (C-4) Department dated 22.11.2001 which has also been incorporated as a Rule viz., Tamil Nadu Panchayat Procedure for Conducting Public Auction of Leases and Sales in Panchayat Rules, 2001.

3.The impugned order is a one by which a fresh auction is sought to be conducted, that too, for a period of one year. This is sought to be predicated on the premise that the petitioners are entitled for two more terms of lease for three years each. In other words, the petitioners seek six more years of license/lease as the case may be.

4.The learned counsel appearing for the petitioners has made reliance upon the Rule which says that a maximum period of lease for an own building used as shop is three years.

5.The learned Government Advocate appearing for the respondent would submit that the lease/license was only for a period of one year and two more extensions have already been given. He would also submit that the period of three years mentioned is a maximum period, both for license and for renewal. There is no lease but it is only a license. He would further submit that the petitioners were aware of the fact that the lease/license was only for one year and they have already been given two more extensions by way of renewal, hence, no interference required.

6.Rule 3 of the Tamil Nadu Panchayat Procedure for Conducting Public Auction of Leases and Sales in Panchayat Rules, 2001 has to be read in consonance with Rule 23. Therefore, there can be a lease/license for a maximum period of three years and thus it can be either for one year or two years as the case may be. In the case on hand, the petitioners were given license/lease for a period of one year after due auction. There is no difficulty about it. Now they cannot seek to convert it into a lease/license for a period three years and as contended that can be for another period of six years or nine years. This is totally impermissible. If one go by tabular column given in Rule 3, it says that maximum lease period at a time is three years. Therefore, the three years period mentioned is a maximum period and also further period of renewal is also the maximum.

7. Now let us see Rule 23 which makes the position clear. The relevant passage contained in Rule 23 is extracted hereunder:

"23. Renewal of lease: (1) The panchayat shall have power to renew the lease of right of enjoyment of shops, rooms, garages, public markets, canteen, hotels or lodging houses belonging to it and for which rent is payable on a monthly basis or for a period in favour of the existing Lessee, if the Lessee agrees to the renewal of the lease for a higher amount to be decided by the Panchayat, supported by not less than one half of the members then holding office which shall not be less than fifteen per cent for every year on the previous years lease or of rent fixed.

Provided that such extension of renewal of lease shall be done only upto a maximum of three years."

8. Thus, Rule 23 makes it clear that the extension of renewal of lease/license shall be done up to a "maximum of three years". Therefore the petitioners cannot claim as a matter of right that they are entitled for extension for a further period. In fact, the contention of the petitioners is that the very lease itself is taken as one for three years.

9. As discussed above, the said contention cannot be accepted. Even if it is taken, though not specifically pleaded that the period of lease/license is one year, they are not entitled for any more period of extension since the period of three years mentioned in Rule 23 r/w Rule 3 is the maximum one. Therefore, in law, the petitioners cannot seek for three years of extension in all cases. In the case on hand, the petitioner have already been given two extensions though the period of lease/license mentioned is only one year. After all the respondent is interested in augmenting the maximum revenue. Therefore, this Court does not find any arbitrariness in the auction proposed. Furthermore, the order of the respondent in Na.Ka.260/2017/A2 dated 22.02.2017 by which the request of the petitioners for further renewal was rejected has not been put into challenge.

10. The learned counsel appearing for the petitioners would submit that they have not been permitted to take part in the proposed auction.

11. The learned Government Advocate appearing for the respondent would submit that the auction has been postponed and for the aforesaid purpose, fresh auction notice would be issued.

12.Considering the above, this Court of the view that it would be just and proper to permit the petitioners to participate in the fresh auction proposed to be held. Till the said auction are confirmed in favour of the successful participants, the petitioners will have to be permitted to do their business subject to the condition that they pay their rentals as they are paying it as of now.

13.The writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CSIV)

True Copy

Sub-Assistant Registrar

cse/maya
To

The Commissioner,
Yercaud Panchayat Union,
Yercaud, Salem District.

+2 ccs to Mr.C.C.Rengarajan Advocate sr 20077,20078
+1 cc to Mr.J.Franklin Advocate sr 19993
+4 ccs to Mr.O.Selvam Advocate sr 20454, 20455

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