

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
And
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.A.No.752 of 2017
and CMP.Nos.10452 of 10319 of 2017

A.Zaahir Hussain

.. Appellant

vs.

1.Director of Town Panchayats,
Directorate of Town Panchayats,
Kuralagam, Chennai-600 018.

2.Assistant Director of Town Panchayats,
District Collectorate,
Ram Nagar,
Coimbatore-641 018.

3.The Executive Officer,
Kottur Town Panchayat,
Town Panchayat Office,
Kottur Malaiyandi Pattanam,
Pollachi Taluk.

... Respondents

Prayer: Writ Appeal filed under Section 15 of the Letters Patent against the order dated 15.05.2017 made in W.M.P.No.7971 of 2017 in W.P.No.7308 of 2017.

Petition filed under Article 226 of the Constitution of India to pass an order of Interim Injunction restraining the 3rd respondent from in any manner proceeding with/ assigning the Beef Stall situated at Main Road 2nd Ward Kottur Town Panchayat to any other person except the petitioner pending disposal of the above writ petition

WP.No.7308/17:

Writ Petition under Article 226 of the Constitution of India praying this court pleased to issue a Writ of Certiorarified Mandamus or any other Writ or order or directed calling for the records of the impugned Notification Na.Ka. No.67/2017/A1 dated 1.3.2017 issued by the 3rd respondent and quash the same in so far as the Beef Stall situated at Main Road 2nd Ward Kottur Town Panchayat is concerned and consequently direct the 3rd respondent to renew the lease of the said Beef Stall to the

petitioner as stipulated in G.O.(Phase) No.92 Municipal Administration and Water Supply (NH-4) Department dated 3.7.2007

For Petitioner : Mr.Naveen Kumar Murthy
for M/s.Vijaya Krishna

For Respondents: Mr.A.N.Thambidurai,
Special Government Pleader for R1 to R3

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The Writ Petitioner is the appellant and he made a challenge to the Re-Auction Notice dated 01.03.2017 issued by the third respondent by filing the Writ Petition in W.P.No.7308 of 2017 and the Writ Petition was entertained and pending disposal of the same, filed W.M.P.No.7971 of 2017, praying for an ad-interim injunction restraining the third respondent from in any manner proceeding with/assigning the Beef Stall situated at Main Road, 2nd Ward, Kottur Town Panchayat to any other person except the petitioner.

2. The case of the petitioner is that he belongs to a humble background and is running a Beef Stall for eking out his livelihood and the shop in question was taken on auction by the petitioner as early as in the year 2014 and till the final disposal of the writ petition, was running a Beef Stall without any complaint whatsoever. According to the petitioner, in terms of G.O.(Phase) No.92, Municipal Administration and Water Supply (NH4) Department dated 03.07.2007, he is entitled to automatic renewal of lease with enhanced rate and therefore, without participating in the tender, he made a challenge to the said tender notification.

3. Mr.Naveen Kumar Murthy, learned counsel appearing for the petitioner would submit that the learned Judge, vide impugned order dated 15.05.2017 made in W.P.No.7308 of 2017 and WMP.No.7917 of 2017, found that the petitioner does not have any licence as of now for the reason that the period of licence granted in his favour got expired and he was also given two extensions and the petitioner, in pursuant to the order passed by this Court, has also participated in the said auction and taking into account of the same, the learned Judge allowed the respondents to proceed with the process of identifying the successful bidder and confirming the same and also observed that such confirmation followed by running the Beef Stall would be subject to further orders in the writ petition. The petitioner, challenging the legality of the said interim order, came forward with this Writ Appeal. The learned Counsel appearing for the petitioner would further submit that G.O.(Phase) No.92,

Municipal Administration and Water Supply (NH4) Department dated 03.07.2007 enables the petitioner to go for renewal of the lease period and as such, the renewal should have been automatically done in favour of the same.

4. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit filed in the writ petition and would submit that the petitioner, as a matter of right, cannot ask for renewal of the lease period for the reason that the revenue earned through auction would enure for the benefit of the local body and therefore, prays for dismissal of this Writ Appeal.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. This Court, on an earlier occasion in the writ petitions filed for similar relief, had directed the learned Government Pleader to get instructions as to why G.O.(Phase) No.92, Municipal Administration and Water Supply (N4) Department dated 03.07.2007, which is acting detrimental to the interest of the local bodies, have not been scrapped and the answer is yet to come. It is high time for the Government to take a conscious decision to scrap the said Government Order so that public auction conducted by local bodies shall go on without any hindrance so as to enable them to gain more revenue.

7. It is also brought to the knowledge of this Court that the petitioner has also participated in the tender and result of the auction have not been announced. The learned Judge, in the impugned order, has also protected the interest of the petitioner by observing that the process of identifying the successful bidder and confirmation of the same shall go on and however, such confirmation followed by running the Beef Stall would be subject to the further orders in the writ petition.

8. This Court is of the prima facie view that by conducting public auction, local body is going to be benefited and is also of the further view that discretion has been exercised in a fair proper manner while disposing of the application/petition filed for interim order.

9. In the result, this Writ Appeal is dismissed, confirming the order dated 15.05.2017 made in WMP.No.7971 of 2017 in W.P.No.7308 of 2017. No costs. Consequently, connected miscellaneous petitions are closed.

10. Registry is directed to give priority for listing of the Writ Petition and expedite the final disposal.

Sd/- -
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

jvm

To

1. Director of Town Panchayats,
Directorate of Town Panchayats,
Kuralagam, Chennai-600 018.
 2. Assistant Director of Town Panchayats,
District Collectorate,
Ram Nagar, Coimbatore-641 018.
 3. The Executive Officer,
Kottur Town Panchayat,
Town Panchayat Office,
Kottur Malaiyandi Pattanam,
Pollachi Taluk.
 4. The Section Officer,
Writ Section,
High Court, Madras.
- +1cc to Mr.Vijay Krishnan, Advocate sr.48192
+1cc to the Government Pleader sr.48115

W.A.No.752 of 2017

gp(co)
ss(26/7/2017)

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