

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WA.No.828/2017 & CMP.No.11547/2017
in W.P.No.16748 of 2017

R.Siva Kumar ... Appellant / Writ
petitioner

Vs

1. The Rasipuram Municipal Council
Rasipuram Municipality,
Namakkal District.
2. The Commissioner
Rasipuram Municipality
Namakkal District. ... Respondents/
Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the interim order passed by the learned Single Judge in WMP.No.18186/2017 in WP.No.16748/2017 dated 03.07.2017 insofar as the portion of the order pertaining to stay the operation of the Tender Notification dated 23.06.2017.

W.P.No.16748 of 2017:- Writ Petition Under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to Order of 2nd respondent dated 28.4.2017 in Na.Ka.No.3097/2016/A2 and notice dated 31.5.2017 in Na.Ka.No.3097/2016/A2 and consequential tender notification dated 23.6.2017 in Na.Ka.No.1608/17/A2 and to quash the same as illegal and arbitrary and consequently forbearing the respondents, their men or anybody acting on behalf of the respondents from disturbing or interfering with the petitioner's peaceful possession and enjoyment of the Shop No.12 situated at Daily Market Line, Rasipuram Taluk, Namakkal District. WMP.No.18186 of 2017 filed to stay the operation of the tender notification dated 23.06.2017 in Na.Ka.No.1608/17/A2 of the 2nd respondent pending disposal of the Writ Petition.

For Appellant : Mr.R.Syed Mustafa

For Respondents : Mr.P.Srinivas

JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.]

The writ petitioner, aggrieved by the interim order passed in WMP.No.18186/2017 in WP.No.16748/2017 vide impugned order dated 23.06.2017, has filed the present writ appeal.

2 The appellant / writ petitioner made a challenge to the proceedings of the 2nd respondent dated 31.05.2017 and 23.06.2017 respectively by filing WP.No.16748/2017. The grievance expressed by the appellant / writ petitioner appears to be that without putting the appellant / writ petitioner on notice and in violation of G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007, the Tender-cum-Auction Notification has been effected and therefore, prayed for interference. The appellant / writ petitioner and other persons similarly placed, pending disposal of the writ petitions has also filed miscellaneous petitions for interim orders.

3 The learned Judge vide interim order dated 03.07.2017, has taken note of the earlier orders dated 25.05.2017 made in WP.No.13596/2017 and ordered maintenance of Status Quo with regard to the possession of the writ petitioners therein for a period of two weeks subject to the condition that the writ petitioners pay 50% of the enhanced amount fixed by the respondent Municipality in the impugned order within a period of one week from the date of receipt of a copy of that order and the writ petitioners therein shall continue to pay 50% of the enhanced amount till the disposal of the writ petitions and the appellant / writ petitioner, challenging the legality of the conditions imposed in the impugned interim order, has filed the present writ appeal.

4 Mr.Syed Mustafa, learned counsel appearing for the appellant / writ petitioner would strenuously contend that without assigning any rhyme or reason, the rent of Rs.730/- per month has been enhanced to Rs.6000/- per month and subsequently, on representation, it was reduced to Rs.4000/- per month and it is very much on the higher side and would further contend that in the light of the above said Government Order, the appellant / writ petitioner, as a matter of right, is entitled to get renewal of the lease.

5 Per contra, Mr.P.Srinivas, learned Standing Counsel accepting notice on behalf of the respondents / Municipality would submit that the hands of the Municipality are tied in the light of G.O.Ms.No.92 dated 03.07.2007 and if the Tender-cum-Auction is resorted to, the Municipality may definitely get more revenue and would further add that since the discretion has been exercised in a particular manner, this Court may not interfere with the same.

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

7 It is settled position of law that in the event of distribution of Government Contract or leasing out of the public property or grant of any contract in respect of public property, Tender-cum-Auction is the best mode. However, the Municipal Administration Department is exactly of the contrary view and continues to deny revenue to the Local Body and it is also brought to the knowledge of this Court that once a lease is granted in favour of a particular person, it is perpetual. This Court is also indicated in number of matters that it is the high time that the said Government Order is to be scrapped in the light of the law laid down by the Hon'ble Supreme Court of India in various decisions and also in the best interest of the Local Bodies and so far the said Department has turned blind eye to the said fact.

8 As rightly contended by the learned Standing Counsel appearing for the respondents / Municipality, the learned Judge while protecting the possession of the writ petitioners therein, including the appellant herein, had merely asked them to deposit 50% of the enhanced amount. It is also the submission of the learned counsel for the appellant/writ petitioner that though the amount was enhanced to Rs.6000/- per month, on the representation made by the appellant/writ petitioner and other traders, it has been reduced to Rs.4000/- per month. Prima facie it cannot be said to be exorbitant. It is also to be noted at this juncture that the appellant/writ petitioner is carrying on the business of goldsmith and therefore, he may not find it difficult to comply with the interim orders passed by this Court.

9 Since the learned Judge has exercised the discretion in a particular manner and this Court is also of the considered view that the discretion has been exercised in a fair and proper manner, no interference is warranted in the impugned interim order. Further the learned Judge while granting interim order, did not impose the default clause and therefore, in the event of the appellant/writ petitioner fails to comply with the interim order, the said interim order would stand automatically

vacated without further reference to this Court and the Municipality is at liberty to proceed further.

10 In the light of the facts and circumstances, no case is made out for staying the Tender process for the reason that the power of this Court to interfere with the Tender process is very limited and the pronouncements of the Hon'ble Supreme Court of India in the judgments reported in 2016 [6] CTC 295 [SC] [Tamil Nadu Generation and Distribution Corporation Vs. CSEPDIL Trishe Consortium and others] ; 2017 [3] SCALE 216 [JSW Infrastructure and another Vs. Kakinada Sea Port Limited and others] and 2017 [2] MLJ 519 [Haryana Urban Development Authority and others Vs. Orchid Infrastructure Developers Private Limited], also made it clear the said legal position.

11 In the light of the observations made by this Court, the Secretary to Government, Municipal Administration and Water Supply Department, Secretariat, Chennai-9, is suo motu impleaded as the 3rd respondent in the pending writ petitions in WP.Nos.16718 to 16750/2017 and in the connected miscellaneous petitions therein.

12 In the result, the writ appeal stands dismissed at the admission stage itself, confirming the impugned order passed by the learned Judge in WMP.No.18186/2017 in WP.No.16748/2017 dated 03.07.2017. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

सत्यमेव जयते

AP

To

1. The Rasipuram Municipal Council
Rasipuram Municipality,
Namakkal District.
2. The Commissioner
Rasipuram Municipality
Namakkal District.

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3. The Secretary to Government,
Municipal Administration &
Water Supply Department,
Secretariat, Chennai-9.

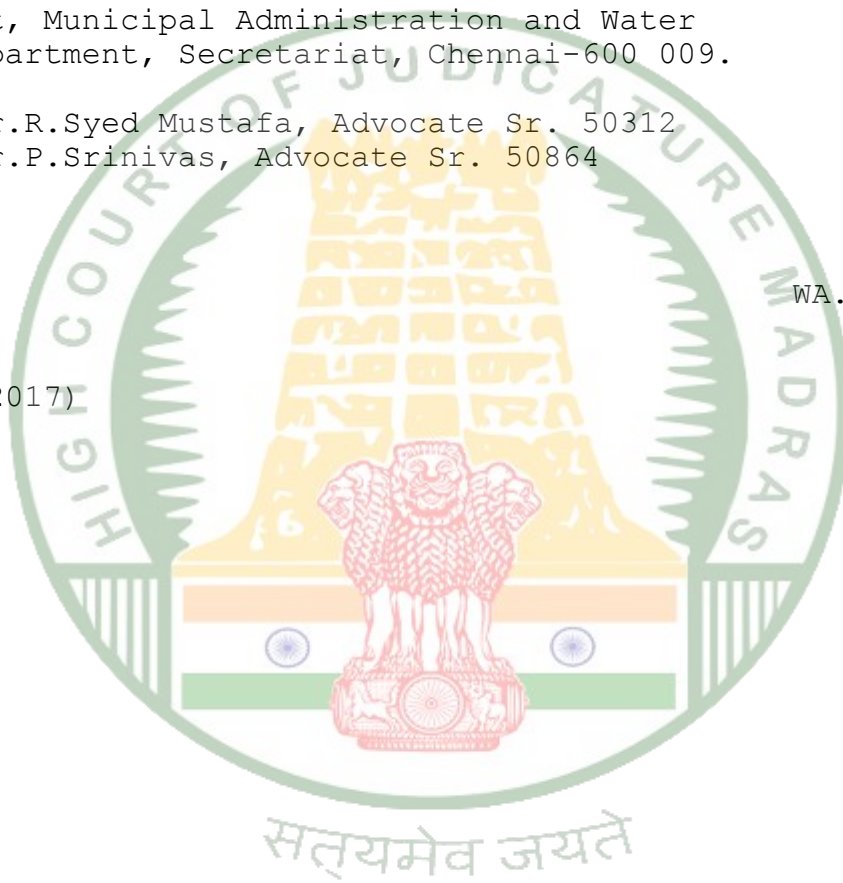
4. The Section Officer,
Writ Section, High Court, Madras.

Note: The Registry is directed to carry out necessary amendments in the cause title in W.P.Nos.16718 to 16750/2017 in the light of suo motu impleadment of the Secretary to Government, Municipal Administration and Water supply Department, Secretariat, Chennai-600 009.

+1cc to Mr.R.Syed Mustafa, Advocate Sr. 50312
+1cc to Mr.P.Srinivas, Advocate Sr. 50864

WA.No.828/2017

LBR(CO)
VR(10/08/2017)



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