

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.NO.5514 OF 2003

D.Chairman

... Petitioner

Vs.

1.Karaikudi Municipality
Rep. By its Commissioner
Karaikudi - 630 002.

2.D.Srinivasan
3.A.Balasubramanian

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India by with a prayer to issue a Writ of Certiorarified Mandamus, to call for the records in the first respondent proceedings Na.Ka.No.A1/8853/2001 dated 01.02.2003 and quash the same, consequently restoring the lease pertaining to the first respondent Municipality's Stall No.1, Municipal New Buildings, 81, Kallukatti East, Karaikudi - 1, Sivagangai District in favour of the petitioner.

For Petitioner : Mr.PL. Narayanan

For Respondent-1 : Mr.S.Gunasekaran
Additional Government Pleader

For Respondent-2 : Mr.A.R.L.Sundaresan
Senior Counsel for
Ms.A.L.Ganthimathi

O R D E R

Shop No.1 in the shopping complex belonging to Karaikudi Municipality is the subject matter of this writ petition. Originally, it was allotted to one S.Dhanushkodi Nadar, who was running a provision stores in the name of Subbiah Stores. After the death of S.Dhanushkodi Nadar, his two sons, namely D.Chairman (Petitioner) and D.Srinivasan (2nd respondent) were running business in the said shop. The Karaikudi Municipality effected change of name and in the place of Late S.Dhanushkodi Nadar, D.Chairman's name was substituted. It

appears that D.Chairman (petitioner) and D.Srinivasan (2nd respondent) had entered into an agreement of compromise on 21.09.2000, which was recorded in Rs.10/- Non-Judicial stamp paper, in which, D.Chairman had agreed that the allotment of Shop No.1, may be given to D.Srinivasan. Pursuant to this, D.Srinivasan made an application to Karaikudi Municipality and the Municipality by the impugned order dated 01.02.2003 effected name change by substituting the name of D.Srinivasan in the place of D.Chairman. Aggrieved by this, D.Chairman (petitioner) is before this Court.

2. Heard Mr.PL.Narayanan, learned counsel for D.Chairman (petitioner) Mr.S.Gunasekaran, learned Additional Government Pleader for the first respondent and Mr.A.R.L.Sundaresan, learned Senior Counsel appearing on behalf of Ms.A.L.Ganthimathi, for D.Srinivasan (second respondent).

3. Admittedly, the Shop does not belong to either D.Chairman (petitioner) or D.Srinivasan (2nd respondent). Allotment of such Shops are regulated by Government Orders that are issued from time to time. Much water has flown under the bridge after 2003, inasmuch as the Government has issued a notification in G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, regulating the grant of lease of properties held by the Municipalities to private persons. Therefore, both D.Chairman (petitioner) and D.Srinivasan (2nd respondent) are bound by the rules framed by the Government from time to time.

4. However, Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for D.Srinivasan fairly brought to the notice of this Court a communication dated 22.12.2016, that has been issued by the Karaikudi Municipality, addressed to Chairman (petitioner) wherein it is stated that he will be entitled to extension of lease provided he agrees with the terms and conditions imposed by the Municipality.

5. Mr.A.R.L.Sundaresan, learned Senior Counsel submitted that the said communication has been addressed to D.Chairman, because this Court had granted interim stay of the order dated 01.02.2003 (impugned order) passed by the Karaikudi Municipality on 20.02.2003 and the same has been made absolute. On account of the interim stay, the Karaikudi Municipality has proceeded on the premise that Chairman (petitioner) is the original allottee and therefore, they have issued the said communication dated 22.12.2016.

6. In the considered opinion of this Court, the dispute between the parties, with regard to lease of Shop No.1, which belongs to Karaikudi Municipality, cannot be decided in a writ petition, as disputed question of facts cannot be gone

into. It is always open to the Karaikudi Municipality to proceed with the lease of the Shop premises, in terms of the Government Orders, that are issued from time to time.

7. The original order dated 01.02.2003 was passed only for a period of three years and that three year period has also lapsed. Sixteen years have passed by and because of this writ petition and the stay granted by this Court, the Karaikudi Municipality has not been able to put the shop in public auction and earn income. The two brothers are fighting for someone else's property and in the bargain one of them is unjustly enjoying the property at the cost of income to the Municipality. Therefore, it is open to the Karaikudi Municipality to take fresh steps in accordance with the Government instructions for allotment of Shop No.1, by public auction, wherein, both D.Chairman (petitioner) and D.Srinivasan (2nd respondent) can stake their claim along with others.

8. The writ petition is dismissed accordingly and the stay orders are vacated. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

TK

To
The Commissioner
Karaikudi Municipality
Karaikudi - 630 002.

+1cc to M/s.S.Gunasekaran, Advocate sr.2273

+1cc to M/s.AL.Gandhimathi, Advocate sr.2420

+1cc to M/s.P.L.Narayanan, Advocate sr.2682

ppa (co)
ss (15/02/2017)

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