

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.01.2017

Pronounced on: 25.04.2017

Coram:

The Hon'ble Dr. Justice ANITA SUMANTH

W.P.No.10610 of 2002

R.Venugopalan

..Petitioner

Vs.

- 1 State of Tamilnadu
rep by Secretary,
Municipal Administration and
Water supply, Fort St.George,
Chennai - 9.
2. Assistant Director,
Town Panchayat,
Collector Office Compound,
Nagercoil, Kanyakumari District
3. Thingal Nagar Selection Grade
Town Panchayat,
rep.by Executive Officer,
Thingal Nagar, Neyoor P.O.
Kanyakumari District - 629 802.
4. Thingal Nagar Selection
Grade Town Panchayat,
Council by President.

5. Pachrose

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus or any other appropriate order calling for the records at the third respondent relating to the auction, notice A1/216/02 dated 11.03.2002 with regard to Shop No.19, at Bus Stand Thingal Nagar, Selection Grade Town Panchayat Neyoor P.O. Kanyakumari District and quash the auction proceedings and direct respondents 1 to 4 to renew the lease for the Shop in

favour of the petitioner for further period of three years as per the G.O. (20 years) No. 147 dated 30.12.2001 issued by the first respondent and pass such orders.

For Petitioner .. Mr. M.Rajaraman

For respondents .. 1. Mrs. Vasudha Thiagarajan,
Additional Government Pleader
(Writ)
for R1 and R2.
2. None appeared for R3 and R4

ORDER

This Writ petition is filed seeking the issuance of a Writ of Certiorarified Mandamus or other appropriate order calling for the records of the third respondent relating to auction notice A1/216/02 dated 11.03.2002 in regard to Shop No.19, at Bus Stand Thingal Nagar, Selection Grade Town Panchayat Neyoor P.O. Kanyakumari District, quash the same and direct respondents 1 to 4 to renew the lease for the Shop in his favour for a further period of 3 years in terms of G.O. No. 147 dated 30.12.2001 issued by the first respondent.

2. Initially, this Court in WMP.No. 1477 of 2002 passed an order of interim injunction on 15.04.2002. The interim injunction was granted on the basis of the statement of learned counsel for the petitioner that out of 19 Shops owned by the third respondent, the petitioner was singled out for non-renewal of lease whereas, leases in respect of the other 18 Shops were renewed and lease rent enhanced. The third respondent thereafter sought to vacate the interim injunction granted. After hearing the parties in detail, this court passed an order dated 31.07.2002, vacating the interim injunction in the light of various factual developments that had transpired in the matter. This Court noted as follows:

Through several details have been furnished by the writ petitioner and the third respondent Town Panchayat, I am of the view that it is unnecessary to refer all those factual details. As stated earlier, this Court was constrained to grant injunction on the basis of the statement that out of 19 Shops owned by the third respondent Town Panchayat, the petitioner alone was singled out and the lease was not renewed in terms of the Government Order No.147 dated 30.12.2001. It is the specific case of the Town Panchayat that since the petitioner being a Ward Member is not entitled to continue as a lessee of a Shop, voluntarily surrendered the Shop in question. It is also their case that the Shop was sub-leased to one V.Chandran @

V.Jayachandran and the said Shop No.19 was conducted by the said Jayachandran in the name of Ashok Bhavan. It is also stated that the petitioner has received Rs.1 lakh as deposit from the said V.Jayachandran and collecting Rs.130/- as daily rent for the said Shop, whereas the original rent fixed by the Panchayat is only Rs.1,050/- per month. The Executive officer has also referred the dispute between the partners, namely the petitioner and V.Jayachandran and the pendency of civil proceedings in O.S.No.178 of 2000 on the file of Subordinate Judge, Padhmanabhapuram and O.S.No.22 of 2002 before the District Munsif Court, Eraniel. No doubt, the petitioner has disputed the details furnished by the Executive Officer, by filing a counter affidavit dated 30th July 2002.

It is not disputed that the petitioner is a Ward Member of the Panchayat. It is also brought to my notice that the sub-lease, namely V.Jayachandran has filed a writ petition No.9688 of 2002, questioning the auction in respect of the Shop in dispute. In the said writ petition the petitioner herein has been impleaded as second respondent. By order dated 21.03.2002, after holding that it is not clear how the first respondent - Executive Officer allowed the second respondent (petitioner herein) to continue the Shop without being brought the same for public auction and there is no illegality or irregularity in the auction notice which was impugned in the writ petition, dismissed the same. No doubt, the second respondent herein (petitioner herein) was not represented before the learned Judge, however the fact remains the writ petition filed by the sub-lessee, namely V.Jayachandran came to be dismissed by this Court on 21.03.2002 and the Panchayat was permitted to proceed with the auction.

It is further seen that after the dismissal of the writ petition on 21.03.2002, auction was conducted on 22.03.2002 and physical possession was given to the higher bidder on 01.04.2002. All these factual details have been stated by the Executive Officer of the respondent Panchayat vide para 13 of the counter affidavit. It is also brought to my notice that subsequent to the auction, the same was approved by the Panchayat in their resolution No.101 dated 28.03.2002. Here again, learned counsel for the petitioner has contended that most of the members abstained the proceedings. Whatever

may be the Xerox copy of the resolution dated 28.03.2002, produced by the learned counsel for the third respondent shows that the auction held on 22.03.2002, was approved by the Town Panchayat.

In the light of the above factual details, dispute between the petition and his partner in the civil proceedings, dismissal of the writ petition filed by V.Jayachandran questioning the auction notice, auction which had taken place on 22.03.2002 approved by the Town Panchayat on 28.03.2002 and possession was handed over to the highest bidder on 01.04.2002. I do not find any valid reason to continue the injunction granted on 15.04.2002; accordingly, the same is vacated.'

3. With the vacation of the interim injunction on 31.07.2002 and the elapse of fifteen years thereafter, this Court is of the view that nothing further remains to be adjudicated upon at this juncture. There are categoric findings in the aforesaid order to the effect that the auction on 23.02.2002 was approved by the Panchayat vide resolution dated 28.03.2002 and physical possession handed over to the highest bidder on 01.04.2002. Further the dispute between the petitioner and V.Jayachandran, the sub-lessee in Shop No.19 was the subject matter of dispute in O.S. No. 178 of 2000 and O.S.No. 22 of 2002 on the file of Subordinate Judge, Padhmanabhapuram and before the District Munsiff Court, Eraniel respectively. The Sub-lessee V.Jayachandran also filed a writ petition in WP.No. 9688 of 2002 challenging the same auction as impugned by this petitioner which was dismissed. The term of lease is for a period of three years and the lease on shop No.19 would have either been extended/changed hands several times in the 15 years since the filing of this writ petition. An order on merits would, thus, apart from being infructuous now, also affect the interests of third parties. In the light of the above observations the writ petition stands dismissed with no order as to costs.

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Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

msv

To

1 State of Tamilnadu
rep by Secretary,
Municipal Administration and
Water supply, Fort St.George,
Chennai - 9.

2. Assistant Director,
Town Panchayat,
Collector Office Compound,
Nagercoil, Kanyakumari District

3. Thingal Nagar Selection Grade
Town Panchayat,
rep.by Executive Officer,
Thingal Nagar, Neyoor P.O.
Kanyakumari District - 629 802.

4. Thingal Nagar Selection
Grade Town Panchayat,
Council by President.

+1cc to M.Raja Raman, Advocate Sr. 24863

+1cc to the Government Pleader Sr. 25322

Pre-delivery Order in W.P.No.10610 of 2002

NR(CO)

VR(15/5/2017)

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