



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2017

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THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

W.P. (MD)No.11280 of 2017

and

WMP(MD)Nos.8664 and 9093 of 2017

C.K.Sunitha

: Petitioner

-vs-

1. The Commissioner of Municipal Administration,
Ezhilagam,
Annexe Building 6th Floor,
Chepauk,
Chennai-600 005.

2. The Commissioner,
Nagercoil Municipality,
Nagercoil-629 001,
Kanyakumari District.

3. The District Collector,
Kanyakumari District,
Nagercoil-629 001.

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned auction-cum-tender notification issued by the 2nd respondent in his proceedings in Na.Ka.No.202/2014/A13, dated 01.06.2017 and quash the same as illegal and consequentially directing the 2nd respondent to extend the period of lease of the petitioner for further period of 3 years on the basis of prevailing market value.

For Petitioner : Mr.M.Ajmal Khan
Senior counsel
for M/s.Ajmal Associates

For R1 and R3 : Mr.G.Muthukannan
Government Advocate

For 2nd respondent : Mr.P.Athimoolapandian

**ORDER**

The present writ petition is filed challenging the auction-cum-tender notification issued by the 2nd respondent, in his proceedings in Na.Ka.No.202/2014/A13, dated 01.06.2017 and also seeking for a direction to the 2nd respondent to extend the lease period for further period of three years.

2. According to the petitioner, she has become a lessee under the second respondent municipality in respect of shop Nos.4, 5 and 6 situated at Anna Bus Stand Nagercoil, on the basis of transfer from one Mr.M.Peer Mohamed. The transfer was approved by the 2nd respondent municipality, in his proceedings, dated 26.05.2008 and therefrom, she has been paying rents regularly.

3. It is further alleged that the 2nd respondent has passed a resolution to extend the period of lease upto 15 years as per the G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 in respect of other shops, but the petitioner was alone discriminated and the impugned notification was issued.

4. The 2nd respondent has file a counter affidavit stating that the lease period of the petitioner expired in the year 2015 itself and there was no further extension. It is further stated that the petitioner is in the habit of taking license in respect of shops situated in Anna Bus Stand, Nagercoil and sub-let the same for higher rent and that the petitioner is not running business in Anna Bus Stand in respect of shop Nos.4, 5 and 6. Since, the petitioner had violated the general condition No.69 stipulated in the order of allotment, she is not entitled for the benefit under G.O.Ms.No.92 Municipal Administration and Water Supply Department, dated 03.07.2007.

5. In the counter, it is further stated that the second respondent municipality has taken effective steps to conduct fresh auction for all the shops situated in Anna Bus Stand and the respondent municipality has every right to bring the shops for fresh auction to augment more revenue for the welfare of the municipality and in respect of shop Nos.4, 5 and 6 situated in Anna Bus Stand, the petitioner pays monthly rent of Rs.12,797/- (Rs.1,53,654/- per annum). As per the tender-cum-notification, dated 01.06.2017, the following persons are the highest bidders.

Sl.No.	Shop No.	Name	Monthly Rent	Deposit	D.D.No.	12 Months Advance
01.	4	Krishnasamy	41,100	2,00,000	463642 SBI	4,93,200
02.	5	S.Murugesan	30,000	2,00,000	177200	3,96,000
03.	6	S.Sivachandra Sekar	60,000	2,00,000	177201	7,20,000
Total						16,09,200



However, the bid was not confirmed, in view of the stay order passed by this court in this case.

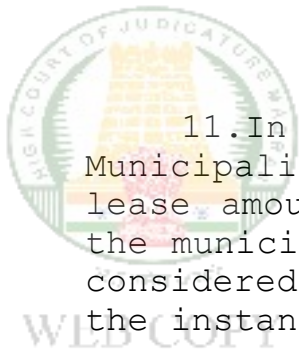
6.I have heard Mr.M.Ajmal Khan, learned Senior counsel for the petitioner, Mr.G.Muthukannan, learned Government Advocate for the respondents 1 and 3 and Mr.P.Athimoolapandian, learned counsel for the 2nd respondent and perused the materials available on record.

7.This court in W.P.(MD)No9333 of 2017 batch etc., [S.A.Ganesa Raja vs. The Rajapalayam Municipality, rep by its Commissioner, Rajapalayam, Virudhunagar], following the judgment of the Hon'ble Supreme Court and this court, has held that the licensees are not entitled for extension/renewal of licence as a matter of right and the municipality has every right to bring the shop for auction to augment more revenue. It is further held that G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 would not apply to the existing lessees and that G.O would apply only for a particular period.

8.In the case on hand, indisputably, the petitioner has not participated in the auction conducted by the 2nd respondent municipality. It is pertinent to note that in para 3 of the affidavit filed in support of the writ petition, it is admitted that the lease was transferred in the name of the petitioner in the year 2008. In the light of the above decision and facts of this case, this court is of the considered opinion that the petitioner is not entitled for extension of lease, as per G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007.

9.Admittedly, the petitioner is paying rent of Rs.12,797/- per month for all the three shops, which comes to Rs.1,53,564/- per annum, but in the auction held on 21.06.2017, three persons have quoted rate of Rs.41,100/-, Rs,30,000/- and Rs.60,000/- per month in respect of shop Nos.4, 5 and 6 respectively, which comes to Rs.16,09,200/- per annum.

10.When the writ petition was listed for hearing, Mr.M.Ajmal Khan, learned Senior counsel appearing for the petitioner submitted that the petitioner is ready to pay 10% more than the offer made in the auction held on 21.06.2017 and also deposited the EMD for a period of one year. When, it was listed again, the learned counsel for the 2nd respondent would submit that the successful bidders have expressed their willingness to pay 20% more than offer made by the petitioner. The learned counsel also submitted a letter to that effect. However, the learned Senior counsel for the petitioner has contended that the offer made by the successful bidder is not genuine. Further, the petitioner has submitted a letter to that effect for a period of one year, as it was agreed by the 2nd respondent in the earlier hearing,



11. In the case of C.Vinoba vs. The Commissioner, Palladam Municipality [2015(3) CTC 170], this court after comparing the lease amount and the offer made in the public auction, directed the municipality to bring the shops for fresh auction. I am of the considered view that the above decision would squarely apply to the instant case.

12. In such view of the matter, the writ petition is **dismissed** with a direction to the 2nd respondent to bring the shops in question for fresh action, as expeditiously as possibly. The 2nd respondent is directed to refund the amount deposited by the petitioner forthwith. It is needless to mention that the petitioner is entitled to take part in the auction to be conducted by the respondent municipality. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To,

1. The Commissioner of Municipal Administration,
Ezhilagam,
Annexe Building 6th Floor,
Chepauk,
Chennai-600 005.

2. The Commissioner,
Nagercoil Municipality,
Nagercoil-629 001,
Kanyakumari District.

3. The District Collector,
Kanyakumari District,
Nagercoil-629 001.

+1 cc to M/S.Ajmal Associates , Advocate in SR.No. 68468
+1 cc to Mr.P.Athimoolapandian , Advocate in SR.No. 68730
+1 cc to The Special Government Pleader in SR.No.66566

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AE/JC/SAR2/06.09.2017/4P/7C