



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2017

CORAM

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

W.P.(MD)No.11371 of 2017

&

WMP(MD)No.8750 of 2017

T.James

: Petitioner

-vs-

1. The Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George, Chennai.

2. The Commissioner,
Nanguneri Panchayat Union,
Nanguneri, Tirunelveli District.

: Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd respondent in A2/465/2009, dated 12.05.2017 and quash the same and consequently, direct the 2nd respondent to renew the lease to collect the fee for the further period of 2 years i.e., upto 30.06.2019 as per G.O.No.181, dated 19.09.2008.

For Petitioner

: Mr.H.Arumugam
Mr.G.Muthukannan for R1
Government Advocate

For Respondents

: Mr.D.Muruganandham for R2
Additional Government Pleader

O R D E R

This writ petition is filed for the issuance of a Writ of Mandamus, to call for the records relating to the impugned order of the 2nd respondent, dated 12.05.2017, quash the same and consequently, direct the 2nd respondent to renew the lease of the petitioner to collect the fee, for a further period of 2 years I.e., upto 30.06.2019 as per G.O.No.181, dated 19.09.2008.

2.The case of the petitioner is that the 2nd respondent issued a notification and conducted public auction to collect fee in the weekly market on 13.07.2016. The petitioner was a successful bidder and he was granted lease to collect fee for one year from 01.07.2016 to 30.06.2017. Long before the expiry of the lease period, the petitioner submitted an application seeking renewal of the lease for another two years, based on G.O.Ms.No.181, Municipal



Administration and Water Supply Department, dated 19.09.2008. Since it was rejected, the present writ petition has been filed.

3.Mr.H.Arumugam, learned counsel for the petitioner would submit that the Government has issued a notification in G.O.Ms.No.181, Municipal Administration and Water Supply Department, dated 19.09.2008 directing the municipalities to lease out the property for a period of three years, but contrary to the above Government Order, the 2nd respondent issued a notification for a period of one year and therefore, the petitioner is entitled for renewal of lease for another period of two years and in support of his contention, he placed reliance on the decision reported in **(2010)5 MLJ 1149** [*K.M.Meeran Mohideen vs Secretary to the Government*].

4.It is contended by the respondents that the petitioner as a matter of right cannot claim renewal of lease. The object of leasing out the property of the municipalities/panchayats is only to augment revenue to carry out welfare activities for the public. It is further contended that after passing of the order impugned in this writ petitioner, the 2nd respondent has conducted auction on 01.07.2017 and also confirmed the auction in favour of the successful bidder. Therefore, the writ petition is liable to be dismissed.

5.Heard Mr.H.Arumugam, learned counsel for the petitioner and Mr.D.Muruganandham, learned Additional Government Pleader for the respondents and perused the materials available on record.

6.The only issue arises for consideration in this case is to whether the petitioner is entitled for renewal of lease based on G.O.Ms.No.181, dated 19.09.2008.

7.This court in the case of *O.A.Nowshad Farooq vs. The Commissioner, Tirunelveli Municipal Corporation, Tirunelveli and another*, in Indian kannon.org/doc/1721899/, has held in para 14 as follows:-

"14.The Government Order in G.O.Ms.No.181, Municipal Administration and Water Supply Department, dated 19.09.2008 was issued only to tide over the difficulties experienced by the local bodies in the conduct of public auction every year. It was only to minimize the difficulties that the Government have directed the local bodies to grant the licence for a period of three years instead of the existing system of granting the privilege for a period of one year. The Government Order clearly says is only from the financial year 2009-2010. When there is nothing in the Government Order, which gives a right to the existing



licencees to demand an automatic renewal of the licence for a further period, it cannot be said that the licencees are entitled for an automatic renewal of the licence, subject to the condition of revision of licence fee."

WEB COPY

8. In similar circumstances, in the decision reported in Indiankannon.org/doc/175145736/ in the case of **K. Saravanan vs. The Executive Officer, Poolampatti Town Panchayat, Salem District**, this court has held in para 21 as follows:-

"21. It is also noted that the said Government Order has been issued containing certain guidelines to be followed, while conducting a public auction, for certain purposes. However, the said Government Order would not vest any right in the petitioner to challenge the agreement, which had been concluded between the first and the second respondents. However, it may be open to the petitioner to agitate the matter before the appropriate authority, who may have the administrative control over the first respondent panchayat, for passing appropriate orders, in the manner known to law. Accordingly, the writ petitions filed by the petitioners stand dismissed."

9. In the case of **Kolanji Murugan vs. The Pethanaickenpalayam Town Panchayat, rep. by its Executive Officer, Pethanaickenpalayam-636 109, Attur Taluk, Salem District**, (Indiankanoon.org/doc/22705833/), this court has held that in the notification, based on which the lease had been granted in favour of the petitioner, it had been made clear that the shop in question would be brought to public auction at the end of the lease period of three years. Having participated in the public auction, agreeing to the terms and conditions prescribed in the notification, dated 03.06.2009, it would not be open to the petitioner to claim that the lease granted in his favour should be extended, for a further period of three years, on payment of the enhanced lease amount.

10. The Division Bench of this court in the judgments reported in (2014)5 MLJ [P. Muthusamy Vs. State of Tamil Nadu] and (2016)3 MLJ 698 [P. P. M. S. C. L. W. ASSN. vs. Commissioner] held that the licensee as a matter of right cannot seek renewal of lease, based on G.O. Ms. No. 92, Municipal Administration and Water Supply Department, dated 03.07.2007 and the public property is to be put into auction by inviting tender so as to enable the municipality to obtain the highest offer in a fair and transparent manner and



then only, the respondent municipality could augment its revenue to the optimum level. Further, the interest of the respondent municipality cannot be jeopardized by permitting the petitioner to continue in possession of the premises for perpetuity.

11. I am of the considered opinion that the principles laid down in the decisions cited supra would squarely apply to the case on hand. Hence, the submission of the learned counsel for the petitioner cannot be countenanced. In view of the latest judgment, with great respect, I am not able to follow the decisions referred by the learned counsel for the petitioner.

12. In such view of the matter, the writ petition fails and the same is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(writs)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Rural Development and Panchayt Raj Department,
Fort St. George, Chennai.
2. The Commissioner,
Nanguneri Panchayat Union,
Nanguneri, Tirunelveli District.

+1cc to Mr.Mr.H.Arumugam , Advocate Sr.No.64859

ER

VB/KK/SAR2/04/09/2017/4P/4C

W.P. (MD) No.11371 of 2017
&
WMP (MD) No.8750 of 2017
11.07.2017