



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2017

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
10.04.2017 & 11.04.2017	13.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM**and****THE HONOURABLE MR.JUSTICE P.VELMURUGAN**W.P.(MD) Nos.14330 & 13805, 11298, 14766 & 14750 of 2016andW.M.P.(MD) Nos.8649, 13377, 10921, 10922, 10923, 10907, 10908,
10909, 10626, 10298, 10299 & 10300 of 2016andCont.P.(MD) No.857 of 2016W.P.(MD) No.14330 of 2016:

N.Mohammed Ali Hussain

... Petitioner

-vs-

1.The Commissioner of Municipal Administration

Municipal Administration

and Water Supply Department

Government of Tamil Nadu

Ezhilagam Annexe, Sixth Floor

Chepauk, Chennai-600 005

2.The Commissioner

Thirunelveli City

Municipal Corporation

Thirunelveli

3.The Assistant Commissioner

Thirunelveli Zone

Thirunelveli City

Municipal Corporation

Thirunelveli

4.The Assistant Commissioner

Thatchanallur Zone

Thirunelveli City

Municipal Corporation

Thirunelveli



5.The Assistant Commissioner
Palayamkottai Zone
Thirunelveli City
Municipal Corporation
Thirunelveli

WEB COPY

6.The Assistant Commissioner
Melapalayam Zone
Thirunelveli City
Municipal Corporation
Thirunelveli

7.The Council
Thirunelveli City
Municipal Corporation
rep. through its Mayor
Thirunelveli

8.The Mayor
Thirunelveli City
Municipal Corporation
Thirunelveli

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus to forbear the respondent from renewing any license or lease in respect of the properties of the Thirunelveli Municipal Corporation either based on the Government Order, dated 03.07.2007 in G.O.Ms.No.92, Municipal Administration and Water Supply Department, Government of Tamilnadu or based on any resolution of the Council of the Thirunelveli Corporation.

For Petitioner : Mr.J.Barathan
for Mr.T.R.Jeyapalam

For Respondents : Mr.Aayiram K.Selvakumar
Standing Counsel for R2 to R6
No appearance for R7 & R8

D.Arunacahalam ..Petitioner in WP(MD)No.13805/2016

M.Jayaprakash Narayanan..Petitioner in WP(MD)No.14766/2016

vs

1 THE SECRETARY TO THE GOVT. DEPARTMENT OF MUNICIPAL
ADMINISTRATION AND WATER SUPPLY, SECRETARIAT, FORT ST. GEORGE,
CHENNAI-600 009.

2 THE COMMISSIONER TIRUNELVELI CITY MUNICIPAL CORPORATION,
TIRUNELVELI.

3 THE ASSISTANT COMMISSIONER, PALAYAMKOTTAI ZONE, TIRUNELVELI
CITY MUNICIPAL CORPORATION, TIRUNELVELI.

<https://hservices.ecmudn.gov.in/hservices>

... Respondent(s) in WP(MD).13805/ 2016 and WP(MD)No.14766/2016



N.Maripandi

..Petitioner

vs

1 THE COMMISSIONER THIRUNELVELI CITY MUNICIPAL CORPORATION,
THIRUNELVELI.

2 THE ASSISTANT COMMISSIONER THIRUNELVELI CITY MUNICIPAL
CORPORATION, THIRUNELVELI.

3 P.S.ISMATHINOON S/O.SYED AHAMED, OLD NO.19, NEW NO.45, BIG
STREET, MELAPALAYM, TIRUNELVELI. (R3 IS IMPEADED VIDE COURT ORDER
DT.10/01/17 IN WMP(MD)8927/16)

... Respondent(s) in WP(MD). 11298/ 2016

N.Maripandi

..Petitioner

vs

1 SECRETARY TO GOVERNMENT DEPARTMENT OF MUNICIPAL ADMINISTRATION
AND WATER SUPPLY, SECRETARIAT, FORT ST, GEORGE, CHENNAI - 600 009.

2 THE COMMISSIONER, TIRUNELVELI CITY MUNICIPAL CORPORATION,
TIRUNELVELI.

3 THE ASSISTANT COMMISSIONER MELAPALAYAM ZONE, TIRUNELVELI CITY
MUNICIPAL CORPORATION, TIRUNELVELI.

... Respondent(s) in WP(MD). 14750/ 2016

Counsel for Petitioner:

Mr.Isaac Mohanlal, Senior counsel in All
for Mr.T.Selvan in WP(MD)No..11298/16&WP.14750/16
Mr.A.R.Jeyaruthran in WP(MD)No..14766/16

Counsel for Respondents:

Mr.Aayiram K.Selvakumar for RR1&2 in WP's 11298,14766&
14750/2016

Mr.J.Bharathan for R3 in WP(MD)No..11298/16

Mr.V.Muruganantham, Additional Government Pleader for R1 in
jWP.14766&14750/16

Prayer in WP(MD). 13805/ 2016 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a Writ of
Certiorarified Mandamus to call for the records of the impugned
resolution No.126 dated 28.07.2016 passed by the Tirunelveli
Municipal Corporation and quash the same as illegal and
consequently direct the respondents to renew the petitioners lease
for further period of 9 years as per the letter
Ma.Ka.No.A1/0003/2016 dated 02.02.2016 sent by the 3rd respondent.



Prayer in WP(MD). 11298/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus call for the records pertaining to the impugned order passed by the 2nd respondent in Na.Ka.No. A1-2978-2010(Me-Pa) dated 21.06.2016 and quash the same and directing respondents to renew the lease in favour of the petitioner in respect of Melappalayam Corporation Thirumana Mandapam, Tirunelveli.

Prayer in WP(MD). 14766/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus call for the records pertaining to the impugned resolution No.126 passed by the Tirunelveli Municipal Corporation dated 28.07.2016 and quash the same as illegal and directing respondents to enforce the previous order of the 3rd respondent in Na.Ka.No.A1/0003/2016 dated 02.02.2016 in respect of Maharajanagar Corporation Thirumana Mandapam, Palayamkottai, Tirunelveli.

Prayer in WP(MD). 14750/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari call for the records pertaining to the impugned resolution No.126 passed by the Tirunelveli Municipal Corporation dated 28.07.2016 and quash the same as illegal.

Cont.P.857/2016

P.S.Ismath Inoon ...Petitioner/Petitioner/Appellant

vs

1.Mr.S.Sivasubramanian,
The Commissioner,
Thirunelveli City Municipal
Corporation, Tirunelveli

...Respondent/3rd Respondent/
3rd Respondent

2.N.Maripandi

3.O.A.Ajmal khan ...Respondents 2&3

(RR2&3 impleaded vide Court order dt.10/1/17 in Sub.A.No. 63/2016&77/2016)

This Petition is filed under Section 11 of Contempts of Courts Act to punish the respondent for the willful disobedience of the order dated 28/03/2016 passed in M.P.No.1/2010 in WASR.No.29799/10

Prayer in MP(MD). 1/ 2010 in WA(MD).SR29799/2010 :

<https://hcservices.ecourts.gov.in/hcservices/> To grant the petitioners leave to file the Writ Appeal SR No.29799/2010 and thus render justice.



Prayer in WP(MD). 4698/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, to direct the 2nd respondent to renew the lease as per the G.O.Ms.No. 147, Municipal Administration and Water Supply Department, dated 30/12/2000, in favour of the petitioner for further period of 3 years in respekt of the Melapalayam Corporation Thirumana Mandapam, Thirunelveli and pass such further or other orders as this Honorable Court deem fit.

C O M M O N O R D E R

T.S.SIVAGNANAM, J.,

The issue involved in all these petitions pertains to the licence granted by the Tirunelveli Municipal Corporation (hereinafter, referred to as "the Corporation") in favour of the petitioners (hereinafter called as "Licensees").

2. Writ petition, in W.P.(MD) No.13805 of 2016, has been filed by one Mr.D.Arunachalam and it pertains to a licence granted in his favour in respect of a Marriage Hall situated near Palayamkottai Bus stand. He has impugned the resolution No.126, dated 28.07.2016, passed by the Tirunelveli Municipal Corporation Council and for a consequential direction upon the respondents to renew his lease for a period of nine years as per the letter, dated 02.02.2016, sent by the Assistant Commissioner, Palayamkottai Zone, Tirunelveli City Municipal Corporation, Tirunelveli / third respondent.

3. Writ petition, in W.P.(MD) No.14330 of 2016, has been filed by one Mr.N.Mohammed Ali Hussain for issuance of a writ of mandamus to forbear the respondents, who are the Commissioner of Municipal Administration, Commissioner of Tirunelveli City Municipal Corporation and his officers, including Mayor of the Corporation from renewing any lease / licence in respect of the properties owned by the Tirunelveli Municipal Corporation based on the Government Order, in G.O.(Ms) No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 or based on any resolution of the Corporation Council.

4. Contempt Petition, in Cont.P.(MD) No.857 of 2016, has been filed by one Mr.P.S.Ismath Inoon, alleging wilful disobedience of the order, dated 28.03.2016, made in M.P.(MD) No.1 of 2010 in W.A. (MD) SR.No.29799 of 2010, wherein the respondent Corporation stated that fresh tender for grant of licence to a marriage hall would be invited and on account of the same, the petition filed by <https://hcservices.eports.dot.in/hcservices/> to grant leave to challenge the order, dated 04.09.2007, in W.P.(MD) No.4698 of 2007, was held to be



unnecessary.

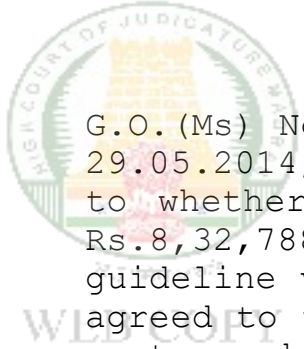
5. Writ petition, in W.P.(MD) No.11298 of 2016, has been filed by one Mr.N.Maripandi, challenging the proceedings of the Assistant Commissioner, Thirunelveli City Municipal Corporation, dated 21.06.2016, and for a direction to the respondents to renew the lease of the marriage hall at Melapalayam in his favour. By the said impugned proceedings, the petitioner has been directed to handover vacant possession of the marriage hall.

6. Writ petition, in W.P.(MD) No.14750 of 2016, has been filed by the said Mr.N.Maripandi, challenging the resolution No.126, dated 28.07.2016, passed by the Corporation Council, by which a decision was taken to administer the marriage hall at Melapalayam departmentally.

7. Writ petition, in W.P.(MD) No.14766 of 2016, has been filed by one Mr.M.Jayaprakash Narayanan, challenging the resolution of the respondent Corporation, dated 28.07.2016, taking a decision to administer the marriage hall at Maharaja Nagar departmentally.

8. Mr.P.Wilson, learned Senior Counsel appearing for the petitioner in W.P.(MD) No.13805 of 2016, submitted that the petitioner was granted licence to run a marriage hall for a period of three years from 01.04.2005 to 31.03.2008 with an annual licence fee of Rs.3,06,000/-. The licence was further renewed for a period of three years from 01.04.2008 to 31.03.2011 by accepting enhanced licence fee at 15% over and above the original licence fee and the petitioner remitted the enhanced licence amount of Rs.3,51,900/- per annum. Again, the petitioner's licence was renewed, by a resolution dated 24.02.2011, for a further period of three years from 01.04.2011 to 31.03.2014, at Rs.4,04,635/- per annum. The licence was further renewed by an order, dated 24.03.2014, passed by the Assistant Commissioner, Palayamkottai Zone, Tirunelveli City Municipal Corporation, for a period of 01.04.2014 to 02.07.2016 (2 years and 3 months) and the petitioner remitted a sum of Rs.4,65,388/- per annum. Thus, the petitioner in W.P.(MD) No.13805 of 2016, namely, D.Arunachalam is in possession of the Marriage Hall since 2005. He claims to have spent several lakhs of rupees in the repair and maintenance of the building, which according to him was in a dilapidated condition when it was handed over in 2005. Now, he seeks for further renewal based on G.O.(Ms) No.92, dated 03.07.2007 and the sheet anchor of the case of the petitioner rests upon a communication, dated 02.02.2016, sent by the Assistant Commissioner, Palayamkottai Zone, Tirunelveli City Municipal Corporation.

<https://hcservices.courts.gov.in/hcservices/> By referring to the said communication, the learned Senior Counsel submitted that the Assistant Commissioner has referred to



G.O.(Ms) No.92, dated 03.07.2007 and the Council resolution, dated 29.05.2014, and called upon the petitioner to give his consent as to whether he is agreeable to pay the increased licence fee at Rs.8,32,788/-, which is the revised licence fee as per the guideline value. It is submitted that immediately, the petitioner agreed to the same vide representation, dated 19.02.2016, and also sent a demand draft, dated 27.06.2016, for the said amount. However, all of a sudden, by communication, dated 20.06.2016, the respondent Corporation directed the petitioner to handover the possession of the marriage hall by 05.00 p.m., on 02.07.2016.

10. The petitioner further stated that immediately they sent a representation to the Government as well as the respondent Corporation, which were not considered and an auction-cum-tender notice, dated 11.07.2016, was issued by the Corporation. This was challenged by the petitioner by filing W.P.(MD) No.12529 of 2016 and the Court disposed of the writ petition, by order dated 18.07.2016, directing *status quo* to be maintained leaving it open to the Corporation Council to pass a final resolution. It is thereafter, the impugned resolution No.126, dated 28.07.2016, has been passed by the respondent Corporation, which is contrary to the earlier resolution, dated 29.05.2014, deciding to administer the marriage hall by themselves and not to bring it for public auction or tender.

11. As observed earlier, the petitioner's case largely rests upon G.O.(Ms) No.92, dated 03.07.2007 and it is submitted that the petitioner is entitled to renewal of licence as a matter of right for two spells of nine years each. Further, it is submitted that the observations made in the impugned resolution that there are various Court orders, which are confusing, are not borne out by records and the petitioner has not initiated any litigation.

12. It is further contended that the action of the respondent Corporation is discriminatory and renewal has been granted as in respect of a slaughter house. Further, it is submitted that the enhanced amount as mentioned in the proceedings, dated 02.02.2016, of the Assistant Commissioner of respondent Corporation being a sum of Rs.8,32,788/- has been deposited by the petitioner by way of demand draft. Further, it is submitted that in a public interest litigation writ petition, in W.P.(MD) No.3635 of 2008, in which the validity of G.O.(Ms) No.92, dated 03.07.2007, has been challenged, wherein the Court had specifically directed the respondent Corporation to place its stand before the Court. But, till date, the respondent Corporation has not filed any counter in these proceedings though they have been impleaded as a party respondent. This was also reiterated by the Division Bench in the order, dated 21.07.2016, passed in W.A.(MD) No.908 of 2016.

13. Referring to Sections 23(2), 49(1)(ii)(c) and 49(2) of the



Coimbatore City Municipal Corporation Act, which applies to the respondent Municipal Corporation, it is submitted that the Government has power to cancel the impugned resolution, since it is inconsistent with G.O.(Ms) No.92, dated 03.07.2007. To buttress this submission, the learned Senior Counsel referred to another Government Order in G.O.(Ms) No.70, dated 01.02.2016, where the Government interfered with the order passed by the Mettupalayam Municipality and directed the Municipality to follow G.O.(Ms) No.92. It is further submitted that a representation was given to the Government and till date, the Government has not disclosed its stand in the matter.

14. Mr.Isaac Mohanlal, learned Senior Counsel appearing for the petitioners in W.P.(MD) Nos.11298, 14766 and 14750 of 2016, submitted that insofar as the marriage hall at Melapalayam is concerned, it is a very small hall and it can hardly accommodate about 150 persons and there are no adequate facilities in the hall and it has an asbestos roof and the petitioner is put to great prejudice because the Division Bench, in an earlier interim order, directed the payment of Rs.2 lakhs per month and this is wholly inequitable for the petitioner and the respondent Corporation may be directed to refund the amount.

15. So far as the marriage hall at Maharaja Nagar is concerned, the learned senior counsel submitted photographs to show that the marriage hall has been neatly maintained and the interiors have been done up and so that it will be comfortable for the people, who attend functions and the petitioner has incurred substantial expenditure for carrying out these renovation works within the premises of the marriage hall. Further, the petitioner has not effected any structural alteration to the building. Therefore, it is submitted that the petitioner should be permitted to continue the licence by applying G.O.(Ms) No.92. As in the other cases, the petitioner has been in possession of the marriage halls from the year 2005 and once in three years, licenses have been renewed in their favour. Mr.Jayaprakash Narayanan, petitioner in W.P.(MD) No.14766 of 2016, has filed an additional affidavit stating that he has invested a sum of Rs.30,06,325/- for carrying out the building renovation work in the marriage hall premises and as such their position has become irretrievable and the respondent cannot be allowed to resile and they are estopped from acting against their promise, which is unjust.

16. Mr.Aayiram K.Selvakumar, learned Standing Counsel appearing for the respondent Corporation, referring to a status report, dated 09.08.2016, filed by the respondent Corporation, submitted that in the council meeting convened on 28.07.2016, after a detailed discussion, it was unanimously decided to maintain these marriage halls departmentally. Further, based on the resolution of the Council, the Municipal Administration



prepared a presumptive income and expenditure statement and the Corporation would get Rs.60.62 lakhs annually, if the Corporation maintained the marriage hall on its own, when compared to the total income of Rs.8.67 lakhs received from all the three marriage halls, which were licenced to the petitioners.

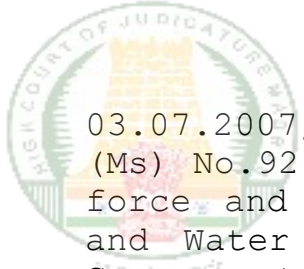
17. Further, if E-Governance is implemented for allocating the marriage halls by internet, there will not be any loss of revenue. Further, it is stated that the vehicle parking stand in the new Bus stand is being maintained by the Corporation departmentally by utilizing smart card and the collection is Rs.61.19 lakhs for the year 2015-2016, when compared to the collection of Rs.35 lakhs for 2009-2010, when it was licenced to a private party.

18. Further, there will be no complaint or harassment, if the marriage halls are maintained departmentally. That apart, Vehicle Parking, Melapalayam Animal Shandy and all Bus stand toll fee collections are being maintained departmentally in a successful manner. Therefore, it is submitted that the respondent Corporation may be allowed to maintain the marriage halls departmentally at least for one year and if the presumptive revenue could not be achieved, the subject will be placed before the Council to conduct a public auction / tender. Therefore, a prayer has been made to accept the status report and pass suitable orders in the writ petitions. Further, it is submitted that no order was passed in favour of the petitioner extending the period of licence and the demand draft sent by the petitioner unilaterally has been returned to him.

19. Mr.Aayiram K.Selvakumar, learned Standing Counsel appearing for the respondent Corporation submitted that sofar as the marriage hall at Melapalayam is concerned, possession has been taken over by the respondent Corporation and when interim orders were granted in other cases, the petitioner wanted same orders to be passed and he agreed to pay a sum of Rs.2 lakhs. Accordingly, possession was granted to them. Therefore, if they find that they cannot administer the marriage hall, they should be directed to handover the possession to the respondent Corporation.

20. It is further submitted that the intention of the petitioner is only to retain the corporation property endlessly and if the respondent Corporation administers the marriage hall departmentally, substantial revenue could be generated.

21. Mr.J.Bharathan, learned counsel appearing for the petitioner in the other writ petition i.e., W.P.(MD) No.14330 of 2016, which is a public interest litigation writ petition and in the contempt petition i.e., Cont.P.(MD) No.857 of 2016, would ~~submit that the~~ ^{submit that the} writ petition, in W.P.(MD) No.3635 of 2008, challenging the Government Order, in G.O.(Ms) No.92, dated



03.07.2007, is still pending and an order of interim stay of G.O. (Ms) No.92 has been granted on 03.12.2014 and the stay is still in force and the Secretary to Government, Municipal Administration and Water Supply Department / the authority which passed said Government Order, is the first respondent in the said writ petition and therefore, the said order of stay would bind the Secretary to Government, Municipal Administration and Water Supply Department consequently, the respondents and the respondent Corporation can never rely upon the said G.O.(Ms) No.92 to extend the licences.

22. Further, it is submitted that the best manner in which, revenue can be generated is by conducting public auction and the properties of the respondent Corporation have remained in the hands of the private parties for more than a decade and the said position should not be allowed to continue further. Therefore, the Municipal Administration should be restrained from renewing lease / licence in respect of the properties owned by Tirunelveli Municipal Corporation by relying upon G.O.(Ms) No.92, dated 03.07.2007 and all auctions shall be by way of public auction-cum-tender strictly following the provisions of the Act.

23. Further, it is submitted that earlier the first respondent took a stand that the Government has formed a Committee to frame appropriate guidelines in respect of renewal of leases and licences and though such a stand was taken in W.P.(MD) No.3635 of 2008 in the year 2008, till date no steps have been taken by the Government and no amendment has been made. Further, it is submitted that even in terms of G.O.(Ms) No.92, the relevant Rules under the District Municipalities Act and other statutes have to be amended and this has been specifically stated in Paragraph No.6 of G.O.(Ms) No.92 and till date, the statute has not been amended and the statute does not provide for grant of lease for a period of three years. Therefore, G.O.(Ms) No.92, dated 03.07.2007, being contrary to the statutory provisions is illegal. This aspect was considered by the Court while passing an interim order, dated 03.12.2014, in W.P.(MD) No.3635 of 2008. The third respondent in W.P.(MD) No.11298 of 2016 is the person at whose instance, the matter has come up to this stage as he had filed a public interest litigation. It is the contention of the learned counsel that the stand taken by the petitioner is wholly unsustainable and there can be no estoppel. The renovation work carried out without approval cannot be used to plead estoppel. There is no concluded contract and therefore, the plea of estoppel is liable to be rejected. In support of his contentions, reliance has been placed on the following decisions:

- i. **Union Territory v. Managing Society**, reported in (1996) 7 SCC 665; and

<https://hcservices.ecourts.gov.in/hcservices/>
 ii. **Manarshi Dayanand University v. Surjeet Kaur**, reported in (2010) 11 SCC 159.



24. After elaborately hearing the learned counsels appearing for the parties and perusing the materials placed on record, we preface by saying that the action of the respondent Corporation in handing over their properties to private parties and allowing them to be in possession and enjoyment of the same for more than a decade is a very disturbing feature. The facts disclose that from 2005, the petitioners have been in possession and enjoyment of the marriage halls. The petitioners' justification is that they have been paying the enhanced licence fee at 15% over and above the previous licence fee. The question would be is this a justification to vest a property with the private individual. G.O.(Ms) No.92, dated 03.07.2007, appears to be the trump card of the petitioners.

25. In the light of the interim order, dated 03.12.2014, made in W.P.(MD) No.3635 of 2008, the first respondent and his functionaries, namely, respondent Corporation cannot rely upon G.O.(Ms) No.92, dated 03.07.2007. At this stage, it would be beneficial to refer to the operative portion of the interim order, dated 03.12.2014, made in W.P.(MD) No.3635 of 2008, which reads as follows:

"7. The learned counsel for the petitioner has also, in support of his contention, drawn the attention of this Court to Rule 12-4 of Municipal Manual and Instruction No.4.90 of Administrative Instructions issued to the Municipalities. Rule 12-4 of Municipal Manual reads as follows:

"12-4 Transfer by lease of immovable property belonging to a Municipal Council-

(1) A Municipal Council may lease out any immovable property belonging to it:

Provided that no such lease shall be valid in case the period of the lease exceeds three years or where the lessee is permitted to put up any building or structure whether or masonry, bricks, wood, mud or metal, unless the sanction of the Inspector of Municipal councils and Local Boards has been obtained therefor.

(2) The lease deed shall be in Form III (a) in Schedule III appended to these rules with such variations as circumstances may require."

8. Instruction No.4.90 of Administrative Instructions issued to the Municipalities reads as under:

"4.90. Lease of Immovable Properties.-The Municipal Council may lease out any immovable property (buildings and lands) belonging to it,



provided that no, such lease shall be valid in the case the period of lease exceeds three years or where the lessees is permitted to put up any building or structure of any material unless the sanction of the Director of Municipal Administration is obtained."

9. The combined appreciation of the relevant Rules and the Administrative Instructions would very well show that the impugned Government Order providing for renewal or for extension of lease beyond three years is not in conformity with the relevant Rules as above stated and the amendment process to amend the guidelines containing in the impugned Government Order is already commenced and is under process.

10. The learned Additional Advocate General, has at this juncture sought three months time to amend the impugned Government Order and to keep the writ petition pending till then. He has also brought to the notice of this Court the Order passed in Civil Appeal Nos. 1991 of 1991, 1993 of 1991 and W.P.(Civil) No.400 of 1986, Erode Perunthu Nilaya Viyabarigal, Salem Municipal Shops Lessees Association, Tamilnadu Municipal Market Building Merchant Association vs. State of Tamilnadu and others, wherein the Honourable Apex Court has directed the Government to allow the petitioners/ existing leaseholders to continue in the premises for enhanced rate of rent at 15% more than the amount, which is payable by them and the increased rate of rent at 15% shall be paid once in a block period of three years commencing from the date specified in the order.

11. The learned Additional Advocate General would submit that as the Government is inclined to make suitable amendment in the Rules in such a manner to give effect to the Government order, the writ petition challenging the validity of the impugned Government order may be kept pending for passing appropriate orders in the same in accordance with the amendment so proposed to be brought in.

12. This Court, considering the respective contentions raised on both sides, is of the view that while keeping the writ petition pending till the amendment process is completed, the operation of the impugned Government Order, which is not conformity with the existing rules, may be stayed pending amendment process. Hence, the operation of the impugned Government Order in G.O.(Ms)No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, is stayed until further orders."



26. It is not in dispute that the above referred interim order is still in force. The said Government Order having been passed by the first respondent and the same having been stayed cannot be enforced. Therefore, the plea raised by the petitioners placing reliance on G.O.(Ms) No.92 is misconceived.

27. The respondent Corporation was justified in mentioning in the impugned, dated 28.07.2016, that there are several Court orders. In fact, the petitioner himself had filed a writ petition, in W.P.(MD) No.12529 of 2016, in which an order of *status quo* was granted subject to certain conditions and final decision was directed to be taken by an order, dated 18.07.2016. There is an order of stay of G.O.(Ms) No.92, in W.P.(MD) No.3635 of 2008. There is a decision of the Division Bench of this Court in **P.Muthusamy v. State of Tamil Nadu**, reported in **(2014) 5 MLJ 129**, wherein all writ petitions praying for identical reliefs as in the present writ petitions were dismissed. In the said decision, it was held that extension of licence was granted only as a concession. Further, it was held that the best way to get maximum revenue is by way of public auction, which will create a level playing field enabling others to participate along with the licensees and therefore, there is no arbitrariness in the auction. In our considered view, the decision taken by the respondent Corporation to run the marriage hall departmentally is a welcome action, a sensible decision in the interest of the Municipality considering the past record.

28. The plea of discrimination raised by the petitioner is also liable to be rejected, since each individual licence is a separate matter and as and when a challenge is made to it.

29. The next aspect of the matter that has to be seen is whether the petitioner could rest his case solely based on the proceedings of the third respondent, dated 02.02.2016. In our considered view, subject to what we have stated above, the said communication can be treated only as a proposal, which emanated from the third respondent. It did not fructify into an order. At best, it was an offer, which was always subject to acceptance and approval by the Corporation Council.

30. The petitioner is stated to have given consent on 19.02.2016. However, no orders were passed by the respondent Corporation on such consent being given by the petitioner. But, the petitioner was served with the order to vacate and handover the vacant possession of the marriage hall by 20.06.2016. It is after that, the petitioner sent a sum of Rs.8,32,788/- by way of demand draft, dated 27.06.2016. The payment was wholly unauthorized and it is a devise adopted by the petitioner to show as if he has paid the enhanced lease amount. This document is a

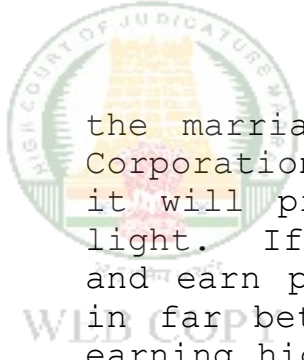


self-serving document and rightly returned by the Municipal Corporation.

31. The learned counsel appearing for the petitioner contended that the Government has power to cancel the impugned resolution by invoking the powers under Sections 23(2), 49(1)(ii)(c) and 49(2) of the Coimbatore City Municipal Corporation Act, as it is contrary to G.O.(Ms) No.92, dated 03.07.2007. As mentioned above, G.O.(Ms) No.92 has remained stayed since 2014. The relevant statutes were not amended as mentioned in the Government Order. Thus, the Government Order could not have been impleaded as it had no force of law. The Government Order being inconsistent with the statute cannot prevail over it. That apart, the impugned resolution has decided to administer the marriage halls departmentally and not to bring the same for public auction. Therefore, the argument based on G.O.(Ms) No.92 has to necessarily fail.

32. Admittedly, the marriage hall is a property owned by the respondent Corporation. The respondent Corporation holds the property in trust for and on behalf of the public at large. The respondent Corporation cannot act as a private owner of the property. Any action of the respondent Corporation, which does not satisfy the Wednesbury's principles of reasonableness, is liable for interference. Any action of the Municipal Corporation, which is arbitrary or whimsical, would amount to breach of public trust. Thus, the role of the Municipal Corporation is not only to preserve but also protect the assets, which are vested in it to ensure that the best revenue possible is generated from those properties, which can be used for various welfare schemes for the public of the area. At last, wisdom has dawned upon the officials of the respondent Corporation, which is evident from the status report, which the Commissioner has filed. They have now realized that more revenue can be generated if the marriage halls are departmentally administered. There is a vast difference between the projected revenue and what was earned by the respondent Corporation thus far. In such circumstances, it is incumbent not only upon the officials of the respondent Corporation, but also the elected representatives, who are in the helm of affairs to ensure that they act for public good.

33. Thus, in the light of the fact that the respondent Corporation has decided to departmentally administer the marriage halls, we hold that the writ petitioners have no right to insist that licence granted in their favour should be renewed for the next 9 years. In the status report filed by the Commissioner, dated 09.08.2016, in Paragraph No.9, it is stated that they should be allowed to maintain the marriage halls departmentally at least for the next 9 years. We fail to understand as to why there is such diffidence on the part of the Municipal Corporation to administer

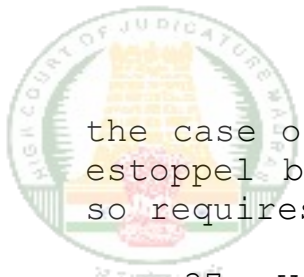


the marriage halls by themselves. If the Commissioner of the Corporation is apprehensive that they will not be able to run it, it will project the officials of Municipal Corporation in poor light. If a private person is able to administer a marriage hall and earn profits out of it, the respondent Corporation should be in far better position to manage the marriage halls apart from earning higher revenue. Therefore, we reject the submissions made by the Commissioner in Paragraph No.9 of the status report and direct the respondent Corporation to efficiently and effectively run the marriage halls departmentally by appointing officers, who are best suited for the said job, sufficient number of staff and conservancy workers to maintain hygiene and provide good facility to the public.

34. The above findings, which have been rendered by us is equally applicable to all the marriage halls (i.e.) including the Melapalayam and Maharaja Nagar halls as well. The cases are not different. The additional plea of the petitioner, in W.P.(MD) No.14766 of 2016, is that he has invested substantial sums of money for renovation purpose. Admittedly, no approval has been obtained for effecting such renovations or improvements. As rightly pointed out by the learned Standing Counsel for the Corporation, no alteration can be done without prior written permission of the respondent Corporation and it is one of the conditions of the licence.

35. The plea that there is no alteration by the petitioner cannot be countenanced, since alteration can also mean replacement of floors providing additional amenities such as washrooms, renovation of kitchen etc., all would encompass alterations. Therefore, the petitioner having taken a risk and gone ahead and invested his own funds, cannot now seek to fasten such liability on the respondent Corporation. The person, who has taken such a risk has to bear the consequences. Obviously, the petitioner having invested such sums of funds would have been charging the customers at appropriate rates. However, we did not call for those details and if it was done, it might have projected a different picture, not very conducive for the petitioners.

36. The plea of promissory estoppel is thoroughly misconceived. Though the petitioners were called upon by the Assistant Commissioner to inform as to whether they are willing to pay additional licence fee for extension of license, such proceedings of the Assistant Commissioner was based on the resolutions, which were passed in the year 2013 / 2014. These resolutions can hardly have any relevance in respect of the extension of licence beyond 2016. This aspect has been considered by the Council of the respondent Corporation and a decision has been taken by them to administer the marriage halls departmentally. As observed by the Honourable Supreme Court in



the case of **Maharshi Dayanand University** (cited supra), promissory estoppel being an equitable doctrine, must yield when the equity so requires. We find no equity in favour of the petitioner.

37. With regard to the stand taken by the licensee of the Melapalayam marriage hall that it is a small hall having only a temporary roof etc., are no grounds to bargain for reduction in license fee, since the petitioner was fully aware of the condition of the marriage hall and being acquainted with the same he had sought for extension of licence from 2004 onwards and therefore, it would not lie in the mouth of the petitioner, to now state that the marriage hall is not fully equipped, it does not have a modern facility etc. If the petitioner was dissatisfied with the condition of the marriage hall, he should have quit the premises and handed over the same to the respondent Corporation even at the very inception in the year 2004-2005. Thus, the plea raised by the petitioner is thoroughly misconceived.

38. Equally, the plea that the Court should direct refund of the amount paid by the petitioner pursuant to the interim order granted in the writ petitions by the Division Bench is also a plea to be rejected. As pointed out by the learned Standing Counsel for the respondent Corporation, the petitioner had handed over possession of the Melapalayam marriage hall to the respondent Corporation, thereafter came before the Court and voluntarily wanted to remit Rs.2 lakhs as ordered in respect of the other halls and having obtained such an order, they cannot now resile from the same and seek for directions to refund the amount already paid.

39. Hence, for all the above reasons,

- (i) W.P.(MD) No.13805, 14766, 11298 and 14750 of 2016 are dismissed and the petitioners are directed to hand over the vacant possession of the marriage hall to the respondent Municipal Corporation not later than 05.00 p.m., on 30.04.2017, failing which, the respondent Municipal Corporation is entitled to take possession of the marriage halls and if necessary with police aid.
- (ii) In the light of the fact that G.O.(Ms) No.92, dated 03.07.2007, has been stayed, vide order dated 03.12.2014, in W.P.(MD) No.3635 of 2008, the respondent Municipal Corporation cannot rely upon the said Government Order nor any of the lease / licence of the properties vested with the respondent Corporation could be extended by relying upon the said Government Order. Consequently, W.P.(MD) No.14330 of 2016 is allowed and the respondent Corporation is restrained from



renewing any lease / licence in respect of the properties owned by them based on G.O.(Ms) No.92, dated 03.07.2007 in the light of the fact that the said Government Order has been stayed.

(iii) The respondent Corporation has now passed a resolution, dated 28.07.2016, deciding to administer the marriage halls departmentally and the said resolution having been upheld by this Court, the contempt petition in Cont.P.(MD) No.857 of 2016 is closed.

(v) No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.THE COMMISSIONER OF MUNICIPAL ADMINISTRATION,
MUNICIPAL ADMINISTRATION AND WATER SUPPLY DEPT., GOVT OF
TAMILNADU, EZHILAGAM ANNEXE, 6TH FLOOR, CHEPAUK,
CHENNAI-05.

2.THE COMMISSIONER, TIRUNELVELI CITY MUNICIPAL CORP.,
TIRUNELVELI.

3.THE ASSISTANT COMMISSIONER, TIRUNELVELI ZONE,
TIRUNELVELI CITY MUNICIPAL CORP., TIRUNELVELI

4.THE ASSISTANT COMMISSIONER, THATCHANALLUR ZONE,
TIRUNELVELI CITY MUNICIPAL CORP., TIRUNELVELI

5.THE ASSISTANT COMMISSIONER, PALAYAMKOTTAI ZONE,
TIRUNELVELI CITY MUNICIPAL CORP, TIRUNELVELI

6.THE ASSISTANT COMMISSIONER, MELAPALAYAM ZONE,
TIRUNELVELI CITY MUNICIPAL CORP., TIRUNELVELI.

7.THE COUNCIL TIRUNELVELI CITY MUNICIPAL CORP., REP
THROUGH ITS MAYOR, TIRUNELVELI

8.THE MAYOR, TIRUNELVELI CITY MUNICIPAL CORP.,
TIRUNELVELI

9.THE SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF MUNICIPAL ADMINISTRATION AND

WATER SUPPLY DEPT., SECRETARIAT,
FORT ST. GEORGE, CHENNAI-600 009



+1cc to Mr.A.R.Jeyaruthran, Advocate, SR.51990
+1cc to Mr.S.Ashok kumar, Advocate in SR.51855
+4cc to Mr.T.Selvan, Advocate in SR.51988, 51989, 52352, 51989
+9cc to Mr.Aayiram Selvakumar, Advocate in SR.52378, 51956
+1cc to Mr.H.Arumugam, Advocate in SR.52207
+1cc to Mr.T.R.Jeyapalan, Advocate in SR.52467

PRE-DELIVERY COMMON ORDER

IN

W.P. (MD) Nos.14330 & 13805, 11298,
14766 & 14750 of 2016

and

W.M.P. (MD) Nos.8649, 13377, 10921,
10922, 10923, 10907, 10908, 10909,
10626, 10298, 10299 & 10300 of 2016

and

Cont.P. (MD) No.857 of 2016
13.04.2017

KRK

kk/SKN RSK/SAR4-21.04.2017-18P-17C