

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

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THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.3102 & 3103 of 2018
and
W.M.P.No.3798 & 3799 of 2018

1.R.Ilangi ... Petitioner in W.P.No.3102 of 2018

2.P.Krishnamoorthy ... Petitioner in W.P.No.3103 of 2018

Vs.

1.The Inspector of Panchayats
and District Collector,
Salem District.

2.The Executive Officer,
Selection Grade Town Panchayat,
Tharamangalam,
Omalur Taluk,
Salem District.

... Respondents in both W.P.Nos.

Common Prayer : Writ petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents to extend the period of lease to collect fees/toll in the weekly market, Tharamangalam Town Panchayat, Tharamangalam, Omalur Taluk, Salem District, by three years from 01.04.2018 to 31.03.2021 in favour of the petitioner as per G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007 within the time that may be fixed by this Honourable Court.

For Petitioners
(in both W.P.Nos.)

: Mr.P.Mani

For Respondents
(in both W.P.Nos.)

: Mr.V.Shunmugasundar

Special Government Pleader

C O M M O N O R D E R

These writ petitions have been filed for issuance of Writ of Mandamus, directing the respondents to extend the period of

lease to collect fees/toll in the weekly market, Tharamangalam Town Panchayat, Tharamangalam, Omalur Taluk, Salem District, by three years from 01.04.2018 to 31.03.2021 in favour of the petitioner as per G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007, within the time that may be fixed by this Court.

2. According to the petitioners, they are the lessee to collect fees/toll in the weekly market, Tharamanglam, Salem District initially from 01.04.2009 to 31.03.2012. As per the G.O.Ms.No.92, dated 03.07.2007 lease period was extended for next three years from 01.04.2012 to 31.03.2015. Pursuant to the directions issued by this Court in W.P.Nos.4784 of 2015 and 6050 of 2015 the second respondent renewed the lease periods from 01.04.2015 to 31.03.2018.

3. The learned counsel for the petitioners submitted that the second respondent has to refix the lease amount and renew the lease period for three years. The petitioners sent letters dated 13.01.2018, 21.01.2018 and 22.01.2018 requesting the respondents to refix the lease amount and renew the lease period. However, the second respondent has been taking steps to conduct auction without renewing the lease in favour of the petitioners. Hence, these Writ Petitions have been filed.

4. The issue involved in this case is no longer res intera. This court in the following decisions have consistently taken the view that the licensees of the municipal shops have no vested right to seek renewal of licence in perpetuity and the shops/buildings of the Local Bodies to be put in public auction with an object to augment more revenue and also to provide opportunity to general public to participate in the auction.

5. The Division Bench of this court in A.Sathar Vs. The District Collector, Coimbatore and Another (AIR 1998 MAD 217) has held as follows:-

"...We are of the view that the appellant has no vested right to continue in occupation of the premises in question belong to the second respondent/panchayat which is entitled to lease out the properties owned by it by public auction. As rightly pointed by the learned single judge, properties owned by the Municipality are also a source of revenue to the Municipality and the interest of the Municipality has to be balanced as against the interest of the shop owner lessee. It cannot be disputed that the lessees may also be entitled to a

fair terms and the Government, had, therefore, allowed the lessees to continue their occupation for a second term. As already seen the appellant was given extension of lease period from time to time from the year 1988 to 31.02.1997 on terms. Even the last lease was extended for three years by enhancing the rent by 30 per cent. Under these circumstances, it is not fair on the part of the appellant to ask for the extension of the lease for further term of three years from 01.04.1997 to 31.03.2000 on an enhancement of 15 per cent of the previous rent. The extension granted earlier by the Panchayat, to the appellant would not mean that the appellant is entitled to continue in possession of the premises in question for ever by paying ridiculously low rent. We are of the view that the extension of the lease to the appellant is against the interest of the Panchayat. As already noticed the rental income from the properties owned by the Panchayat is one of the sources of income of the Panchayat. Therefore, the interest of the Panchayat cannot be jeopardized by permitting the appellant to continue in possession of the premises in question at the enhanced rate of 15 per cent as prayed for. There are absolutely no merits in this writ appeal and the same is dismissed."

6. In the case of O.A.Nowshad Farooq vs. The Commissioner, Tiruvelveli Municipal Corporation, Tirunelveli and another (W.P(MD)No.3535 of 2009, dated 30.04.2009), reported in Indiankannon.org/doc/1721899, has held that the petitioner is not entitled for an automatic renewal of his licence on the basis of the Government Order in G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 as well as the Government Order in G.O.Ms.No.181, Municipal Administration and Water Supply Department, dated 19.09.2008. It is also observed that the Government Order is not applicable to the existing licensees and thereby, licence would be renewed for a further period and there is no such condition incorporated in the Government Order.

7. In WA(MD)No.546 of 2010, dated 19.08.2010 (P.Ravi vs. 1.Madurai City Municipal Corporation Council, represented by its Hon'ble Mayor, Madurai City Municipal Corporation, Tallakulam, Madurai and another, the Division Bench of this Court has

observed in para 6 as follows:-

"6.In the award of public largesse, particularly involving the revenue, the municipal Corporation should have the paramount interest of augmenting the revenue. We may also point out that even in case of the Government Orders granting such benefit, those Government Orders should be considered and interpreted to be of advantage of the Corporation and not to the licensee. This again is on the principle of augmenting the revenue to the Corporation. As the appellant had not satisfied this Court as to his entitlement for the renewal of licence for a further period of two years, though he has relied upon the Government Order dated 25.5.2009."

8. Similar issue came up in the case of M.Periya Samy vs. The Assistant Director of Town Panchayats, Madurai, Madurai District and The Executive Officer, T.Kallupatti Town Panchayat, T.Kallupatti, Madurai reported in Indiankannon.org/doc/21280938. In that case, the shops situated in T.Kallupatti Town Panchayat Bus Stand Commercial Complex was auctioned in the year 2012 for a period three years and after expiry of the licence period, the local authority issued a notification for a fresh auction, which was challenged contending that the existing licensee is entitled for extension of licence period as per G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007. In that case, the Division Bench of this court held that the licence period is only for three years and after expiry of the same, it is for the local authority, to decide, as to whether extension of the lease has to be made, by upward revision of lease amount, as per the terms and conditions of the Government Order or to go for public auction, to augment more revenue, holding so rejected the case of the licensees.

9. Following the decision reported in 2014(5) MLJ 129 in the case of P.Muthusamy vs. State of Tamil Nadu, in the case of C.Vinoba Vs. The Commissioner, Palladam Municipality (2015(3) CTC 170), directed the respondent municipality to put the shops to fresh auction with a view to find out the fair market rent.

10. In (2016)3 MLJ 698 in the case of P.P.M.S.C.L.W.Assn. vs. Commissioner, after considering a number of decisions of this court as well as the Supreme court, in para 26, held as follows:-

"26.There is no two option of a vital fact that the 2nd respondent/Municipality is the competent/appropriate authority to

determine what rent a particular shop of the Panchayat may fetch and it is well settled principle in Law that a lease cannot be extended much to the detriment of panchayat and in any event, the panchayat cannot be a loser on any score."

11. In the light of the above decisions, the petitioners cannot seek extension of lease by relying upon either G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, which in my view, would be against the interest of the local body.

12. In such view of the matter, the Writ petitions fail and they are dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

- 1.The Inspector of Panchayats
and District Collector,
Salem District.
- 2.The Executive Officer,
Selection Grade Town Panchayat,
Tharamangalam,
Omalar Taluk,
Salem District.

+2cc to Mr.Mani, Advocate SR.No.11213 & 11214

+1cc to Government Pleader SR.No.11757

W.P.No.3102 & 3103 of 2018

MG(CO)
GN(08/03/2018)