

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN, J
&
THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN, J

W.A.No.1323 of 2018
&
C.M.P.No.10547 of 2018

P.Balakrishnan ... Petitioner

Vs.

The Assistant Commissioner
Central Region
Coimbatore Municipal Corporation
Coimbatore -1 ... Respondent

Prayer : Writ Appeal filed under clause 15 of the Letters Patent to set aside the order passed in W.P.No.24334 of 2015 dated 11.01.2018 on the file of this Court.

W.P.No.24334/15: Petition filed under Article 226 of the constitution of India praying this Honourable Court to issue a Writ of Certiorarified Mandamus Calling for the records of the proceedings of the respondent in Na.Ka.No. 4363/13/A1(M) dated 26.08.2014 to quash the same and consequently abstain the respondent from cancelling the licence No.2531810 granted to the petitioner.

For Petitioner : Mr.C.Deivasigamani
For Respondents : Mr.K.Magesh
Standing Counsel

ORDER

(Order of the Court is made by M.Sathyanarayanan.J)

The appellant is the writ petitioner and he made a challenge to the proceedings of the respondent dated 26.08.2014, in and by which he was directed to pay arrears of the licence amount of Rs.5,00,419/- (Licence amount Rs.4,23,500/- + interest Rs.24,572/- + Sales Tax Rs.52,346/-), due and payable from July 2014 within 7 days from the date of the receipt of a copy of the

letter, failing which action will be initiated against him. The said writ petition, after contest, came to be dismissed vide impugned order dated 11.01.2018. Making a challenge to the said order, the present appeal is filed.

2. The appellant /writ petitioner in the affidavit filed in support of the writ petition, among other things, averred that respondent Corporation auctioned Shop No.2, Ground Floor, Near Sivan Temple, Flower Bazaar, Mettupalayam Road, Coimbatore- 641 001 and he was a successful bidder and vide proceedings dated 01.01.2014, the respondent granted licence subject to 20 conditions.

3. The grievance expressed by the petitioner is that the possession of the shop was handed over to him only on 15.03.2014 and that apart, fixation of the licence amount at Rs.60,500/- is very much arbitrary and unreasonable and though the plinth area of the shop is only 170 sq.f, exorbitant licence amount has been demanded and therefore, he is put to great prejudice and hardship on account of the impugned demand, which is subject matter of challenge in the writ petition and prays for quashment of the same.

4. Writ petition was entertained and notice was ordered and entering appearance, the respondent filed counter, wherein they took a stand that an e-auction-cum-tender was conducted for Shop No.2 at Mettupalayam Road, Sivan Koil, Flower Bazaar on 13.11.2013 and the petitioner had quoted the highest amount of Rs.60,500/- and therefore, the auction was knocked down in his favour and he was granted licence to run the shop at the monthly rent of Rs.60,500/-. It is further averred that the petitioner has started making the default in payment of the licence amount and therefore, the demand was raised and it was further pointed out that as per Condition No.19, the writ petitioner has to deposit 12 months rent as rental advance and the monthly rent has to be deposited on or before 10th of every month and the petitioner did not pay the licence amount between October 2013 and December 2013, January 2014 and December 2014 and therefore, he was in arrears of Rs.10,97,143/- with interest and service tax.

5. Subsequently, yet another demand was raised on 28.07.2014 and the petitioner has sent a Demand Draft for Rs.2,42,000/- and willfully and wantonly failed to pay the licence amount from 01.01.2014 to 14.03.2014 and therefore, the petitioner is a willful defaulter and as such, there is no merit in the writ petition and prays for dismissal of the same.

6. The learned single Judge, upon considering the materials placed before him and the rival submissions, found that once the

petitioner had participated and quoted Rs.60,500/- as monthly licence amount and got into possession, cannot turn around and took a contradictory stand. Having found that there is no merit in the writ petition, dismissed the same, vide impugned order dated 11.01.2018. Challenging the legality of the same, the present writ appeal is filed.

7. Mr.C.Deivasigamani, learned counsel appearing for the appellant / writ petitioner has invited the attention of this Court to the typed-set of documents, particularly paragraph 9 of the affidavit and would submit that fixing of Rs.60,500/- as monthly licence amount itself is arbitrary and before the commencement of auction, the said amount has been fixed and that apart, plinth area of the shop is only 170 sq.ft and therefore, fixing the said amount, is highly arbitrary. He would further aver that on account of the belated handing over of the possession, the petitioner also suffered a lot and as a consequence, he is not in a position to pay the arrears of licence amount and prays for appropriate orders.

8. Per contra, Mr.K.Magesh, learned standing counsel appearing for the respondent would submit that the reasons assigned by the learned Judge for dismissing the writ petition is sustainable and prays for dismissal of this writ appeal.

9. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

10. It is not in dispute that e-auction was conducted by the respondent Corporation in respect of Shop No.2, Mettupalyam Road, Sivan Koil, Flower Bazaar and the petitioner, having quoted the highest amount of Rs.60,500/-, became the successful bidder and he was granted licence to occupy the shop and run the business for three years from 31.01.2014. The proceedings of the respondent dated 01.01.2014 would disclose that as many as 20 conditions have been imposed before granting possession of the shop.

11. Since the appellant/writ petitioner fallen into arrears, periodical demand was raised and last of such demand was made vide impugned proceedings dated 26.08.2014 and in respect of the earlier demand, the petitioner has also paid the part of the arrears of licence amount of Rs.2,42,000/- and he has failed to pay the balance amount. It is pertinent to point out here that the period of licence has also expired.

12. The learned standing counsel appearing for the Corporation of Chennai would submit that the possession of the shop has also been taken and the appellant/writ petitioner is due and payable a sum of Rs.40,00,000/- towards arrears of

licence amount.

13. The argument advanced by the learned counsel appearing for the appellant that the fixation of Rs.60,500/-, even prior to the auction, is arbitrary, has no merits and substance, for the reason that the petitioner had participated in the auction and in fact, he quoted Rs.60,500/- towards monthly licence amount and it was accepted and the auction was knocked down in his favour and as such, it is not open to him to make a complete turn around and challenge the tender conditions, for which he has agreed and participate in the tender. The judgment relied on by the learned counsel appearing for the appellant/writ petitioner in S.Mohan Singh Bhatiya Vs. Rashtriya Chemicals and Fertilizers Limited, Mumbai and ors. reported in AIR 2013 Bombay 172, has no application to the case on hand for the reason that the said writ petition was filed praying for appropriate direction directing the respondents 1 and 2 to permit the petitioner to participate in e-Reverse Auction and to consider its tender along with other bidders in accordance with law. In the case on hand, the petitioner had participated in the auction and became a successful bidder and later on fallen on arrears of the licence amount.

14. The learned single Judge, in the considered opinion of this Court, has properly appreciated the facts and correctly applied the legal position and dismissed the writ petition.

15. This court, on an independent application of mind to the entire materials, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned Judge for dismissing the writ petition.

In the result, the writ appeal is dismissed, confirming the order dated 11.01.2018 made in W.P.No.24334 of 2015. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS V)

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Sub Assistant Registrar

gpa

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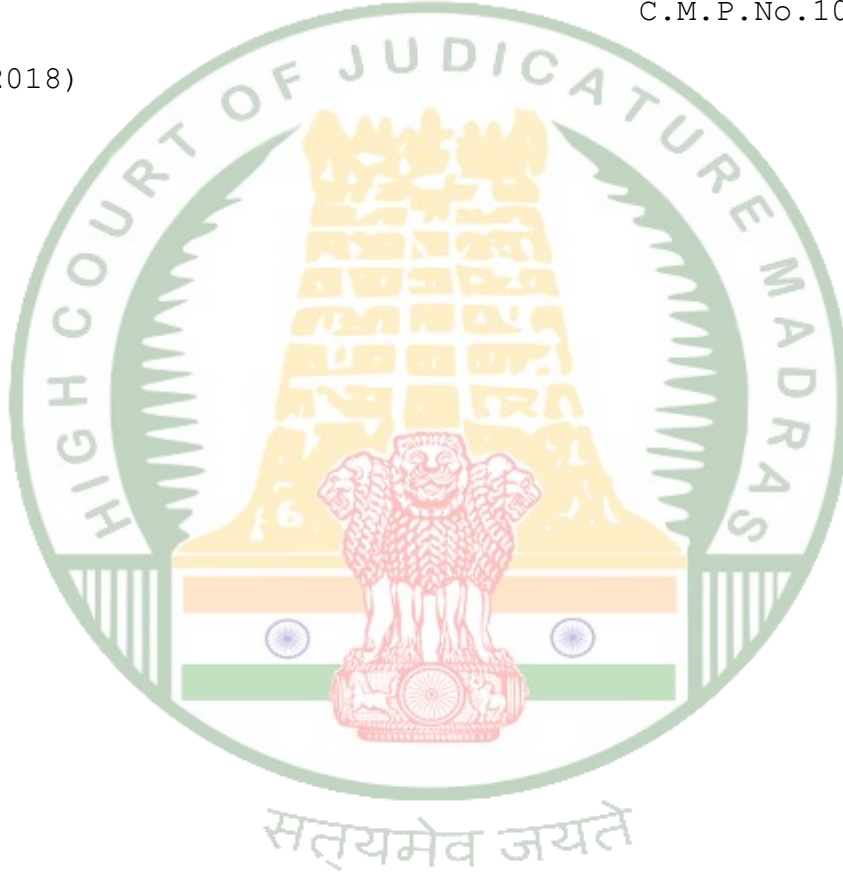
The Assistant Commissioner
Central Region
Coimbatore Municipal Corporation
Coimbatore -1.

+1cc to Mr.C.Deivasigamani, Advocate SR.No.40560

+1cc to Mr.K.Magesh, Advocate SR.No.40265

W.A.No.1323 of 2018 &
C.M.P.No.10547 of 2018

SV(CO)
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