

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT APPEAL No.403 of 2017

D.Srinivasan ... Appellant/2nd Respondent

vs.

1. D.Chairman
No.7, Mela Oorani Lane,
Karaikudi 630 001
Sivagangai District. ...1st Respondent/ Writ Petitioner
2. Karaikudi Municipality,
rep. by its Commissioner,
Karaikudi 630 002.
3. A.Balasubramanian
Karaikudi Municipality Campus,
Karaikudi 630 002. ... Respondents 2 &
3/Respondents 1 & 3

Writ Appeal filed under Clause 15 of the Letters Patent against the order of this Court dated 10.01.2017 made in W.P.No.5514 of 2003.

W.P. 5514/2003:

Writ Petition filed under Article 226 of the constitution of India by with a prayer to issue a Writ of certiorarified Mandamus to call for the records in the first respondent proceedings Na.Ka. No. A1/8853/2001 dated 01.02.2003 and quash the same, consequently restoring the Lease pertaining to the first respondent Municipalities Stall Nos. , Municipal New Bulidings 81, Kallukathi East, Karaikudi -1, Sivagangai District in favourt of the petitioner.

For Appellant : Mr.AR.L.Sundaresan
Senior Counsel for
Mrs.A.L. Gandhimathi

For Respondents 1 & 3: No appearance

For 2nd Respondent : Mr.A.S.Thambuswamy

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Appellant has come up with the present Writ Appeal, challenging the order of dismissal dated 10.01.2017 passed by a Learned Single Judge in W.P.No.5514 of 2003.

2. The Appellant/D.Srinivasan and the 1st Respondent/D.Chairman are brothers. They are fighting for a property in Shop No.1 of a Shopping Complex belonging to Karaikudi Municipality, for more than 15 years and thereby stalled the authorities from proceeding with the public auction.

3. Learned Single Judge, while dismissing W.P.No.5514 of 2003, by an order dated 10.01.2017, came to the conclusion that the parties are governed by G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, which regulates the grant of properties held by the Municipality to private persons. Thus, the Learned Single Judge observed that it is open to the Karaikudi Municipality to take fresh steps in accordance with the Government instructions for allotment of the Shop in question by public auction, wherein, both the brothers can stake their claim along with others.

4. It is relevant to point out that this Court, by an order dated 30.10.2017 in W.P.No.16095 of 2017, batch of cases (in which one of us, SVNJ is a member) held that if the person who is running the Shop is not willing to pay the enhanced amount fixed by the Municipality towards rent, it is open to the Municipality to go ahead with the auction. For better appreciation of the case, paragraph 11 of the said order is extracted hereunder:

"11. I find no merit in the writ petitions, which are dismissed accordingly. No costs. Consequently, connected miscellaneous petitions are closed. If it is for the petitioners to accept the offer given by the 4th respondent, they being in the occupation for several years, failing which, the 4th respondent shall go ahead with the auction. In case the petitioners do not give consent for payment of the enhanced amount within one month, it is open to the 4th respondent to go ahead with the auction, and till such time, the auction is announced, the petitioners may continue in the same place. As there is possibility of challenging the auction notice and the petitioners continue in that place on account of a case or on account of interim order, this Court directs that once the auction notification is published, the petitioners are

deemed to have vacated the tenement and the respondents can enter the place with the help of police force."

5. Whether the Appellant/D.Srinivasan or the 1st Respondent/D.Chairman is eligible to the Shop in question or not, is a matter to be decided before the appropriate Civil forum. However, the Municipality cannot be prevented from going ahead with the auction. Hence, we find no error in the order passed by the Learned Single Judge and the same is confirmed.

6. However, we make it clear that there is no hurdle on the part of the person, who is in possession of the Shop in question to pay the periodical revision amount to the Municipality and continue to have the benefit of the lease, provided there is no bar for the Municipality to extend the benefits.

7. In case, the person, who is running the Shop in question is not willing to pay the periodical revision of rent fixed by the Municipality, it is needless to state that it is open to the Municipality to proceed with the auction and in such case, either of the parties have no locus to stall the auction proceedings.

With the above observation(s) and direction(s), this Writ Appeal stands disposed of. No costs. Consequently, connected C.M.P.No.6385 of 2017 is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

(aeb)

To

The Commissioner,
Karaikudi Municipality,
Karaikudi 630 002.

+1 CC to Mrs. A.L. Gandhimathi, Advocate sr 10732.

W.A.No.403 of 2017

RSI (CO)
SP(10/04/2018)