

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

WP.No.6858 of 2018
& W.M.P.No.8500 of 2018

M.Meenammal

...Petitioner

Vs.

1. The District Collector,
Dharmapuri District.
2. The Special Officer-cum-Assistant Director,
Town Panchayat,
Harur, Dharmapuri District.
3. The Executive Officer,
Town Panchayat, Harur,
Dharmapuri District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to direct the respondents to consider the petitioner's representation dated 12.02.2018, within a stipulated time as fixed and consequently direct the 2nd and 3rd respondents to extend the lease tenure period from 01.04.2018 to 31.03.2019 of 15% enhanced lease rent as per the rules and regulations contemplated under the Tamil Nadu District Municipality, Act, 1920 for the cycle stand area to an extent of 1,800 square feet at the North-East by this Court.

For Petitioner : Mr.N.Vijaya Basker
for M/s.Law Vision

For Respondents : Mr.V.Shanmuga Sundar, Spl.G.P. (for RR1 & 2)
Mr.V.Annalakshmi, G.A. (for R3)

ORDER

Mr.V.Shanmuga Sundar, learned Special Government Pleader takes notice for the respondents 1 and 2 and Mrs.V.Annalakshmi, learned Government Advocate takes notice for the 3rd respondent. By consent, this Writ Petition is taken up for final hearing at the admission stage itself.

2. The Petitioner has filed this petition to issue a Writ of Mandamus to direct the respondents to consider the petitioner's representation dated 12.02.2018, and consequently direct the respondents 2 and 3 to extend the lease tenure period from 01.04.2018 to 31.03.2019 at 15% enhanced lease rent as per the rules and regulations contemplated under the Tamil Nadu District Municipalities, Act, 1920.

3. According to the petitioner, she is running a Cycle Stand parking business since 2003. While so, in the year 2009, the 2nd respondent called for a tender for the Cycle Stand parking area at Harur bus stand, in which, the petitioner participated and she was declared as successful bidder for the period from 01.04.2009 to 31.03.2012.

4. The petitioner would further state that she had spent huge amount for levelling the ground to ensure the safety of the vehicles. The lease was subsequently extended from 01.04.2012 to 31.03.2013, by enhancing licence fee at 15%. It is further submitted that she filed a suit in O.S.No.59 of 2012 against the respondents for permanent injunction, which was also decreed on 30.09.2012. While so, the respondents, instead of renewing the lease, as per the guidelines of the Hon'ble Supreme Court, has brought the shop for public auction. Hence, the present Writ Petition.

5. The learned counsel for the respondents submitted that admittedly, after expiry of lease period, they have decided to bring it for public auction to get more revenue to implement the welfare activities of the general public. It is further contended that it is the prerogative of the Municipality to bring the Shop for auction and the Civil Court has no jurisdiction to pass any order against the respondent, in the light of the decision of this Court.

6. The learned counsel for the petitioner submitted that the petitioner is ready to participate in the public auction conducted by the 3rd respondent, but she was prevented by the respondents.

7. Though the petitioner seeks extension of lease based on the judgment of the Hon'ble Apex Court, no such order was produced for perusal of this Court. Moreover, the petitioner relied on the judgment of the Hon'ble Supreme Court for extension of lease, which shows that, indirectly, the petitioner claims relief only on the basis of G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007.

8. The issue involved in the case is no longer res integra. This court, in the following decisions has consistently taken

the view that the licensees of the Panchayat / 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 the general public to participate in the auction.

9. 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 meant 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."

10. 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.

11. 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."

12. 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.

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

14. 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, this Court 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."

15. Keeping in mind, the principles laid down in the above decisions and the facts of this case, in the considered opinion of this Court, the petitioner is not entitled for the relief sought for in this Writ Petition and the same is liable to be dismissed. Accordingly, the Writ Petition is dismissed with a direction to the respondents to permit the petitioner to participate in the public auction. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

pvs

To

1. The District Collector,
Dharmapuri District.
2. The Special Officer-cum-Assistant Director,
Town Panchayat,
Harur, Dharmapuri District.
3. The Executive Officer,
Town Panchayat, Harur, Dharmapuri District.

+1cc to Mr.Law Vision, Advocate SR.No.22791

+1cc to Government Pleader SR.No.23974

WP.No.6858 of 2018

AK(CO)
GN(25/04/2018)



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