

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE Mrs.JUSTICE S.RAMATHILAGAM

W.A.No.1774 of 2018 and
CMP Nos.14223 and 14224 of 2018

M.Pandian ...Petitioner

vs.

1. The Block Development Officer,
Needamangalam Panchayat Union,
Needamangalam Taluk,
Thiruvavarur District
2. The Special Officer,
Edaimalaiyur Village Panchayat,
Needamangalam Taluk,
Thiruvavarur District
3. R.Prabhakaran ...Respondents
[R3 impleaded as per order of
this Court in W.M.P.No.21382
of 2018 dated 20.07.2018]

Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 20.07.2018 made in W.P.No.7327 of 2018 passed by the Learned Single Judge and allow the Appeal. Writ petition filed under Article 226 of the constitution of India to issue a writ of certiorari calling for the impugned order in Na.Ka.No.3862/16/A2, dated 07.03.2018 passed by the first respondent and quash the same.

For Appellant : Mr.S.V.Jayaraman
Senior Counsel

For Respondents: Mr.J.Pothiraj for R1 and R2
Special Government Pleader

J U D G M E N T

(Judgment of the Court was made by M.VENUGOPAL,J.)

The Appellant / Petitioner has focused the instant Intra-Court Writ Appeal [as an aggrieved person] as against the order dated 20.07.2018 made in W.P.No.7327 of 2018 passed by the Learned Single Judge in dismissing the Writ Petition.

2. Earlier, the Learned Single Judge while passing the Impugned Order in W.P.No.7327 of 2018 filed by the Appellant [as Writ Petitioner] at Paragraph Nos.6 and 7 had observed the following and resultantly, dismissed the Writ Petition without costs.

"6. It is an admitted fact that the petitioner had been a lessee of the community hall since 19.04.2004 and his lease period was extended, pursuant to the order of this Court in W.P.No.14156 of 2007, dated 13.12.2012. This Court following the earlier Division Bench Judgment held that the lessee cannot seek extension as a matter of right in perpetuity. Though, the lease period expired on 18.04.2018, I have extended the period till July, 2018, on the ground that the petitioner had already booked marriage hall till July, 2018.

7. Since the period has already expired, the petitioner shall hand over the possession to the respondents forthwith. It is made clear that the petitioner can also very well participate in the proposed auction to be conducted by the respondents. Hence I do not find any merits in this writ petition. Accordingly, this writ petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed."

3. Assailing the validity, legality and correctness of the order of dismissal dated 20.07.2018 in W.P.No.7327 of 2018 passed by the Learned Single Judge, the Appellant / Writ Petitioner has filed the present Writ Appeal by taking a plea that in W.P.No.7327 of 2018, it was ordered since the lease period had already expired, the Petitioner should hand over the possession to the Respondents forthwith. Further, it was mentioned that the Appellant, viz, the Petitioner can also very well participate in the proposed auction to be conducted by the Respondents and in this regard, the Learned Single Judge had failed to consider that only at the initial time of lease, the property was to be leased out by public auction, as per G.O.Ms.No.92 Municipal Administration and Water Supply Department dated 03.07.2017, which still holds good.

4. At this stage, Learned Senior Counsel for the Appellant submits that in terms of ingredients of G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007, Paragraph No.4[ii] and [iii] enjoins as under:-

"(ii) Lease may be given for three years. After completion of three years, the lease may automatically be renewed. It may be renewed upto nine years. 15% of the lease amount has to be enhanced every three years (This condition is applicable to the present lessee).

(iii) Lease amount has to be reexamined after nine years. Lease amount has to be determined by taking into consideration the market rate, priority may be given to the existing lessees to renew the lease for another nine years. If the existing lessee did not agree, it should be given by auction."

as such, the Appellant / Petitioner should have been permitted to have lease of another nine years.

5. The Learned Counsel for the Appellant contends that the Appellant is ready and willing to pay the market value of lease amount by increasing at 15% of Lease Amount as per guidelines issued in G.O.Ms.No.92 dated 03.07.2007. Further, during the entire period of lease, there was no delay on the part of the Appellant and further, it was not the case that the Appellant had not paid the lease amount for any particular period.

6. The Learned Senior Counsel for the Appellant comes out with a plea that the materials available in Edamalaiyur Community Hall is worth about Rs.6 Lakhs and as such, huge amount spent by the Appellant for conduct of marriages and other functions will have to be taken away by the Appellant.

7. The Learned Senior Counsel for the Appellant takes a stand that the notice dated 07.03.2018 issued by the Respondents is only directing the prevailing lease rent and in fact, the handing over of the 'Community Hall' to the Respondents will not in any way affect the legal right of the Appellant, as regards seeking continuance of lease on the 'Prevailing Market Rate'.

8. The Learned Senior Counsel for the Appellant refers to the Order of the Learned Single Judge dated 13.12.2012 in W.P.No.14156 of 2007 between T.Pandiyarajan V. the President, Edamialur-North Panchayat, Mannargudi Taluk, Tiruvarur District wherein at Paragraph Nos.6 and 7, it is observed as under:

"6. The lease commenced on 19.04.2004. The first renewal was on 18.04.2007, second renewal on 17.04.2010, third renewal has to be on 16.04.2013 subject to payment of 15% enhanced lease amount, viz., till nine years. Thereafter, as per the market value to be determined the lease has to be renewed.

7. With the above said direction, the Writ Petition is allowed and the impugned order dated 16.04.2007 is quashed. A further direction is issued to the respondent to follow the above said Government Order, to grant the subsequent lease period, provided the petitioner to match the market value to be determined by the respondent. Consequently, connected Miscellaneous Petitions are closed. No costs."

9. Per contra, it is the submission of the Learned Special Government Pleader for the Respondents 1 and 2 that the Community Hall in Edamalaiyur West Village Panchayat, Needamangalam Taluk, Tiruvarur District belongs to the Village Panchayat and that the Community Hall was leased out to the Appellant / Petitioner on 19.04.2004 for a period of three years on a annual rent of Rs.40,000/- for the 1st year and Rs.44,000/- for the 2nd year and Rs.50,600/- for the 3rd Year and that the term of 3 years already had expired on 13.04.2007.

10. The Learned Special Government Pleader for the Respondents 1 and 2 brings it to the notice of this Court that the Appellant / Petitioner was permitted to continue with the

Community Hall on lease continuously and in fact, the lease was extended for a further period of five years from 19.04.2013 to 18.04.2018, taking into consideration of the market value prevailing at that point of time and now, the lease period expired on 18.04.2018. As such, the 2nd Respondent / Special Officer, Edaimalaiyur Village Panchayat, Thiruvarur District had issued a notice to the Appellant / Petitioner to hand over the charge of Community Hall on 18.04.2018, by a letter dated 07.03.2018 so as to re-assess the lease rent with reference to the prevailing market rate to obtain maximum benefit to the Village Panchayat.

11. Yet another argument advanced on behalf of the Respondents 1 and 2 is that the Appellant was continuing with the lease from 19.04.2004 to 18.04.2018, aggregating in all for a period of 14 years, and that the Appellant has paid a lease amount of Rs.1,59,809/- for the last lease year ie., for a period beginning from 19.04.2017 to 18.04.2018.

12. The Learned Special Government Pleader for the Respondents takes a stand that the office of the President of the Panchayat Union got expired on 25.10.2016 and that the powers of the entire administration of the Village Panchayat was entrusted to the 2nd Respondent / Special Officer, Edaimalaiyur Village Panchayat, Thiruvarur District and further that, after expiry of the lease period, a demand was given by the Village people to conduct an open auction in order to secure maximum revenue for the Community Hall for the benefit of the Village Panchayat. Therefore, the Respondents 1 and 2 had issued a Public Auction Notification on 12.08.2018 fixing a date of auction on 28.08.2018 and the same was published in the entire Village Panchayat. Further, if the auction is conducted, then, it is open to the Appellant to take part in a public auction and whoever bids the maximum amount, he will be declared as a highest bidder and lease would be executed between such highest bidder and the Special Officer of the Village Panchayat.

13. The Learned Special Government Pleader for the Respondents submits that if the public auction is conducted bid up to Rs.10,00,000/- [Rupees Ten Lakhs only] per annum is expected / anticipated as there are enormous bidders to take part in the auction to be conducted by the village panchayat and that the Appellant was shown indulgence by the Writ Court in granting orders up to July 2018 by taking into consideration the marriage booked by the Appellant in the Community Hall.

14. In effect, it is the contention of the Learned Special Government Pleader for the Respondents 1 and 2 that the Panchayat is to conduct an open auction as per G.O.Ms.No.92 dated 03.07.2007 of Municipal Administration and Water Supply Department, as such, the Writ Appeal is liable to be dismissed.

15. Be it noted, that the Officer Concerned in the Village Panchayat is the Competent Authority to determine what will be the lease amount for the Community Hall in question that may fetch for a particular Lease Period. It is settled position in

Law that the 'Lease' cannot be extended much to the detriment of the Panchayat. Further, the 'State' as per Article 12 of the Constitution of India cannot disburse / determine its 'Largesse' at its sweet will and pleasure, in the considered opinion of this Court.

16. Besides the above, the Hon'ble Supreme Court in Nagar Nigam Meerut V.AL Faheem Meat Exports (P) Ltd., and Others reported in [2006] 13 Supreme Court Cases at Page 382 and at Special Pages 384 and 385 wherein it had observed as under:

"It is now a well-settled principle of law that having regard to the provisions of Article 14 of the Constitution, State within the meaning of Article 12 thereof cannot distribute its largesse at its own sweet will. The court can ensure that the statutory functions are not carried out at the whims and caprices of the officers of the Government / local body in an arbitrary manner. But the court cannot itself take over functions. Not finding any arbitrariness, discrimination or malafides, the High Court had no justification for interfering with the advertisement inviting fresh offers for the contract in question.

All contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well-known newspapers having wide circulation, so that all eligible persons will have an opportunity to bid in the auction, and there is total transparency. This is an essential requirement in a democracy, where the people are supreme, and all official acts must be actuated by the public interest, and should inspire public confidence. The Supreme Court has been insisting upon that rule, not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities. The State or its instrumentalities should not give contracts by private negotiation but by open public auction / tender after wide publicity. Although the Nagar Nigam had advertised the contract, the High Court has directed that it should be given for 10 years to a particular party (Respondent 1). The contract had not only been given by way of private negotiation, but the negotiation had been carried out by the High Court itself, which is impermissible.

Having regard to the nature of the trade or largesse or for some other good reason, a contract may have to be granted by private negotiation, but normally that should not be done as it shakes the public confidence. However, in rare and exceptional cases, for instance during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be

departed from and such contracts may be awarded through "private negotiations"".

17. Moreover, the Hon'ble Supreme Court in the decision of Delhi Science Forum and Others V. Union of India and Another reported in [1996] 2 Supreme Court Cases 405 at Special Page 409 had observed the following:

"The question of awarding licences and contracts does not depend merely on the competitive rates offered; several factors have to be taken into consideration by an expert body which is more familiar with the intricacies of that particular trade. While granting licences a statutory authority or the body so constituted should have latitude to select the best offers on terms and conditions to be prescribed taking into account the economic and social interest of the nation. Unless any party aggrieved satisfies the court that the ultimate decision in respect of the selection has been vitiated, normally courts should be reluctant to interfere with the same."

18. Aptly, one has to bear in mind the observation of the Hon'ble Supreme Court between Shri Sachidanand Pandey and Another V. the State of Bengal and Others reported in AIR 1987 Supreme Court at Page 1109 and at Special Page 1133 at Paragraph No.39, wherein it is mentioned as follows:

"39. On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established: State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism."

19. A public auction, undoubtedly, will bring in the highest bidders, in and by which there is every possibility of swelling the coffers of a Panchayat. In Law, the Appellant has no legal or vested right to seek for extension of lease for the Community Hall. As a matter of fact, an object of arranging Revenue is meant for the purpose of public welfare by the Town Panchayat and without assessing market value of the lease, Panchayat cannot be permitted to grant lease on a nominal sum. Undoubtedly, 'Auction' is the best mode of bringing in the highest bidders.

20. It is an axiomatic Principle in Law that after expiry of particular lease period, one cannot seek 'Renewal of the Lease' in question either as a matter of right or as a matter of routine. At this juncture, a cursory perusal of the G.O.Ms.No.92 Municipal Administration and Water Supply Department dated 03.07.2007 indicates that in respect of 'Renewal of Lease', orders were issued in respect of the amending earlier procedure relating to the lease of shops, lands of urban municipalities. Eventhough the Learned Senior Counsel for the Appellant has placed heavy reliance on the Paragraph No.4(ii) and (iii) of the G.O.Ms.No.92, which runs to the following effect:

"(ii) Lease may be given for three years. After completion of three years, the lease may automatically be renewed. It may be renewed upto nine years. 15% of the lease amount has to be enhanced every three years (This condition is applicable to the present lessee).

(iii) Lease amount has to be reexamined after nine years. Lease amount has to be determined by taking into consideration the market rate, priority may be given to the existing lessees to renew the lease for another nine years. If the existing lessee did not agree, it should be given by auction."

yet, this Court is of the considered view that the Appellant has no indefeasible right to seek for 'Renewal of Lease' automatically in his favour. In reality, when public auction is conducted for leasing out the concerned property, the highest offer in the bid will be considered by the concerned authority, which will certainly enure to the benefit of the concerned Panchayat / Authority. If numerous bidders take part in the auction, then, if a person offers the highest bid, then, it will enure to the benefit of the Village Panchayat. If the highest bidder is declared to be a successful bidder, then, it is needless for this Court to make a significant mention that the due lease deed would be executed between him and the Special Officer of the Village Panchayat.

21. Already, the Appellant had enjoyed the benefit of 'Lease' for a period of 14 years from 19.04.2004 to 18.04.2018. Furthermore, this Court is of the considered view that the Appellant cannot claim any legal right that has accrued to and in his favour, especially by virtue of ingredients of G.O.Ms.No.92 Municipal Administration and Water Supply Department dated 03.07.2007. Viewed from any angle, the Writ Appeal preferred by the Appellant is devoid of merits.

22. In fine, the Writ Appeal is dismissed leaving the parties to bear their own costs. Before parting with the Appeal, this Court makes it quite clear that if the Appellant is desirous of taking part in the Public Auction to be held today, i.e., on

28.08.2018 nothing will preclude him to take part and offer his bid, which can be taken note of by the concerned Authority at the time of finalising / confirming bid. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Block Development Officer,
Needamangalam Panchayat Union,
Needamangalam Taluk,
Thiruvarur District
2. The Special Officer,
Edaimalaiyur Village Panchayat,
Needamangalam Taluk,
Thiruvarur District.

+ 1 cc to M/s. R. Sethu Pandian, Advocate SR.58707

W.A.No.1774 of 2018 and
CMP Nos.14223 and 14224 of 2018

RR(CO)
EU(24/09/2018)

सत्यमेव जयते
WEB COPY