

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	06/02/2018
Delivered on	09/02/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.2338 of 2018 &
W.M.P.Nos.2868 & 2869 of 2018

P.Senthil Kumar

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Municipal Administration and
Water Works Department,
Fort St.George, Chennai.
 - 2.The Commissioner,
Municipal Administration and
Water Works Department,
Ezhilagam, Chepauk, Chennai - 600 005.
 - 3.The Commissioner,
Mayiladuthurai Municipality,
Mayiladuthurai, Nagapattinam District.
- .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the tender cum public auction notice issued by the third respondent in Na.Ka.No.1924/2015/A1, dated 09.01.2018 published in Tamil Daily Dinathanthi dated 13.01.2018 to be held on 14.02.2018 or any other date and quash the same in as much as serial No.3 is concerned, consequently direct the third respondent to extend the lease for the public toilet in Serial No.3, in favour of the petitioner in terms of G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007.

For Petitioner : Mr.S.Prabhakaran, Senior Counsel
For Mr.D.Arun

For Respondents : Mr.V.Shanmuga Sundaram
Special Government Pleader for R-1 and R-2

Mr.P.Srinivas
Standing Counsel for R-3

O R D E R

This Writ Petition has been filed challenging the tender cum public auction notice issued by the third respondent dated 09.01.2018 and for a direction to the third respondent to extend the lease of public toilet in favour of the petitioner in terms of G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007.

2. The case of the petitioner is that he was a successful bidder for collection of fee for the usage of public toilet in Kamaraj Town Bus Stand in Mayiladuthurai Municipality and he is entitled for renewal of lease as per G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007. However, instead of renewing the lease, the third respondent issued the impugned notice to bring it for public auction.

3. Mr.S.Prabhakaran, learned Senior Counsel for the petitioner submitted that the petitioner became the successful bidder in the auction conducted on 23.03.2015 and the license was renewed for 2015-16 and 2016-17 and as per the G.O.Ms.No.92, the third respondent ought to have renewed the lease of the petitioner. The learned Senior Counsel in support of the contention has relied upon the orders passed by this Court in W.P.No.7416 of 2013 and W.A.No.686 of 2015. It is also contended that the Commissioner, Municipal Administration on 30.11.2016 issued direction to the Commissioner of Municipalities to renew the lease based on G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007.

4. Per contra, Mr.P.Srinivas, learned Standing Counsel for the third respondent submitted that G.O.Ms.No.92 would not apply to the case on hand. G.O.Ms.No.181, Municipal Administration and Water Supply Department, dated 19.09.2008 deals with renewal of license of collection of fee for usage of pay and use toilet and as per the G.O., the licensee is entitled for renewal of license only for a total period of two years. The petitioner availed the benefits under the G.O. and this Writ Petition has been filed on misconception and prayed for dismissal of the Writ Petition.

5. In W.P.No.7416 of 2013, the learned Single Judge disposed of the Writ Petition with a direction to the respondent-Town Panchayat to indicate the proposed lease rent, if the petitioner is willing to accept the same, the respondent-Town Panchayat shall consider the same and grant lease to him and if he is not willing, it is open to the respondent-Town Panchayat to issue fresh tender cum public auction notification. The said order of the learned Single Judge was confirmed by the

Division Bench of this Court in W.A.No.686 of 2015.

6. In the instant case, admittedly, the petitioner is a licensee for collecting fee for the usage of public toilet. G.O.Ms.No.92, dated 03.07.2007 deals with renewal of lease of shops and other properties of the Municipalities. G.O.Ms.No.181, dated 19.09.2008 covers the license relating to the bus stand, sandi, cycle stand, public toilets, paid toilets and etc. Hence, in my considered opinion G.O.Ms.No.92, dated 03.07.2007 has no applicable to the case of the petitioner. It is not in dispute that the license of the petitioner was renewed for a period of two years as per G.O.Ms.No.181. Therefore, the petitioner is not entitled for further renewal.

7. The issue involved in this case is no longer res intera. This court in the judgments referred infra 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.

8. The Division Bench of this court in A.Sathar Vs. The District Collector, Coimbatore and Another (AIR 1998 MAD 217), (A.R.Lakshmanan, J & P.Thangavel, J), 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."

9. In the case of O.A. Nowshad Farooq vs. The Commissioner, Tirunelveli Municipal Corporation, Tirunelveli and another (W.P (MD) No. 3535 of 2009, dated 30.04.2009), reported in Indiankannon.org/doc/1721899/ K.K. Sasidharan, J 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.

10. 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 [D. Murugesan, J and M. Duraisamy, J] 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."

11. 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 (Justice S.Manikumar and Justice G.Chockalingam) 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.

12. Following the decision reported in 2014(5) MLJ 129 in the case of P.Muthusamy vs. State of Tamil Nadu, V.Ramasubramanian, J 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.

13. In (2016)3 MLJ 698 in the case of P.P.M.S.C.L.W.Assn. vs. Commissioner, Satish K.Agnihotri J and M.Venugopal, J, 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."

14. In the light of the above decisions, with great respect I am not able to follow the orders relied on by the petitioner. The petitioner cannot seek extension of lease by relying upon

either G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 or G.O.Ms.No.181, Municipal Administration and Water Supply Department, dated 19.09.2008, which in my view, would be against the interest of the local body.

15. In such view of the matter, the Writ petition fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Municipal Administration and
Water Works Department,
Fort St.George, Chennai.
- 2.The Commissioner,
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- 3.The Commissioner,
Mayiladuthurai Municipality,
Mayiladuthurai, Nagapattinam District.

+1cc to Government Pleader SR.No.11012

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PVS (CO)
GN(27/02/2018)