

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18..09..2018
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.15634 of 2018
and
W.M.P.Nos.18567 & 18568 of 2018

K.Muniappan

... Petitioner

-Versus-

1. Corporation of Salem,
Rep. by its Commissioner,
O/o The Corporation of Salem,
Fort, Salem.

2. The Assistant Commissioner,
Corporation of Salem,
Suramangalam Ward Office,
Salem.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the Auction cum Tender Notice in K1/6097 dated 15.06.2018 issued by the 2nd respondent in the name of the 1st respondent in the name of the 1st respondent and to quash the same in respect of 'Pay and Use' Toilets in Salem New Bus Stand, situate at Achuvan Tank (Eri) New Bus Stand and nearby Cycle-Stand and consequently direct the respondents to extend the petitioner's lease for the year 2008-19 after revising the lease amount and adjustment of compensation equal to the loss of Rs.40,51,892/- by properly considering his representation dated 23.05.2018 and 30.05.2018 within a reasonable time to be fixed by this court.

For Petitioner : Mr.R.Neelakandan
For Respondents : Mrs.K.Bhuvaneswari,
Standing Counsel for
R1 and R2

ORDER

This writ petition has been filed challenging the Auction cum Tender Notice floated by the respondent corporation for granting license for collection of charges for using Pay and

Use Toilets in Salem New Bus Stand.

2. According to the petitioner, earlier he had participated in the public tender cum auction, which was conducted in the year 2016 by the respondent corporation [in short, "the corporation"] for granting license for collection of charges for using "pay and Use' Toilets in Salem New Bus Stand. Since he became the successful bidder, auction was confirmed in his favour and he was granted licence for the year 2016-2017. Accordingly, he had deposited the entire license fee for the year 2016-17 besides security deposit and 1% amount on the entire license amount. For next year, i.e., 2016-17, the corporation required the petitioner to give a consent for extension of the license on payment of 5% of enhanced license amount in addition to the first year's license amount. The corporation also informed the petitioner that the license for a further one year i.e., 2018-19 would be extended on further payment of 5% of enhanced license amount in addition to the second year's license fee. The petitioner has submitted his consent and therefore, license was extended from 01.04.2017 to 31.03.2018. For the year 2018-19, without extending the license period, the 2nd respondent sent a notice dated 29.01.2018 requiring the petitioner to pay additional 5% amount along with the previous year's license amount. But, in the mean time, due to road extension work which was being carried out then, one of the toilets allotted to the petitioner has been demolished and he could not collect charges from the users. That apart, in view of renovation and extension work carried out in the new bus stand, users from the public commuters had drastically come down which also caused revenue loss to the petitioner. Further, according to the petitioner, another toilet situated nearby cycle stand got damaged and therefore, it had also become unusable and therefore, he could not collect charges from that toilet also. Hence, he made a representation to the respondents expressing his difficulties and praying to compensate the loss. The respondents did not consider his request for compensation. The respondents sent a final notice dated 31.03.2018 demanding outstanding license amount for which, he had issued a reply notice dated 18.04.2018.

3. While so, the respondent issued fresh public auction cum tender notice dated 07.05.2018. Challenging the same, the petitioner has filed W.P.No.12567 of 2018 and while disposing of the writ petition, by order dated 17.05.2018, this court directed the respondents, instead of proceeding with the auction, to consolidate the amount payable by the petitioner for the years 2016-17, 2017-18 and also 2018-19 and make a demand for payment. The petitioner was also permitted to give his representation in writing together with statement of accounts. In the said order, the respondents were directed to give an opportunity of hearing to the petitioner and thereafter take

appropriate decision. Now, the grievance of the petitioner is that pursuant to the order of this court, he had appeared before the 2nd respondent pursuant to the order of this court and submitted a detailed representation explaining every details as to how he sustained loss in the tender but, the respondents, without adhering to the letter and spirit of the order of this court, has once again issued fresh auction notice on 15.06.2018. It is this notice which is now under challenge in this writ petition.

4. The 1st respondent filed a detailed counter affidavit contending that as per the original auction conducted for granting licence for the year 2016-17, weekly payment was fixed as Rs.1,85,000/- and the licence was subsequently extended for the year 2017-18 with an enhanced rate of 5% over and above the original licence amount. But, the petitioner had committed default in payment of license amount. Hence, a notice has been sent to him requiring to pay the dues so as to avoid cancellation of license. Despite such notice, the petitioner did not pay any amount towards arrears and the amount due was Rs.16,01,375/- . Since the petitioner had failed to pay the amount due under the license , the license granted to him was cancelled on 06.05.2018. Thereafter, fresh auction notice was issued by the corporation. Subsequently, as per the directions given by this court, the respondents had a negotiation with the petitioner, but, the petitioner did not bother to clear off the dues. Hence, fresh auction was conducted on 27.06.2018 and latest bid was quoted for Rs.25,00,000/- which was more than the previous years. Since, the petitioner did not pay the arrears as directed by this court, he cannot maintain the present writ petition.

5. I have considered the rival submissions carefully.

6. The grievance of the petitioner is that the respondents did not adhere to the letter and spirit of the order of this court dated 17.05.2018 made in W.P.No.12567 of 2018 and without conducting any enquiry and without giving an opportunity of personal hearing to the petitioner to put forth his difficulties in clearing of the arrears, once again issued the public auction notice. The relevant portion of the order passed by this court earlier in the writ petition filed by the petitioner reads as follows:-

"2. Even in the notice, for the auction, it had been stated that it would be conducted on 22.05.2018 or any other date to which it is postponed. Since the petitioner is working for the respondent in his capacity as a successful bidder and according to the respondent, the petitioner is due and payable sums of money and since there is dispute with respect to the

amount which the petitioner has to pay, instead of proceeding with auction, the respondent may give a final notice to the petitioner, consolidating the amount receivable from petitioner and payable by him for the years 2016-2017, 2017-2018 and also in the year 2018-2019. The respondents may consolidate the amount and issue notice and seek for payment from the petitioner. For this purpose, the petitioner is also permitted to give his representation in writing and give his statement of accounts. Thereafter, the respondent has to give a personal opportunity to the petitioner to decide the issue and thereafter take a decision to let out the work on auction or any other decision which respondents decide from re-tendering the entire work. The learned counsel appearing for respondent also states that the respondent should have the liberty to cancel the license granted to the petitioner. That is a prerogative which vests with the respondent. Before such action is taken, it is made clear that the petitioner is to be afforded full opportunity of being heard."

7. It has been submitted by the respondents that pursuant to the directions of this court, a notice was given to the petitioner consolidating the amount payable by him and the amount payable towards arrears of rent was Rs.16,01,375/- besides income tax of Rs.1,01,014/-. Despite the demand, the petitioner did not pay even a single pie towards arrears of license fees and other charges and the petitioner had flouted the directions of this court. Therefore, the respondents had no other option except to go for a fresh auction.

8. A copy of the order dated 15.06.2018 passed by the 2nd respondent has been produced before this court for perusal and from a perusal of the same, it could be seen that sufficient opportunity of personal hearing was afforded to the petitioner and the order has been passed by the respondent 2nd respondent after having conducted due enquiry. Despite the same, the petitioner did not bother to clear off the dues. In such circumstances, the respondents had thought it fit to go for fresh public auction and had accordingly issued a public auction notice. The respondent who had admittedly committed default in payment of license amount cannot have any grievance in the same. That apart, it is now submitted that in the fresh auction, the latest bid was for Rs.25,00,000/- which is higher than the amount offered to the petitioner for extension of the license. Considering the above facts and circumstances, this court does not find any merit in the writ petition and the writ petition deserves only to be dismissed.

9. In the result, the writ petition is dismissed. No costs.
Consequently, connected WMPs are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kmk

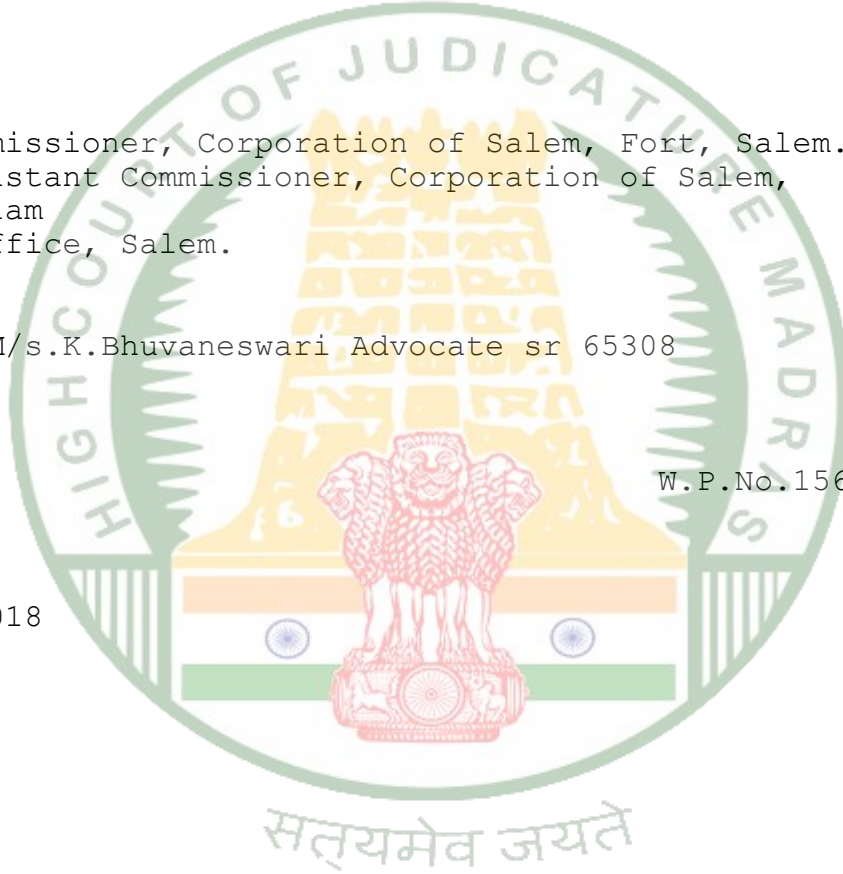
To

- 1.The Commissioner, Corporation of Salem, Fort, Salem.
- 2.The Assistant Commissioner, Corporation of Salem,
Suramangalam
Ward Office, Salem.

+1 cc to M/s.K.Bhuvaneswari Advocate sr 65308

W.P.No.15634 of 2018

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