

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.Nos.2745 & 2747 of 2018
and
CMP No.22612 of 2018 in WA No.2745 of 2018

V.N.Kavitha

... Appellant in both Appeals

Vs.

The Commissioner,
Chengalpattu Municipality,
Kancheepuram District.

... Respondent in both Appeals

Writ Appeals filed under Clause 15 of the Letters Patent against the Common Order dated 11.8.2018 made in W.P.Nos.2550 & 20057 of 2018. Petitions presented of the court to issue a Writ of certiorarified mandamus calling for the records relating to (I) tender notification made in Na.Ka. No.084/2018/A1 dated 11.01.2018 with respect to item No.2 for grant of licence to collect fee in daily market and quash the same and direct the respondent to extend licence for the period of full three years from the date of handing over the possession of the shops with respect to collecting fee in the daily market.

(2) the respondents proceedings made in Na.Ka.No.2610/2016/A1 dated 11.7.2018 and quash the same and direct the respondent grant another two years period of licence/ lease to collect the fee in the daily market from July 2018 to 2020.

For Appellant : Mr.M.Muthappan
in both Appeals

For Respondent : Mr.P.Srinivas
in both Appeals Standing Counsel

C O M M O N J U D G E M E N T

(Order of the Court was delivered by SUBRAMONIUM PRASAD, J)

Challenging the dismissal of WP Nos.2550 & 20057 of 2018 by a common order dated 11.08.2018, passed by a learned Single Judge, instant writ appeals have been filed.

2. W.P.No.2550 of 2018, has been filed for a writ of certiorarified mandamus, calling for the records relating to respondent's tender notification made in Na.Ka.No.084/2018/A1 dated 11.01.2018, with respect to Item No.2 for grant of licence to collect fee in daily market and to quash the same and to direct the respondent to extend licence for the period of full three years from the date of handing over the possession of the shops with respect to collection fee in the daily market.

3. W.P.No.20057 of 2018, has been filed for a writ of certiorarified mandamus, calling for the records relating to the respondent's proceedings made in Na.Ka.No.2610/2016/A1 dated 11.7.2018 and to quash the same and to direct the respondent to grant another two years period of licence / lease to collect the fee in the daily market from July 2018 to 2020.

4. The facts in brief of the writ petitioner are as under:

(i) The petitioner was granted a licence by the respondent Municipality for a period of three years from 2015-16 to 2017-18, for collection of fee from 31 shops with shutters and 108 open shops without shutters, in the municipality Vegetable Market, situated at Bazaar Street / Mettu Street in Chengalpattu and also for collection of fee from 7 open shops, situated at the entrance of the market at Gandhi Salai. The petitioner was the highest bidder for Rs.20,03,501/-.

(ii) The petitioner filed a suit in O.S.No.319 of 2015 before the learned District Munsif, Chengalpattu, for a decree of mandatory injunction, directing the respondent Municipality to identify the shops in the market and place him in control of all the shops, to enable him to collect the daily rent from the vegetable vendors. The injunction was initially granted in his favour, but it was vacated, subsequently.

(iii) Challenging the vacation, the petitioner filed an appeal before the Additional Sub Judge, Chengalpattu in CMA No.4 of 2016, which was allowed and the Municipality was directed to handover possession of the shops. The order was not complied with, resulting in filing of a Contempt Petition. Pending Contempt Petition, the Municipality issued a notice to all the shop owners to pay the daily rent to the petitioner, which was challenged by the occupants in W.P.Nos.9551 to 9550 of 2017, etc. batch of writ petitions and an order of status quo was passed by this Court on 18.04.2017. Ultimately, all the shops

were handed over to the petitioner.

(iv) The Commissioner came out with a tender notification on 11.01.2018, for reacution of the same shops. This tender notification dated 11.01.2018, issued in Na.Ka.No.084/2018/A1 dated 11.01.2018, is the subject matter of challenge in W.P.No.2550 of 2018. Further, vide another proceedings in Na.Ka.No.2610/2016/A1 dated 11.7.2018, respondent Municipality has demanded for payment of arrears of licence/lease fee, which is the subject matter of challenge in W.P.No.20057 of 2018. The learned Single Judge by impugned common judgment dated 11.08.2018, has dismissed both the writ petitions.

Heard the learned counsel for both parties and perused the record.

5. It is an admitted fact that after the expiry of the first year of lease period as per the tender conditions, the petitioner has to renew his licence by paying 5% increased licence fee over and above the first year licence fee and likewise, for the third year also the petitioner has to pay the licence fee at the increased rate over and above the second year licence fee. But, as stated by the learned Single Judge, the petitioner has not done the same. In fact, he did not even apply for the renewal of the licence.

6. Petitioner cannot escape from his liability under the contract. If he has any grievance, regarding the payment of the licence fee, he can only file a suit for damages against the respondent. His liability under the contract cannot be struck down by invoking the writ jurisdiction of the High Court. After having failed to perform his obligation, the petitioner also cannot challenge the proceedings of the respondent Municipality in calling for fresh tenders.

7. Mr.P.Srinivas, learned standing counsel for the respondent Municipality, informs that fresh tender has been floated and the successful bidder has been granted the licence to collect the rent. Submission is placed on record.

8. In view of the above said facts, the instant writ appeals are dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

ars

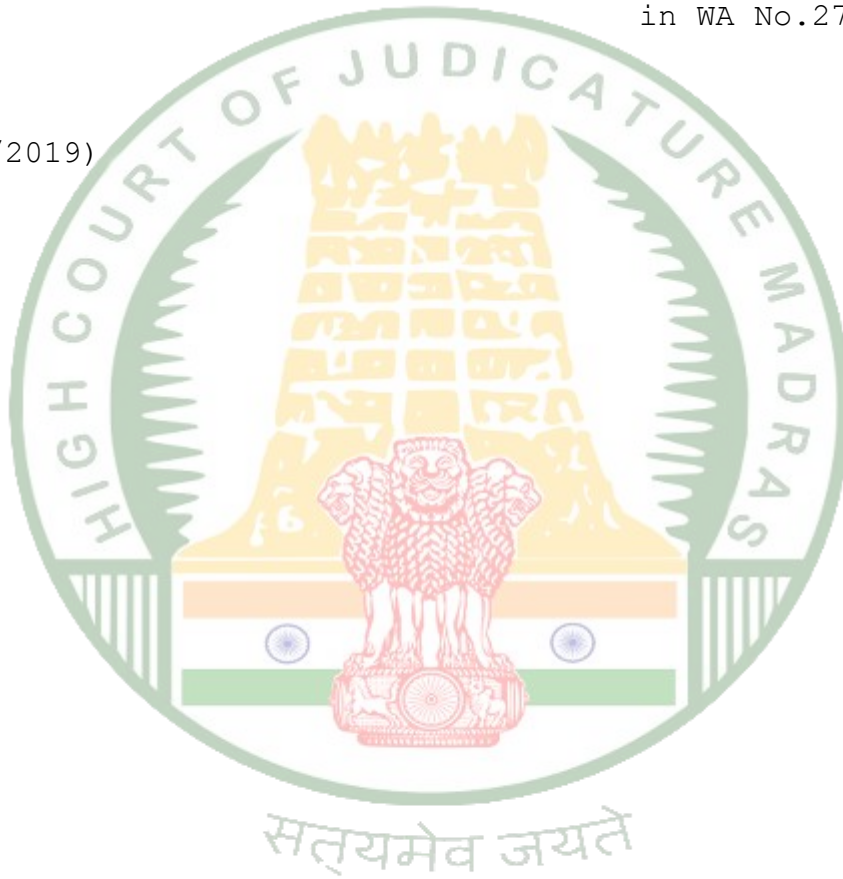
To
The Commissioner,
Chengalpattu Municipality,
Kancheepuram District.

+2ccs to Mr.M.Muthappan, Advocate SR.No.87555,87556

+1cc to Mr.P.Srinivas, Advocate SR.No.87982

W.A.Nos.2745 & 2747 of 2018
and CMP No.22612 of 2018
in WA No.2745 of 2018

NM(CO)
GMY(01/02/2019)



WEB COPY