



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) Nos.404 to 408 of 2018

and

C.M.P. (MD) Nos.2462 to 2471 of 2018

1.S.Jeyamalar

2.Licensee,

Alangar Bakery,

Shop No.3, Kamaraj Bus Stand,

Colachel, Colachel Municipality,

Kanyakumari District. ...Appellant in W.A.(MD)No.404 of 2018

1.K.Noor Mohammed

2.Licensee,

Mobile Shop,

Shop No.4, Kamaraj Bus Stand,

Colachel, Colachel Municipality,

Kanyakumari District. ...Appellant in W.A.(MD)No.405 of 2018

1.A.Mohammed Suhaibu

2.Licensee,

Old Shop No.9, New Shop No.35,

Kamaraj Bus Stand,

Colachel, Colachel Municipality,

Kanyakumari District. ...Appellant in W.A.(MD)No.406 of 2018

1.V.Mydheen Khan

2.Licensee,

Bakery, Shop No.2, Kamaraj Bus Stand,

Colachel, Colachel Municipality,

Kanyakumari District. ...Appellant in W.A.(MD)No.407 of 2018

1.V.Mydeen Khan

2.Licensee,

Medical Shop,

Shop No.1, Kamaraj Bus Stand,

Colachel, Colachel Municipality,

Kanyakumari District. ...Appellant in W.A.(MD)No.408 of 2018

Vs.

<https://hcservices.ecourts.gov.in/hcservices/>

The Commissioner,

Colachel Municipality,

Colachel, Kanyakumari District.

...Respondent in all appeals



COMMON PRAYER: Writ Appeals are filed under Clause 15 of the Letters Patent against the common order, in W.P.(MD).No.2369 to 2375 of 2018, respectively dated 16.02.2018 on the file of this Court.

Prayer in WP(MD) . 2369/ 2018 :

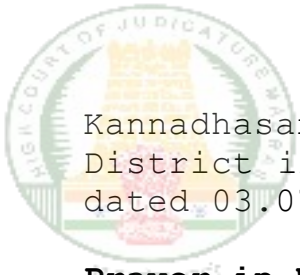
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorarified Mandamus calling for the records of the impugned auction/tender notice issued by the Respondent herein in Na.Ka.No.2035/2015/A1 dated Nil published in Dinamalar Daily Nagercoil Education on 20.01.2018 and Subsequent amended tender notification Na.Ka.No.2035/2015/A1 dated Nil published in Dinamalar Daily Nagercoil edition on 25.01.2018 and quash both the notification as illegal as far as Shop No.3 in Kamaraj Bus Stand, Colachel, Colechel Municipality, Kanyakumari District and further direct the Respondent herein to extend the lease/license of the Petitioner in respect of Shop No.3 in Kamaraj Bus Stand, Colachel, Colachel Municipality, Kanyakumari District in accordance with G.O.Ms.No.92, Municipal Administration dated 03.07.2007 with a time stipulated by this court.

Prayer in WP(MD) . 2370/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorarified Mandamus calling for the records of the impugned auction/tender notice issued by the Respondent herein in Na.Ka.No.2035/2015/A1 dated Nil published in Dinamalar Daily Nagercoil Edition on 20.01.2018 and Subsequent amended tender notification Na.Ka.No.2035/2015/A1 dated Nil published in Dinamalar Daily Nagercoil edition on 25.01.2018 and quash both the notification as illegal as far as Shop No.4 in Kamaraj Bus Stand, Colachel, Colechel Municipality, Kanyakumari District and further direct the Respondent herein to extend the lease/license of the Petitioner in respect of Shop No.4 in Kamaraj Bus Stand, Colachel, Colachel Municipality, Kanyakumari District in accordance with G.O.Ms.No.92, Municipal Administration dated 03.07.2007 with a time stipulated by this court.

Prayer in WP(MD) . 2371/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records of the impugned auction / tender notice issued by the Respondent herein in Na.Ka.No.2035/2015/A1 dated Nil published in Dinamalar Daily Nagercoil Edition on 20.01.2018 and subsequent amended tender notification in Na.Ka.No.2035/2015/A1 dt.Nil published inn Dinamalar Daily Nagercoil edition on 25.01.2018 and quash the both the notification as illegal as far as Shop No.8 in Kamaraj Bus Stand, Colachel, Colachel Municipality, Kanyakumari District and further direct the Respondent herein to extend the lease/license of the Petitioner in respect of Shop No.8 in Kaviyarasu



Kannadhasan Complex, Colachel, Colachel Municipality, Kanyakumari District in accordance with G.O.Ms.No.92, Municipal Administration dated 03.07.2007 with a time stipulated by this court.

Prayer in WP(MD) . 2372/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorarified Mandamus calling for the records of the impugned auction/tender notice issued by the Respondent herein in Na.Ka.No.2035/2015/A1 dated Nil published in Dinamalar Daily Nagercoil Education on 20.01.2018 and Subsequent amended tender notification Na.Ka.No.2035/2015/A1 dated Nil published in Dinamalar Daily Nagercoil edition on 25.01.2018 and quash both the notification as illegal as far as Shop No.3 in Kamaraj Bus Stand, Colachel, Colechel Municipality, Kanyakumari District and further direct the Respondent herein to extend the lease/license of tlhe Petitioner in respect of Shop No.9 in Kaviyarasu Kannadhasan Complex, Colachel, Colachel Municipality, Kanyakumari District in accordance with G.O.Ms.No.92, Municipal Administration dated 03.07.2007 with a time stipulated by this court.

Prayer in WP(MD) . 2373/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records of the impugned auction/tender notice issued by the Respondent herein in Na.Ka.No.2035/2015/A1 dated Nil published in Dinamalar Daily Nagercoil edition on 20/01/2018 and Subsequent amended tender notification in Na.Ka.No.2035/2015/A1 dated Nil published in Dinamalar Daily Nagercoil edition on 25/01/2018 and quash both the notification as illegal as far as Old shop No.9, New Shop.No.35 in Kamaraj Bus Stand, Colachel, Colachel, Kanyakumari District and further direct the Respondent herein to extend the lease/license of the Petitioner in respect of Shop No.9, New Shop No.35 in Kamaraj Bus Stand, Colachel, Colachel Municipality, Kanyakumari District in accordance with G.O.Ms.No.92, Municipal Administration dated 03.07.2007 with a time stipulated by this court.

Prayer in WP(MD) . 2374/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorarified Mandamus calling for the records of the impugned auction/tender notice issued by the Respondent herein in Na.Ka.No.2035/2015/A1 dated Nil published in Dinamalar Daily Nagercoil Edition on 20.01.2018 and Subsequent amended tender notification Na.Ka.No.2035/2015/A1 dated Nil published in Dinamalar Daily Nagercoil edition on 25.01.2018 and quash both the notification as illegal as far as Shop No.2 in Kamaraj Bus Stand, Colachel, Colachel Municipality, Kanyakumari District and further direct the Respondent herein to extend the lease/license of the



Petitioner in respect of Shop No.2 in Kamaraj Bus Stand, Colachel, Colachel Municipality, Kanyakumari District in accordance with G.O.Ms.No.92, Municipal Administration dated 03.07.2007 with a time stipulated by this Court.

Prayer in WP(MD). 2375/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records of the impugned auction / tender notice issued by the Respondent herein in Na.Ka.No.2035/2015/A1 dated Nil published in Dinamalar Daily Nagercoil Edition on 20.01.2018 and subsequent amended tender notification in Na.Ka.No.2035/2015/A1 dt.Nil published inn Dinamalar Daily Nagercoil edition on 25.01.2018 and quash the both the notification as illegal as far as Shop No.1 in Kamaraj Bus Stand, Colachel, Colachel Municipality, Kanyakumari District and further direct the Respondent herein to extend the lease/license of the Petitioner in respect of Shop No.1 in Kamaraj Bus Stand, Colachel, Colachel Municipality, Kanyakumari District in accordance with G.O.Ms.No.92, Municipal Administration dated 03.07.2007 with a time stipulated by this Court.

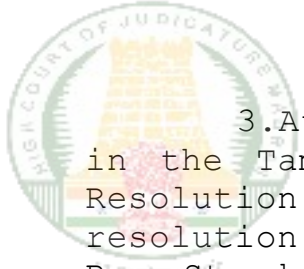
For Appellants	: Mr.V.Meenakshisundaram for Mr.R.Murugan
For Respondent	: Mr.Aaathimoolapandian (in all appeals)

COMMON JUDGMENT

[Common Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.V.Meenakshisundaram, learned counsel, appearing for the appellants and Mr.Aathimoolapandian, learned counsel, appearing for the respondent.

2.These Appeals are directed against the common order passed in W.P.(MD).Nos.2369 to 2375 of 2018. The appellants filed those writ petitions challenging the auction notification issued by the respondent Municipality directing the shops, owned by the Municipality, for public auction. The writ petitioners contended that in terms of G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, they are entitled to continue for further period of nine years with the enhanced the lease rent of 15% and the Municipal Commissioner had issued a notice dated 13.05.2017 calling upon the appellants to pay the enhanced rent. They have also accepted for the same and also signed in an agreement and also sent it to the Municipality for their



3. At that juncture, an auction notification was published in the Tamil Daily newspaper on 20.01.2018 towards the Revenue Resolution No.1772 dated 27.12.2017. However, in the said resolution three items were mentioned and with regard to Kamaraj Bus Stand shops, only five shops were mentioned and the shops occupied by the appellants were not included in the said tender notification. Subsequently, by another notification published in the Tamil Daily newspaper dated 25.01.2018, all the 38 shops in the Kamaraj Bus Stand were brought for public auction.

4. The learned counsel for the appellants strenuously contended that the Executive Officer cannot play dual role, that he cannot act as Municipal Council and at the same time the Commissioner of the Municipality and this would amount to judging his own cause. However, it is stated that the resolution, which has been referred to in the tender notification dated 20.01.2018, has not been produced. In the tender notification dated 25.01.2018, there is no separate resolution. Further, it is submitted that the appellants have agreed to pay the amount and also to execute an agreement and submitted the same for signature of Municipality. At that stage, the question of issuing tender notification does not arise.

5. Substantial part of the submission made by the appellant was considered by us in W.A.(MD) Nos.1498 to 1507 of 2017 dated 08.03.2018. At this juncture it would be useful to refer to the operative portion of the said decision.

"20. The sheet anchor of the arguments of the learned counsel for the first respondent/writ petitioner in all the writ appeals is based on the decision taken by the second respondent, dated 28.03.2017. It is seen that the decision is taken not only in respect of the appellant municipality but also in several other municipalities which come under the jurisdiction of the second respondent.

21. It is no doubt true that in the annexure to the said proceedings dated 28.03.2017, list of shops which are under the control of the respective municipality are mentioned with the shop numbers, name of the lessee/licensee, date of expiry of lease, date of proposed renewal, existing monthly rent, area of the shops, market valuation by the Public Works Department and the proposed enhanced rent and the percentage of increase.

22. Relying upon the proceedings of the second respondent, the learned counsel for the writ petitioners submitted that the appellant cannot refuse to renew the lease. The correctness of the above said submission has to be decided based on the anvil of the law laid down by this Court on the subject issue.



23. In **P. Muthusamy** case (supra) some what an identical argument was placed by the lessee by referring to G.O.Ms.No.92 and stating that the rent should be refixed in terms of the said Government order. Rejecting the contention of the lessee, the Division Bench pointed out that what has been granted to the petitioner therein is only a licence to run the shop and merely because the word 'lease' is mentioned, a licence cannot ipso facto, be converted into a lease. Further, it was observed that the object of letting out the shops owned by the municipality is to collect more revenue, so as to implement the welfare measures.

24. In **C. Vinoba and others Vs. the Commissioner, Palladam Municipality**, the Court rejected the prayer for renewing the licence in favour of the existing licensee who placed reliance on G.O.Ms.No.92.

25. In **Punjai Puliyampatti Municipality Shopping Complex Lessee Welfare Association**, before the Writ Court, the challenge was to an auction notification and for a direction to follow G.O.Ms.92. The Court, after taking into consideration the law laid down in several decisions including the decision of the Hon'ble Supreme Court in **Ram and Shyam Vs. State of Haryana, (1989) in 3 SCC 267** held that disposal of public property partakes the character of a trust in that in its disposal, there should be nothing hanky panky and it must be done at the best price, so that larger revenue coming into the coffers of the State Administration would serve public purpose. The decision in the case of **Punjai Puliyampatti** (supra) was confirmed by the Division Bench of this Court in the judgment reported in **(2016) 3 MLJ 698**.

26. Thus, if the submissions of the first respondent/writ petitioner in all the writ appeals, are to be tested by the law laid down by this Court, the only conclusion that can be arrived is to reject the prayer sought for in the writ petitions. As regards the proceedings of the second respondent with regard to the fixation of enhanced lease amount for all the municipal shops within his jurisdiction the same cannot curtail the power of the appellant municipality, more particularly, when they have taken a decision to demolish the existing shops as they are in dilapidated condition and to construct new shops. The appellant municipality submitted that already tenders have been called for and the highest bidder has also been awarded a work order but at that juncture, the first respondents filed the writ petitions and the matter has now been dragged on.



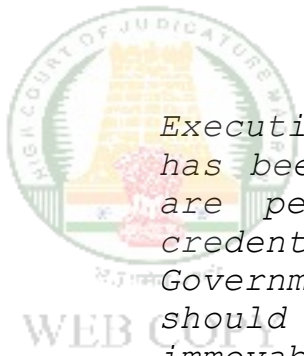
27. The learned Senior Counsel appearing for the first respondent/writ petitioner, placed reliance on the decision in **Shanmugam Chettiar Vs. Joint Commissioner-cum-Executive Officer** reported in **(2015) 5 MLJ 306** and submitted that in the said case, the relief sought by the petitioner therein was granted to the lessee.

28. In our considered view, the facts in *Shanmugam Chettiar* (supra) was entirely different, wherein the temple took a stand that the lessees, were not in occupation of the premises and the Court found that the lease period was not even fixed and it was stated that it shall commence from the date of the approval by the competent authority and the date of commencement of the lease was left to uncertainty and held that it would amount to putting the cart before horse. Therefore, the said decision is distinguishable on facts.

29. Reliance was placed on a decision of this Court in **K. Saravanan Vs. Commissioner, HR & CE, Department** reported in **(2017) 4 MLJ 79**. The said decision will not render any support to the case of the first respondent/writ petitioner in all the writ appeals, as the facts are entirely different and the dispute was with regard to the measurement of the shop and the rent payable.

30. The elected local bodies were superseded and Special Officers have been appointed under the Tamil Nadu Municipal Laws (Amendment) Act, 3 of 2017. The Government appointed Special Officers to exercise the powers and discharge the functions of the village panchayats, panchayat union councils or district panchayats, as the case may be, until the day on which the first meetings of the village panchayats, panchayat union councils or the district panchayats, as the case may be, are held after ordinary elections to said panchayats after the date of commencement of the Tamil Nadu Panchayats (Amendment) Act, 2017. Thus, in view of the said amendment, the Executive Officer or the Special Officer and the concerned local body would be entitled to exercise all powers and discharge all functions as could be done by the concerned local body. Therefore, merely because the Commissioner of the Municipality and the Executive Officer of the municipality are one and the same person can hardly have any impact. As the Executive Officer, the appellant has a duty to protect the interest of the Municipality.

31. The learned Senior Counsel took serious exception to the manner in which, the resolution was passed by the



Executive Officer, more particularly, with regard to what has been stated in the resolution and submitted that they are personal opinion of the Executive Officer and no credential should be given to the personal opinion of a Government Servant and that is why the Executive Officer should not be allowed to deal with the rights over the immovable properties of the municipality. We are unable to concede to the said submission as the Executive Officer is entitled to discharge all the functions exercisable by a validly elected municipal council. The Government while bringing out the relevant amendment has not placed any fetters on the exercise of powers of the Executive Officers. In any event, we find that the power exercised by the Executive Officer has resulted in earning of substantial revenue for the appellant municipality. In fact, this was noted by this Court in W.P.(MD)No.474 of 2018 in respect of shop No.2, Saraloor, Buffalow market, Nagercoil, where the writ petitioner therein offered Rs.1,600/- but as per the re-notification by the second respondent, the auction of shops fetched a monthly licence fee of Rs.17,500/-. The learned counsel for the appellant municipality submitted that such of those licensees, who had offered substantial amount in the tender, all licensees had paid the entire amount apart from the payment of advance of one year lease amount.

32.Thus, for the above reasons, we hold that the action initiated by the appellant municipality taking a decision not to bring the shops for tender/auction and to demolish the dilapidated shops and to construct new shops cannot be faulted nor interfered.

33.We further hold that merely because the second respondent has passed the proceedings on 28.03.2017 purportedly revising the lease rent, such order cannot be an estoppel for the appellant municipality to take appropriate decision, considering the best interest of the municipality. In the instant case, the municipality decided to demolish the shops and to construct new shops to augment revenue and no mala fides have been established by the writ petitioners against such action. The notice which was widely published in the newspaper clearly indicated that the shops occupied by the first respondent/writ petitioners are to be demolished. Thus, the order passed in the writ petitions requires to be interfered.

34.In the result, the writ appeals are allowed and the orders passed in the writ petitions are set aside. <https://hcservices.com.sg/in-bus-services/>, the writ petitions are dismissed with a direction to the first respondent/writ petitioner in all the writ appeals to vacate and hand over the possession of



the shops in question within a period of 10 days from the date of receipt of a copy of this judgment, failing which the appellant is entitled to evict them. No costs."

6. By reading of the above said judgment and the facts of the case, the only conclusion that can be arrived at is to dismiss the Writ Appeal.

7. However, the learned counsel for the appellant urged that in the instant case, there is no resolution passed by the Municipal Corporation including the shops occupied by the appellants put for public auction. This was noted by the learned Single Judge in paragraph No.21 of the impugned order and the same was considered and the notification published in Tamil daily newspaper dated 25.01.2018 was held to be an addendum or corrigendum to the first respondent's notification dated 25.01.2018.

8. Above all, the appellants has no vested right to continue in the shops owned by the Municipality. What is required is that the interest of the Municipality has to be protected, in which the revenue earned by the municipality is of paramount important. The appellants have enjoyed the benefit of licence from the respondent Municipality for sufficient number of years and are paying very meager rent.

9. The learned counsel for the respondent Municipality pointed out that though there were the seven writ petitioners, only five of them have preferred these Appeals and other two had participated in the auction and have taken up the shops on lease. For the above reasons there was no error in the impugned order. the learned counsel for the respondent further submitted that the enhanced licence fees as proposed by the respondent initially was remitted by the appellants.

10. In view of the above, the respondent is directed to verify the said fact and if any payment or deposit has been made as said by the appellants, the same shall be refunded. In the result, these Writ Appeals are dismissed. No costs. Consequently, C.M.P. (MD) No.2462 to 2471 of 2018 are closed.

Sd/-
Assistant Registrar (AS)

/TRUE COPY/

Sub Assistant Registrar



To

The Commissioner,
Colachel Municipality,
Colachel, Kanayakumari District.

+1.CC to Mr.R.Murugan Advocate SR.No.56087

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MV:SV-MMS:SAR4:23/05/2018/10P/3C

ORDER MADE IN
W.A. (MD) Nos.404 to 408 of 2018

19.03.2018