



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 06.02.2018
PRONOUNCED ON : 16.02.2018
CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

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Writ Petition (MD) Nos.2369 to 2375 of 2018
and
W.M.P (MD) Nos.2571 to 2591 of 2018

1. S.JEYAMALAR ... Petitioner in WP(MD)No. 2369/ 2018
2. K.NOOR MOHAMMED ... Petitioner in WP(MD)No. 2370/ 2018
3. M.PEER MOHAMMED ... Petitioner in WP(MD)No. 2371/ 2018
4. P.NINAMOHAMED ... Petitioner in WP(MD)No. 2372/ 2018
5. A.MOHAMMED SUHAIBU ... Petitioner in WP(MD)No. 2373/ 2018
6. V.MYDHEEN KHAN ... Petitioner in WP(MD)No. 2374/ 2018
7. V.MYDHEEN KHAN ... Petitioner in WP(MD)No. 2375/ 2018

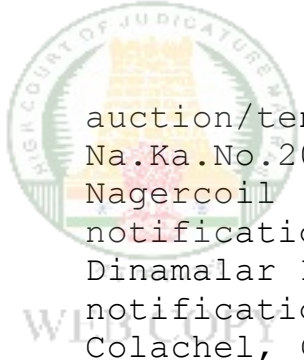
-Vs-

THE COMMISSIONER,
COLACHEL MUNICIPALITY,
COLACHEL, KANYAKUMARI DISTRICT.

... Respondent in WP(MD)Nos. 2369 to 2375/ 2018

Writ Petition No.2369 of 2018 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.

<https://hcservices.ecourt.gov.in/services> Writ Petition No.2370/2018 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



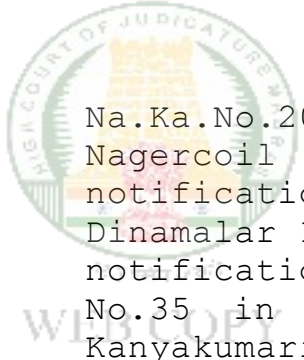
Writ Petition No.2371/2018 is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorarified Mandamus calling for the records of the impugned auction/tender notice issued by the Respondent herein in Na.Ka.No.2035/2015/A1 dated Nil published in Dinamalar Daily 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.

Writ Petition No.2371/2018 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.8, in Kaviyarasu Kannadhasan Complex, Colachel, Colechel 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.

Writ Petition No.2372/2018 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.9, in Kaviyarasu Kannadhasan Complex, 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.

Writ Petition No.s.2373 of 2018 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

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



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

Writ Petition No.2374/2018 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, Colechel 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.

Writ Petition No.2375/2018 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.1, 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.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 Petitioner : Mr.V.Meenakshi Sundaram
for Mr.R.Murugan

<https://hcservices.ecourts.gov.in/hcservices> For Respondent : Mr.P.Athimoolapandian
Standing Counsel.

**COMMON ORDER**

Challenging the tender notification issued by the respondent municipality calling for tender cum auction of the shops belonging to the respondent municipality, the present writ petitions have been filed.

2. Since the issue involved in all the writ petitions are one and the same, they are taken up together and disposed of by this common order.

3. The grievance of the petitioners in all these writ petitions is that they are licencees in respect of shops owned by the respondent municipality. Earlier, licence was granted to the petitioners in the year 1991 and they are continuously in possession and enjoyment of the shops and they are also paying rent regularly which has been revised from time to time. Recently, on 15.05.2017, the respondent municipality has also revised the rent with effect from 01.04.2016.

4. After revising the rent, as per G.O.Ms.No.92, dated 03.07.2007, and after receiving a draft rental agreement from the petitioners, now it is not open to the respondent municipality, to call for public auction. Apart from that recently, the Regional Director, Municipal Administration vide proceedings dated 28.03.2017 has directed all the Special Officers of the bodies not to revise the rent for the properties belonging to the local bodies and also directed not to conduct any public auction till the newly elected local bodies take charge of the administration. That apart now the respondent municipality has been under the administration of a Special Officer, as per Section 375-B of the Tamil Nadu District Municipalities Act, 1920 (in short, 'the Act'). The power of the Special Officer is limited one and he cannot assume the role of the elected municipality council and he has no power to pass the impugned resolution dated 27.12.2017 to conduct public auction for the shops belonging to the respondent municipality.

5. Mr.V.Meenakshisundaram, learned counsel appearing for the petitioners vehemently contended that the respondent municipality after revising the rent as per G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, and called the petitioners to give consent for renewal of licence and after receiving the consent from the petitioners, now it is not open to the respondent to call for a public auction. That apart, now the Director of Municipal Administration has issued a specific circular, dated 29.11.2016 directing the Special Officers of the local bodies not to revise the rent of the properties belonging to the local bodies and also directing them not to conduct any public auction till the newly elected local bodies take charge of the administration. In view of the specific



direction issued by the Director of Municipal Administration, now the respondent cannot bring the shops for public auction.

6.The learned counsel appearing for the petitioner further submitted that now the respondent municipality is under the control of the Special Officer and the Special Officer cannot discharge the functions of the elected municipal council and he has no power to conduct public auction until the newly elected local body take charge of the administration. The respondent municipality after invited the petitioners to accept the revised rent as per G.O.Ms.No.92, dated 03.07.2007 and the petitioners also accepted their offer and submitted the revised lease agreement, the petitioners are having legitimate expectation that the lease would be extended in favour of them and the same cannot be denied by the respondent.

7.The learned counsel appearing for the petitioners would further submit that so far as the shops in Kamarajar Bus-stand is concerned in the original notification only few shops have been noticed, subsequently, amending the earlier notification, the respondent municipality issued a fresh notification including nearly 38 shops in the above said auction and no sufficient time has been given to the petitioners to participate in the auction which is also in violation of the Tamil Nadu Transparency in Tenders Act, 1998.

8.Per contra, learned counsel appearing for the respondent municipality contended that the petitioners are only licencees in the respondent municipality and they have been occupying the property of the municipality from the year 1991 and paying very meagre amount and for the purpose of augmenting income of the municipality, the municipality has opted to conduct a public auction, the petitioners being licencees do not have any vested right to continue in the property perpetually.

9.He would further contend that it is also settled law that any immovable properties belonging to the municipality should be leased out only by a public auction. The petitioners also cannot claim any relief under G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 as they are in occupation of the shops from the year 1991 nearly for more than 27 years, and the above said Government Order is not applicable to the case of the petitioners. He would further contend that in order to augment the income of the municipality, now the municipality has decided to conduct public auction which is ultimately for the welfare of the larger public. Hence, the auction has been conducted only in public interest and the petitioners cannot resist the same. He would further contend that the Special Officer has every power to call for public auction and the same is not restricted. Apart from that the petitioners also cannot claim any legitimate expectation in the matter of granting licence.



10. I have considered the rival submissions made on either side and perused the entire materials available on record carefully.

11. Admittedly, the petitioners are licencees in respect of the shops belonging to the respondent municipality. Almost, all the petitioners were in possession of the respective shops from the year 1991 and now the respondent municipality has chosen to conduct public auction with an object of augmenting more revenue for the respondent municipality. Now, the question is whether the petitioners can prevent the municipality from conducting public auction.

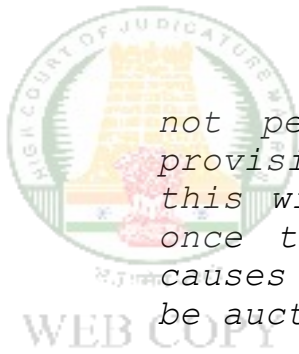
12. The petitioners being the licencees who have been in occupation of their respective shops from the year 1991 have no vested right to continue in occupation perpetually. Recently, a Division Bench of this Court in **P.Muthusamy Vs.State of Tamil Nadu** reported in **(2014) 5 MLJ 129** has held as follows:-

"20. The facts narrated above would clearly indicate that the petitioners have been given only a licence to run the shops. Just because the word "lease" has been mentioned, a licence cannot ipso facto be converted into a lease. Admittedly, the licence issued has a fixed terms. Therefore, the petitioners do not have a legal or a vested right to continue in occupation forever. There is no doubt that the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1961, does not apply to the case on hand. The petitioners can very well participate in the proposed auction. In other words, they cannot claim the right of a statutory tenant.

21. The object of letting out the shops is to collect more revenue for the respondent municipality, which is meant to be used for welfare measures. The Government Orders, as narrated above, are very specific about the purpose of auction followed by lease/licence. Since the transactions are commercials in nature, the petitioners, being licensees, cannot insist that the rent, which as they think, just and proper alone is liable to be paid.....".

13. The petitioners have been in occupation of the shops from 1991 and they cannot claim any heritable right and they cannot be permitted to continue in possession of the shops under the guise of renewal. In **Tamil Nadu Municipal Shop Merchants Association and etc., Vs.State of Tamil Nadu** reported in **AIR 2000 Mad 393**, this Court has held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>. Lease in perpetually or extension or renewal without time limit amounts to lease in perpetually which is



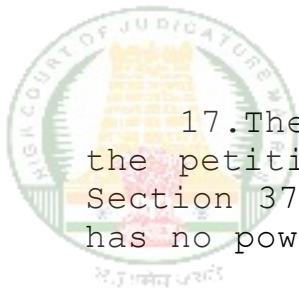
not permissible in law and in terms of the statutory provisions. This is not the intention of the statute and this will create a monopoly in favour of a person who has once taken the lease in an open auction. This apart it causes a loss, the local authority, when the property can be auctioned at much higher price."

14. In another case in **A. Sathar Vs. The District Collector** reported in **AIR 1998 MAD 217**, this Court has held that the properties owned by the municipalities are also a source of revenue to the municipality and the interest of the municipalities has to be balanced as against the interest of the shop owner lessee.

15. A Division Bench of this in **P.P.M.S.C.W. Assn., Vs. Commissioner** reported in (2016) 3 MLJ 698 has held as follows:-

"....Even otherwise, the individual shopkeepers of the appellant/association do not have either a legal or vested right to continue in occupation of the shops belonging to the 2nd respondent/municipality. The paramount interest of the 2nd respondent/municipality cannot be put to peril by permitting the shopkeepers of the appellant/association to continue in possession of the premises in the subject matter in issue at an increased rate of 15%. No wonder, the rule of Law requires competitive bidding which paves way for obtaining a paper price in relation to a public property which is in the nature of a trust. Therefore, the public property is to be put into auction by inviting tender so as to enable the municipality to obtaining the highest offer in a fair and transparent manner. Only then, the public welfare of a particular Town Panchayat can augment its revenue to the optimum level, as opined by this Court".

16. It is settled law that all the contract or lease of the Government or the instrumentality of the State should be granted only by way of public auction or by inviting tender by making wide publicity. It is one of the main sources of revenue to the local bodies which is used for welfare measures in the larger interest of the public. In the said circumstances, the petitioners, who do not have any right over the property which belongs to the respondent municipality, cannot challenge the tender cum auction notification issued by the respondent. Merely because the respondent has revised the rent in the previous year and asked the petitioners to accept the offer, it will not create any right on them and they cannot also claim any legitimate expectation in the absence of any vested right on them.



17. The next contention of the learned counsel appearing for the petitioners is that the Special Officer who appointed under Section 375-B of the Act to administer the respondent municipality has no power to conduct public auction.

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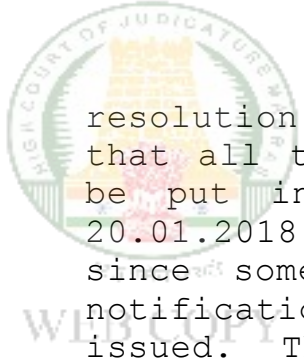
18. Section 375-B reads as follows:-

"375-B. Appointment of Special Officers:- Notwithstanding anything contained in this Act, or in any other law for the time being in force, the State Government may, by notification, appoint Special Officers to exercise the powers and discharge the functions of the Municipalities or the Town Panchayats, as the case maybe, until the day on which the first meetings of the councils are held after ordinary elections to the Municipalities or the Town Panchayats, as the case may be, after the date of commencement of the Tamil Nadu Municipal Laws (Amendment) Act, 2017 or upto the 30th day of June 2017, whichever is earlier."

19. A cursory reading of the above Section it is clear that the Special Officers have been appointed to exercise the powers and discharge functions of the municipality or town panchayat. Hence, the Special Officers are empowered to discharge the functions of the municipality which includes for conducting public auction. Hence, the contention of the learned counsel appearing for the petitioners that the Special Officer has no power to conduct public auction cannot be countenanced.

20. So far as the next contention of the learned counsel appearing for the petitioners that already a circular dated 29.11.2016 has been issued by the Director of Municipal Administration directing the Special Officers of the local bodies not to revise the rent of the properties belonging to the local bodies and also directing them not to conduct any public auction till the newly elected local bodies take charge of the administration is concerned, a perusal of the above said circular, it is seen that it is not a circular issued by the Director of Municipal Administration, it is a regionwise inspection report submitted by the Director of Municipal Administration after conducting regionwise inspection in respect of local bodies and the above report cannot be considered as an executive order by which the petitioners cannot claim any right to continue in possession of the public property.

21. The next contention of the learned counsel appearing for the petitioners that in the original notification some of the shops were not included, subsequently, by way of addendum, another notification has been issued including all the shops without providing sufficient time, thereby the right of the petitioners to participate in the auction has been prejudiced. As per the



resolution dated 27.12.2017, it has been decided by the respondent that all the shops belonging to the respondent municipality will be put into public auction and issued first notification on 20.01.2018. It is also mentioned in the original notification that since some of the shops were not mentioned in the earlier notification, the second notification dated 25.01.2018 has been issued. Therefore, I find no infirmity in issuing another notification including all the shops. Further, the petitioners being the existing licencees fully aware of the fact that all the shops will be put into public auction, in the above circumstances, now the petitioners cannot claim that they are prejudiced.

22.For the foregoing reasons, the relief sought by the petitioners cannot be granted. Accordingly, the writ petitions are dismissed. No costs. Consequently, W.M.P(MD)Nos.2571 to 2591 of 2018 are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Commissioner,
Colachel Municipality,
Colachel, Kanyakumari District.

+7cc to Mr.R.Murugan, Advocate Sr.No.49075

SMS

VB/SKN/RSK/SAR1/05.03.2018/9P/9C

Common Order made in
Writ Petition (MD) Nos.2369 to 2375 of 2018
and
W.M.P (MD)Nos.2571 to 2591 of 2018

16.02.2018