



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 10.10.2018

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WEB COPY

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P(MD)Nos.14975 and 20734 of 2018

and

W.M.P(MD)Nos.13538, 13539, 15514, 15515, 18481, 18482, 18483 of 2018

W.P(MD)Nos.14975 and 20734 of 2018

Arumuga Nainar

..Petitioner in both W.Ps'

Vs

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Block Development Officer/
The Commissioner,
Nanguneri Panchayat Union,
Tirunelveli District.

..Respondents 1 and 2 in both W.Ps'

3.The Munainjipatti Village Panchayat,
represented by its Special Officer,
Nanguneri Panchayat Union,
Tirunelveli District.

..Respondent No.3 in W.P(MD)No.20734
of 2018

Prayer in W.P(MD)No.14975 of 2018: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the Tender Notification made in No.A2/2299/2018, dated 3.7.2018 on the file of the second respondent and to quash the same and to direct the second respondent to renew the existing lease of the Petitioner for the right to collect the toll charges from the vehicles and vendors at Munainjipatti Weekly Market for a further period of one year.

Prayer in W.P(MD)No.20734 of 2018: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the first respondent in Na.Ka.No.A8/2308/2018, dated 2.7.2018 and to quash the same as illegal and unconstitutional and consequently to direct the respondents to renew the existing licence of the Petitioner for



the right to collect the toll charges from the vehicles and vendors at Munainjipatti weekly market for a further period of one year or more in the light of Rule 23 of the Tamil Nadu Panchayat (Procedure for Conducting Public Auctions of Leases and Sales in Panchayats) Rules, 2001 and G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 3.7.2007.

For Petitioner : Mr.T.Arul,
in both W.Ps' for M/s.M.Maharaja

For Respondent-1 : Mr.A.Muthukaruppan
in both W.Ps' Additional Govt.Pleader

For Respondent-2 : Mr.C.Ramar
in W.P(MD)No. Addl.Govt.Pleader
14795/2018

For Respondent-2 : Mr.G.Angappan
in W.P(MD)No. Government Advocate
20734 of 2018

COMMON ORDER

W.P(MD)No.20734 of 2018

The Petitioner was given lease by the second respondent to collect toll charges in the weekly market at Munainjipatti Village from the vehicles and vendors of the market for selling their goods for the period from 1.7.2017 to 30.6.2018. The lease amount was fixed at Rs.5,92,800/- per annum. The lease period was over by 30.6.2018. Before expiry of lease period, the Petitioner submitted his representation for renewal of lease, for a further period of one year and he is also inclined to pay the enhanced lease amount in terms of the instructions issued by the Government in the matter of grant of such lease. However, the said representation was not considered and therefore, the Petitioner has approached this Court in W.P(MD)No.12896 of 2018. This Court vide its order, dated 18.6.2018, directed the second respondent namely, the Block Development Officer to pass appropriate orders on the representation submitted by the Petitioner.

2.In pursuance of the direction, an order was passed by the first respondent on 2.7.2018, rejecting the claim of the Petitioner for extension of lease. Immediately thereafter, vide proceedings, dated 3.7.2018, a tender notification was issued calling for fresh auction in respect of the leasing right enjoyed by the petitioner for the subject market and base price was fixed at Rs.5,20,000/-. Although the said order was put to challenge in the Writ Petition, when the matter came up for hearing, it is ~~entitled to the~~ Court that already an order was passed by the first respondent on 2.7.2018 rejecting the request of the

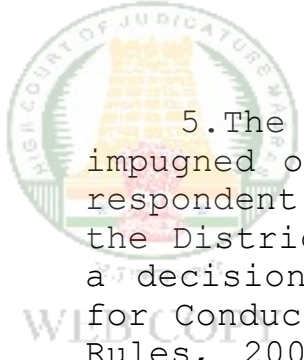


Petitioner. Therefore, the present Writ Petition is filed challenging the said order passed by the first respondent/District Collector.

3. When the matter came up for admission, the learned Judge of this Court vide order, dated 12.7.2018 in W.P(MD)No.14975 of 2018 granted an interim order of stay of the tender notification. The learned Judge passed a detailed order granting interim order as follows:

'Rule 23 of the Tamil Nadu Panchayat(Procedure for Conducting Public Auctions of Leases and Sales in Panchayats)Rules, 2001 deals with the powers for renewal of lease for the existing lessees. In the instant case, the Petitioner's lease for collecting toll charge from vehicles and vendors of the weekly market expired on 30.06.2018. Even three months prior to the expiry, the Petitioner herein had given a representation on 14.3.2018 seeking for renewal of his license for further period of one year. Though the second respondent had received the representation, no orders were passed, which prompted the Petitioner to file a Writ Petition in W.P(MD)No.12896 of 2018 and by an order, dated 18.6.2018, this Court had directed the second respondent to pass appropriate orders, within a period of two weeks. The language of Rule 23 Tamil Nadu Panchayat (Procedure for Conducting Public Auctions of Leases and Sales in Panchayats) Rules, 2001, is to the effect that whenever an application for renewal of lease is made, the concerned authority is required to positively consider the same. In the instant case, though the second respondent had made a positive recommendation and submitted the same to the first respondent, the first respondent seems to have rejected the recommendation through his order dated 02.07.2018, which is contrary to Rule 23 of Tamil Nadu Panchayat (Procedure for Conducting Public Auctions of Leases and Sales in Panchayats) Rules, 2001, and as such the Petitioner may have derived the right to continue the lease for further period of one year in view of the language of Section 23. Consequently, the second respondent may not be justified in proceeding with the impugned tender notification dated 3.7.2018. Hence there shall be an order of interim stay of the tender notification for the present.'

4. In pursuance to the interim direction, it appears that the Petitioner has started collecting the toll charges in the Munainjipatti weekly market till date.



5. The learned counsel for the Petitioner would submit that the impugned order of rejection, dated 2.7.2018 passed by the first respondent suffers from two grave infirmities. According to him, the District Collector is not a party to the Writ Petition to take a decision under Rule 23 of the Tamil Nadu Panchayats (Procedure for Conducting Public Auctions of Leases and Sales in Panchayats) Rules, 2001. According to him, authorities are specified in the Rule and the learned counsel would also draw the attention of this Court to the Rule 23, which is reproduced as under:

'23. Renewal of lease:--(1) The Panchayat shall have power to renew the lease of right of enjoyment of shops, rooms, garages, public markets, canteen, hotels or lodging houses belonging to it and for which rent is payable on a monthly basis or for a longer period in favour of the existing Lessee, if the Lessee agrees to the renewal of the lease for a higher amount to be decided by the Panchayat, supported by not less than fifteen percent for every year on the previous years lease or of rent fixed:

Provided that such extension of renewal of lease shall be done only upto a maximum of three years.

(2) The existing Lessee, if he desires to continue the lease for a further period, he may apply to the Executive Authority or the Commissioner or the Secretary, as the case may be, requesting the renewal of the lease in his favour at least three months before the expiry of the lease period. On receipt of such a request, the Executive Authority or the Commissioner or the Secretary, as the case may be, shall place the matter before the respective Panchayats to fix provisionally a sum at which the lease can be renewed, taking into consideration the following factors:-

(a) the increase in the market value of the building subsequent to the letting out of the present lease;

(b) the appreciation in the increase of rental value of the building and other similar buildings in the locality;

(c) consideration of growth and business of the locality in which the building is situated;

(d) other factors such as the location of the property in close proximity to railway station, bus



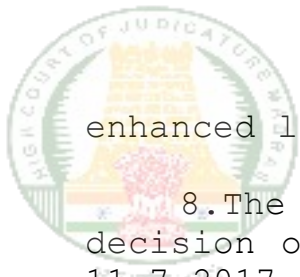
stand, business area and other factors which may have effect in the promotion of business.

(3) The Executive Authority or the Commissioner or the Secretary, as the case may be, may fix the lease amount at fifteen percent, if the annual rise in prices less than fifteen percent, over the existing lease amount for the fourth year of lease and this rate of increase may be fixed at more than fifteen percent for the fifth year and sixth year of the lease period as may be decided by the Panchayat.''

6. The learned counsel for the Petitioner would submit that from the language of the Rule, it is incumbent on the authority, who is named in the Rule itself, to pass a speaking order by taking various factors as provided in the Rule. However, the first respondent, who is not the authority, as not shown in the Rule, has passed an order and therefore, the order suffers from jurisdictional error and on this score alone, the Writ Petition is liable to be interfered with. He would further submit that even assuming that the first respondent has jurisdiction to pass an order being the higher authority, the order is per se a non-speaking order. The first respondent has not spelt out any reasons for not granting extension of lease. Such an order is contrary to the letter and spirit of the above said Rule and therefore, the same cannot be countenanced in Law. The learned counsel for the Petitioner would further submit that the Petitioner is the first time investor and he has invested huge amount out of his hard earning and he was hoping that lease period would be extended for a further period of one year I.e., 2018-2019 and the Petitioner was also willing to pay the enhanced lease at 15% as fixed by the Rule itself. He would therefore submitted that the Petitioner, who enjoyed the leasing right for the year 2017-2018 without any complaint, is entitled to one year extension and that itself would sub-serve the interest of the stake-holders.

7. Per contra, the learned Additional Government Pleader appearing for the first respondent would strongly object to the grant of any relief in the Writ Petition for the reason that by taking undue advantage of the interim order passed by this Court, the Petitioner had collected toll charges in the weekly market without making any payment to the panchayat. He would therefore submit that on that ground alone, the Petitioner's license should not be extended further. Moreover, he would submit that the extension of lease cannot be claimed as a matter of right and it is only a matter of concession. The first respondent felt that the extension need not be given and therefore the same cannot be found fault with. Moreover, the learned Additional Government Pleader

<https://hccnagpur.courts.gov.in/services/> a fresh tender is called for, it will generate more revenue for the Panchayat and the Petitioner cannot perpetuate his right by paying some marginal percentage of



enhanced lease amount for the following year.

8.The learned Additional Government Pleader would rely on a decision of this Court rendered in W.P(MD)No.11371 of 2017, dated 11.7.2017 in support of his contention. He would draw the attention of this Court, particularly, to paragraph 9,10 and 11 of the said order passed by this Court. Paragraph 9,10 and 11 of the said order are extracted hereunder:

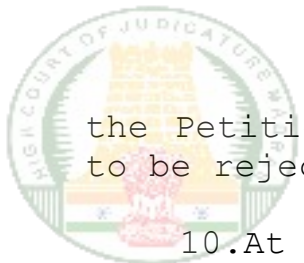
''9.In the case of Kolanji Murugan .vs. The Pethanaickenpalayam Town Panchayat, represented by its Executive Officer, Pethanaickenpalayam-636 109, Attur Taluk, Salem District(India kanoon.Org/doc/22705838/), this Court has held that in the notification, based on which the lease had been made clear that the shop in question would be brought to public auction at the end of the lease period of three years. Having participated in the public auction, agreeing to the terms and conditions prescribed in the notification, dated 3.6.2009, it would not be open to the Petitioner to claim that the lease granted in his favour should be extended, for a further period of three years, on payment of the enhanced lease amount.

10.The Division Bench of this Court in the judgments reported in (2014) 5 MLJ(P.Muthusamy .vs. State of Tamil Nadu) and (2016) 3 MLJ 698 (P.P.M.S.C.L.W. Assn .vs. Commissioner) held that the licensee as a matter of right cannot seek renewal of lease, based on G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 3.7.2007 and the public property is to be put into auction by inviting tender so as to enable the municipality to obtain the highest offer in a fair and transparent manner and then only, the respondent municipality could augment its revenue to the optimum level. Further, the interest of the respondent Municipality cannot be jeo-paradised by permitting the Petitioner to continue in possession of the premises for perpetuity.

11.I am of the considered opinion that the principles laid down in the decisions cited supra would squarely apply to the case on hand. Hence, the submission of the learned counsel for the Petitioner cannot be countenanced. In view of the latest judgement, with great respect, I am not able to follow the decisions referred by the learned counsel for the Petitioner.''

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

9.According to the learned Additional Government Pleader, the above order passed by the learned Judge would cover the case of



the Petitioner and therefore, the present Writ Petition is liable to be rejected.

10. At this stage, the learned counsel for the Petitioner would submit that the said order was not passed with reference to Rule 23 of the above said Rule and therefore, the ratio laid down in the said decision is not applicable to the factual matrix of the present case. He would further add that the second respondent, who is supposed to pass the order in terms of the decision of this Court in the earlier proceedings, has in fact, recommended for grant of extension of lease and unfortunately, the first respondent has not recommended to such a course and on the whole, the order passed by the first respondent, dated 2.7.2018 is bereft of any consideration in terms of Rule 23 and therefore, the said order has to necessarily be interfered with.

11. This Court gave its anxious consideration to the submissions made on behalf of the learned counsel appearing on either side and perused the materials and pleadings placed before this Court.

12. As rightly contended by the learned counsel for the Petitioner, this Court in its earlier order, dated 18.6.2017 in W.P.No.12896 of 2018, had only directed the second respondent namely, the Block Development Officer to dispose of the representation filed by the Petitioner. Presumably, the learned Judge felt that he was not the authority shown in Rule 23. But however, instead of second respondent, the first respondent has passed an order without referring to the recommendation of the second respondent, who is the competent authority to take a call in the matter. No doubt, the first respondent is the higher authority in the official hierarchy. Nevertheless, when the Rule specifies particular authorities to take a decision in terms of the said Rule, those authorities alone can take a decision in respect of the matters falling within the ambit of the Rule. In this case, the first respondent, who is not the authority as shown in the Rule, cannot take a decision that too contrary to the Rule. Therefore, on this score, this Court is of the view that the Writ Petition has to be allowed.

13. Further, even assuming the jurisdiction of the first respondent to pass orders, nevertheless, it has to be seen that whether the order passed by the first respondent can stand the test of reasonableness. As rightly contended by the learned counsel for the Petitioner that the order is completely bereft of any consideration. In fact, Rule 23 provides for several factors to be considered for extension of lease period. But none of such factors has been considered by the first respondent while passing order, dated 2.7.2018. When the Rule provides for such consideration, it is imperative on the part of the first respondent to pass orders in terms of the Rule and not contrary to



the Rule. The order passed by the first respondent rejecting grant of lease is not only a non-speaking order but also an unreasonable one and also not in consonance with the letter and spirit of the Rule.

14. Further, it has to be seen that the base price fixed for the present year for the fresh auction is only Rs.5,20,000/- As far as the amount for the last year is concerned, the Petitioner has paid more than Rs.5,90,000/- and the Petitioner is also willing to pay whatever the enhanced lease amount payable for the present year, in terms of the instructions and also as per the relevant rules.

15. The learned counsel for the Petitioner would also submit that for the interregnum period, the Petitioner had been collecting toll charges in the weekly market, the Petitioner is willing to make good the lease amount to the Panchayat in proportion to the period for which they collected toll charges on the basis of the enhanced lease amount to be fixed by the Panchayat in this regard.

16. Moreover, when the interim order was passed by this Court, dated 12.7.2018 in W.P(MD)No.14975 of 2018, the learned Judge has rendered a finding that Rule 23 is a positive in its expression and the authority under the Rule ought to consider any representation for extension of lease permission positively. In this case, it appears that the first respondent has not considered the representation in terms of the essence of the Rule and as per the finding of the learned Judge of this Court. When the Rule provides for consideration in a particular manner, the same has to be considered in that manner alone, but not in any other manner. In this case, the first respondent, even assuming that he has got jurisdiction, has not passed orders in terms of the letter and spirit of Rule 23.

17. For the afore-said reasoning, the impugned orders in both the Writ Petitions in No.A2/2299/2018, dated 3.7.2018 and Na.Ka.No.A8/2308/2018, dated 2.7.2018 passed by the second and first respondent respectively, are set aside and there shall be a consequential direction to the second respondent to grant extension of lease to the Petitioner for a further period of one year w.e.f. 1.7.2018 till 30.6.2019 on the basis of the enhanced rate of lease amount to be fixed by the second respondent Panchayat in terms of Rule position and also as per the instructions issued by the Government in the subject-matter. It is made clear that the Petitioner shall make payment of enhanced rate of lease amount fixed by the second respondent without demur and failure of payment of such amount to be demanded by the second respondent to the Panchayat, extension of lease need not be granted to the Petitioner and it is open to the Panchayat to go for a fresh auction, as envisaged by the proceedings, dated 3.7.2018. In any



event, the second respondent is also directed to pass orders fixing the enhanced lease amount for the subject weekly market and call the Petitioner for payment of the same. On such payment being made, the lease shall be granted to the Petitioner for a period of one more year I.e., from 1.7.2018 to 30.6.2019. It is also made clear that this order need not be quoted by the Petitioner for the future years. The second respondent shall pass appropriate orders implementing the above direction within a week from the date of receipt of a copy of this order.

18. With these directions, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

W.P(MD)No.14975 of 2018

The present order passed in the above Writ Petition will hold good for this Writ Petition also. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Block Development Officer/
The Commissioner,
Nanguneri Panchayat Union,
Tirunelveli District.

3. The Special Officer,
Munainjipatti Village Panchayat,
Nanguneri Panchayat Union,
Tirunelveli District.

+ 2 CC TO MR.M.MAHARAJA, ADVOCATE IN SR NO.89809
+ 2 CC TO SPECIAL GOVERNMENT PLEADER, IN SR NO.90199,90200

VSN

BU/SV/SAR-IV :26.10.2018 : 9P/7C

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and

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15515, 18481 and 18482 of 2018
10.10.2018