

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.12.2019
CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.731 of 2009

1.Ramalinga Mudaliar(Deceased)
2.Bhuvaneswaran
3.Malaiarasi
4.Panneer Selvam
5.Tamilarasan

...Appellants/ Defendant

Appellants 2 to 5 are impleaded as LR's of the deceased
sole appellant vide order dated 16/02/2017 made in
C.M.P.Nos.1957 to 1959 of 2017 in A.S.No.731 of 2009

Vs.

Atthur Municipality
Rep.by its Commissioner
Ranipet, Atthut, Salem District. ...Respondent/Plaintiff

Prayer : First Appeal filed against the Judgment & Decree
dated 12.12.2008 passed in O.S.No.109 of 2005 on the file of
the Additional District Judge(Fast Track Court No.1) Salem.

For Petitioner : Mr.P.E.Senthil Kumar
for K.Govi Ganesan

For Respondent :Mr.I.Paranthamen

O R D E R

The appeal suit is filed against the judgment and decree
passed in O.S.No.109 of 2005 dated 12.12.2008. The suit is
instituted by the plaintiffs against the respondent for
recovery of Rs.11,51,600/- with subsequent interest and costs
of the suit.

2. The contention of the plaintiff is that Attur
Municipality invited tenders for leasing out the right to
collect toll from the buses entering the Attur Municipal Bus
Stand. The Municipal Bus Stand has been classified by the
authorities as a 'B' Class Bus Stand. The lessees under the
Attur Municipality have been authorized to collect tolls, at
the rate of Rs.3/- per day, from every bus. The auction was
conducted on 13.03.2002, after giving wide publicity and
publication of tender notices for the period from 01.04.2002
to 31.03.2003. As per the tender conditions, the persons who
bid at auction should deposit Rs.1,00,000/- as security
deposit. The various conditions of the lease are also

published in the tender notice and the Municipality reserved its right to demand more lease amount, in case the amount collected as toll is raised. The auction was conducted on 13.03.2002. The defendant/respondent was the successful bidder having bid at auction for a sum of Rs.2,88,000/-. He has also deposited Rs.1,00,000/- as security deposit. The auction was accepted by the Municipality by resolution dated 28.03.2002 and as per the terms of lease, the lessee should deposit 1/4th of the bid amount and also execute a lease deed to that effect. The confirmation of lease was communicated to the defendant/respondent through messenger by name R.Chandran, an Office Assistant of the Municipality. Even in that communication, it was stated that 1/4th of bid amount is to be deposited in one week and kist is to be paid every month. It is stated that the defendant has collected the toll, at the rate of Rs.12/- per day, from every bus which entered the Bus Stand. He has purposely failed to pay the security deposit for enhanced amount or 1/4th of the bid amount, as per the terms of the lease. The defendant must pay the kist on or before 5th of every English Calendar month, failing which, he is liable to pay interest at 18% per annum. So, the plaintiff is entitled to collect from the defendant a sum of Rs.8,64,000/- with interest, at the rate of 18% per annum. The amount of Rs.1,00,000/- paid as security deposit on 12.03.2002, was adjusted in the amount payable by the defendant/respondent. One year lease amount comes to Rs.11,52,000/-. Accordingly, the suit was instituted.

3. The defendant/respondent denied the averments set out in the plaint by stating that the allegations are false, frivolous and vexatious. It is admitted that on 31.12.2001, there was a Notification inviting tenders, and the respondent is a successful bidder. The conditions imposed in the tender notice are also admitted. While admitting all these basic facts regarding the Notification inviting tenders as well as the conduct of tender, the defendant pointed out that the Government Order issued in G.O.Ms.No.175 dated 04.03.2005, to the effect that the toll for 'B' Class Bus Stand was enhanced from Rs.3/- per day to Rs.12/- per day, with effect from 11.03.2002. The contentions of the plaintiff in this regard are denied. The Government Order was communicated to Municipality on 01.04.2002, after knowing about the amendment of the Government Order, enhancing the toll from Rs.3/- to Rs.12/- per day, thus daily rate is revised four times. The respondents denied the allegations regarding the payment made by the plaintiff/Municipality. All other payments are denied.

4. However, the Trial Court framed the issue whether the plaintiff is entitled to recover a sum of Rs.11,51,600/- along with interest from the defendant or not? The Trial Court based on the documents and evidences found that the plaintiff submitted Ex.A1 to Ex.A13, by way of stating that Ex.A1 dated 31.12.2001 is a tender notice for the period 2002-2003; Ex-A2 is with regard to the proceedings of the Commissioner; Ex-A3

is the proceedings of the Commissioner, Attur Municipality dated 01.04.2002 to enhance the toll price. The Xerox copy of G.O.Ms.No.175 Home (Transport-VII) Department dated 04.03.2002 is Ex.A4; The Government Order has been issued on 04.03.2002. However, the lease period is from 01.04.2002 to 31.03.2003. The lease was taken up by the defendant/respondent, after the Government Order dated 04.03.2002. After that Ex.A1 was issued for the period from 2002 to 2003. The Municipality has narrated the conditions of the lease with reference to the period of lease. In the Notification published by the Municipality, every condition has been explained and by accepting the terms and conditions, the respondent/defendant has signed the agreement and accepted the lease as the highest bidder. The Trial Court found that when the successful bidder accepted the terms and conditions of the lease and signed the same, he cannot go back with reference to the payment made as per the terms and conditions. Pursuant to the Government Order, enhancing the toll from Rs.3/- per day to Rs.12/- per day was also communicated to the respondent. All these facts were admitted. However, the respondent/defendant in the oral evidences, has stated that without knowing whether the 'B' Class status was given to the bus stand or not, P.W.1 has stated about the 'B' Class status was given by the Government. However, it was contended that the bus owners have refused to pay the enhanced amount of Rs.12/- per day and they have insisted to collect Rs.3/- per day, as per the previous rates. All these evidences were considered by the Trial Court and it was further recorded that 'B' Class status awarded to the bus stand was renewed till 24.10.2005. A Xerox Copy of that order has also been filed before the Trial Court, which was also enhancing of Rs.12/- per day has also been intimated to the respondent/defendant. The defendant himself has come forward by way of marking this document stating that the enhanced amount has been intimated to the General Manager of Tamil Nadu State Transport Corporation. However, all these facts established by way of documents and through evidences, this Court is of the opinion that the respondent was a successful bidder and terms and conditions of the lease were notified and the respondent signed the documents and accepted the conditions of the lease and thereafter, started collecting the money from Bus stand. Even the respondent has accepted and admitted the enhancement of lease from Rs.3/- per day to Rs.12/- per day, therefore, there is no reason for this Court to interfere with the findings in this regard, as the said facts are not only admitted but also established by way of a document marked by the appellant/plaintiff. The respondents have not produced any document or evidence to establish that they are not liable to pay the lease amount, as per the terms and conditions of the lease. Contrarily, all those facts are mostly admitted except the liability which cannot be considered by this Court. Therefore, the Trial Court is rightly in arriving at a conclusion that the plaintiff is entitled for the relief as prayed for in the plaint.

5. Under these circumstances, the grounds raised in the appeal suit are also neither candid nor convincing and the grounds raised that the Trial Court failed to consider the evidences is incorrect. With reference to the status given to Attur Municipality Bus Stand, which was classified as 'B' Class Bus stand and the said status is continued till the year 2005. The bus operators cannot be a reason for non-compliance of the lease conditions agreed between the parties. The non-payment or otherwise is the dispute to be considered between the bus owners and the respondents, and the same is unconnected with the terms and conditions of the lease which was agreed by the respondent, at the time of accepting of confirmation of the lease. These being the facts and circumstances, this Court is of the opinion that there is no perversity or error in respect of conclusion arrived at by the Trial Court. Accordingly, this Court has no hesitation in arriving at a conclusion that the judgment and decree is inconsonance with the principles.

6. Thus, the judgment and decree dated 12.12.2008 passed in O.S.No.109 of 2008 is confirmed. Consequently, the first appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssb

To,

The Additional District Judge,
(Fast Track Court No.1) Salem.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.I.Paranthamen , Advocate SR.No. 102661

+1cc to Mr.K.Goviganesan , Advocate SR.No. 102443

A.S.No.731 of 2009

ppa

A.SK(24/03/2020)