

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 06-02-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAHN

W.P.No.15392 of 2018

V.Ranganathan

...

Petitioner

-vs-

1.The State of Tamil Nadu,
rep.by its Secretary to Government,
Municipal Administration &
Water Supply Department,
Fort St.George,
Chennai-600 009.

2.The Director,
O/o.Director of Town Panchayat,
Kuralagam Building,
Chennai-600 108.

3.The District Collector,
Villupuram District,
Villupuram.

4.The Assistant Director,
Town Panchayats,
Cuddalore Division, सत्यमेव जयते
Cuddalore.

5.The Executive Officer,
Gingee Special Grade Town Panchayat,
Gingee,
Villupuram District.

6.Mr.K.S.Masthan

7.A.K.Saravanan

8.V.Pandian

9.Munwar Basha

10.Tmt.Chinthamani Ammal

11.L.Gopi

12.Syed Usman

13.K.S.Ghouse Basha
14.Sheik Mubarak
15.Mahaboo Basha
16.Sheik Nisamudeen
17.K.S.Mohamed Ali
18.K.S.Dasdhagir
19.E.Khaja Basha
20.Vijayalingam
21.Kader Basha
22.A.S.Amir

... Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, directing the respondents 1 to 5 to call for Tender for licence to run the 18 shops in Old Shopping Complex situated at Gingee Bus Stand to ascertain the exact lease amount to be fetched under the public auction and to make offer to respondents 7 to 22 to pay the said amount as lease amount for renewal of licence period 2017-2018 in terms contemplated under G.O.Ms.No.92 Municipal Administration and Water Supply (Na.Nee.4) Department, dated 03.07.2007, issued by the first respondent or to allot the shops to the successful bidders in the event of respondents 7 to 22 refusing to pay the market rent to the shops in the Old Shopping Complex in Gingee Bus Stand, Gingee.

For petitioner : Mr.G.Ethirajulu

For respondent 1 to 4 : Mr.T.N.Rajagopalan,
Government Pleader.

For respondent 5 : Mr.J.Pothiraj,
Special Govt.Pleader

For respondent 6 : Mr.K.H.Ravikumar

For respondents 8 to 10, 12 to 21 : Mr.G.Sankaran

ORDER

[Order of the Court was made by Dr.Vineet Kothari,J.]

Mr.V.Ranganathan, son of Mr.Varadharajan, Gingee Town, Villupuram District, has filed this Public Interest Litigation Writ Petition in this Court on 14.06.2018 with the relief claimed therein that fifth respondent-Gingee Special Grade Town Panchayat should renew the lease of the shops constructed by them in the Old Shopping Complex, situated at Gingee Bus Stand, Gingee, by way of public auction only as per G.O.Ms.No.92,

Municipal Administration and Water Supply Department, dated 03.07.2007, issued by the first respondent-State in this regard, which provides for public auction if the renewal of lease on the basis of the renewed lease rental assessed with 15% increase or as per the Public Works Department's Assessment Rates, does not fetch adequate revenue for the said Panchayat for larger public benefit. Allegations are also levelled against Respondent No.6 Mr.K.S.Masthan, son of Mr.Khaja Sheriff, who is said to have headed the said Town Panchayat as the Chairman.

2. Upon issuance of notices, Fifth Respondent Panchayat and also Sixth Respondent have filed their Counter Affidavit and Additional Counter Affidavit and the petitioner also filed a Rejoinder to the Counter filed by Mr.K.S.Masthan, sixth respondent, in the Court today.

3. We have heard the learned counsel for the parties at length and also perused the material on record.

4. Paragraph No.4 of G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, in essence, provides for a lease period of three years at a stretch, after which, the said lease in favour of the lessee shall be renewed automatically. After a period of nine years, Clause (ii) of the said Paragraph No.4 of the G.O. provides for increase of 15% in the lease rental. Clause (iii) thereof provides that if the revised lease amount is not acceptable to the existing lessee, then, a fresh lease can be resorted to by way of public auction. The translated version of Paragraph No.4 of the said G.O. is extracted below for ready reference :-

"4. The Government, after careful consideration of the matter, based on the practical difficulties arising in the implementation of the lease conditions and in order to simplify the procedure to lease Municipal properties have ordered the procedures :-

i) immovable properties of Municipalities whenever they are leased for first time should be leased only by public auction.

ii) Municipal shops can be leased for three years at a stretch. After the set period of three years, the lease will automatically be renewed. Likewise, the lease can be renewed for nine years. Once in three years, the lease amount should be increased by 15%. (This condition will also apply to the existing lessees).

iii) After nine years, the lease should be re-assessed. The existing lessees can be given preference for renewing the lease for another

period of 9 years if they are willing to pay the revised lease amount. If the lessee is not willing, the property can be leased by public auction.

iv) The lessees should pay the following amount once in three years to renew the lease.

1. <100 sq.ft. Rs.500/- (Rs.Five Hundred only)

2. 100 - 500 sq.ft Rs.1000/- (Rs.One Thousand only)

3. 500 - 1000 sq.ft. Rs.1500/- (Rs.One Thousand Five Hundred only)

4. >1000 sq.ft. Rs.2000/- (Rs.Two Thousand only)

v) As far as encroachers are concerned, lease licence can be transferred in his name as a one time concession. For this, the applicant has to make advance payment, a sum equivalent to 12 months lease amount. Apart from that, he should pay a sum equivalent to 12 months rent as name transfer fee mentioned below.

1. <100 sq.ft. Rs.2500/- (Rs.Two Thousand Five Hundred only)

2. 100 - 500 sq.ft. Rs.5000/- (Rs.Five Thousand only)

3. 500 - 1000 sq.ft. Rs.7500/- (Rs.Seven Thousand Five Hundred only)

4. > 1000 sq.ft. Rs.10000/- (Rs.Ten Thousand only)

vi) The legal heirs of the first lessees are eligible to get the lease licence transferred in their name provided they make payment of all arrears and accept the condition to make payment of lease amount as fixed by Municipal Board from time to time. Legal heirs are bound by the general terms and conditions of lease. An application fee of Rs.500/- (Rs.Five Hundred only) shall be fixed for name transfer.

vii) At present, Chennai Corporation is adopting several different procedures and conditions for leasing of properties owned by it. For example, Corporation is leasing its properties only for a period of twelve months at one time. This results in huge paper work and workload. These revised conditions, after approval by the council, will also apply to Chennai Corporation.

viii) The revised conditions will come into effect from the date of its publication."

5. Learned counsel for Fifth Respondent-Town

Panchayat, relying upon the Counter and Additional Counter filed by it, has submitted that G.O.92, dated 03.07.2007, has been followed in letter and spirit by the respondent Panchayat and renewal of leases has been granted to the existing lessees with the increased rentals in terms of the said G.O. It is also stated in Paragraph No.4 of the Additional Counter Affidavit filed by the Executive Officer of Fifth Respondent-Gingee Special Grade Town Panchayat that in the New Commercial Complex, constructed by the Panchayat during the period 2017-2018, three shops were leased out by public auction and they obviously fetched higher monthly rentals. Paragraph Nos.3 and 4 of the said Additional Counter Affidavit are also quoted below for ready reference :

"3 (iii) As stated above, the said conditions prescribed under G.O.Ms.No.92, dated 03.07.2007, are (sic) also applicable to the existing lessees prevailing at the time of introduction of the said G.O. Therefore, the lease has been extended in accordance with the G.O., for a period from 2007-08 up to 2016-17. Thereafter, on the completion of the nine years, a representation dated 23.10.2017 has been addressed to the PWD Department and based on their inspection the subsequent lease rent has been finalized and has been directed to the respective lessees to be paid accordingly. It is submitted that this respondent has followed the prescribed procedure and guidelines issued and has implemented the G.O.Ms.No.92, dated 03.07.2007, without any delay.

4. It is submitted that insofar as the shops bought for auction, the following details are submitted; during the period 2017-18 for Shop No.15 at New Commercial Complex, public auction has been held and one Mr.R.Venkatesan has been given the shop on lease based on his lease bid of Rs.1,25,000/-. For the year 2018-19, Shop No.2 in New Commercial Complex has been taken in public auction by one Mr.P.Pandiaraj for Rs.2,02,000/- and Shop No.5B has been given on lease by public auction to Mr.Elumalai for his bid of Rs.1,33,500/-"

6. Learned counsel for the petitioner urged before us that this Court dealt with a similar controversy in W.A.No.203 of 2018 and other connected matters in the case of N.Manoharan and Others v. State of Tamil Nadu and Others, decided on 19.04.2018, and, in Paragraph No.19 of the said order, a Division Bench of this Court observed that tender-cum-public auction of the shops is the only proper and effective method to augment the income of

the local bodies and G.O.Ms.No.92, dated 03.07.2007, has outlived its purpose and utility and also is not in consonance with the ratio laid down by the Honourable Supreme Court that the best way to get the maximum revenue is by way of public auction. He, therefore, submitted that since the renewal of the leases in the present case has been done by the respondent-Town Panchayat on the basis of the enhanced rentals determined by P.W.D. rates in terms of G.O.Ms.No.92, the same is not sustainable in law. The learned counsel also made certain bald allegations against Respondent No.6, who headed the said Town Panchayat, at the time of renewal of some of these leases.

7. The learned Special Government Pleader, representing the Town Panchayat, as well as the learned counsel representing the lessees vehemently opposed the submissions and urged that the Town Panchayat has to taken into account the interest of the existing lessees and, therefore, their continuity of the business cannot be put at peril by holding the public auction every time the lease period expires. The learned Special Government Pleader also submitted that G.O.Ms.No.32, dated 03.07.2007, has never been struck down by the Court and, to fetch maximum revenue, the respondent-Town Panchayat adopts the basis of renewal of lease on the basis of rentals determined by Public Works Department. He further submitted that whenever the contingency of putting the shops in question to public auction arises and the increased rentals not being acceptable to the lessees and though the public auction might fetch higher revenue, that does not per se mean that the renewal on the basis of increased rental determined by Public Works Department, taking into account the relevant factors, can be set at naught, at the instance of the petitioner.

8. Learned counsel for the Respondents-Lessees also supported the aforesaid submissions and tried to level the counter allegations by submitting that this so called Public Interest Litigation has been filed on the basis of political vendetta, as the petitioner has lost a series of elections against Respondent No.6, who finally got elected as a Member of the Legislative Assembly.

9. Be that as it may, we are here not to go into the allegations and counter allegations of political nature made against each other by the private parties viz., the petitioner and the sixth respondent. The said allegations, not based on any cogent evidence, cannot be adjudicated or even relied upon for deciding the controversies in the PIL jurisdiction, which, altogether, for a different purpose, this Court exercises under Article 226 of the Constitution of India.

10. As far as the validity and tenor of G.O.Ms.No.92, dated

03.07.2007, is concerned, we are conscious of the fact that the said G.O. still holds the field and despite the observations to the contrary, a Co-ordinate Bench of this Court never felt it advised to strike it down on the earlier occasion. Renewal of the existing leases on the basis of increase in rent after nine years cannot be said to be arbitrary, even though the period of lease got over and the shops in question were not put to public auction for determining the new lease rent. It is for the State Government to make such policy decisions in this regard and it is not open to the Court to substitute its own wisdom in such cases. Unless the policy decisions taken by the State Government are found to be ex facie arbitrary and illegal and which shock the conscience of the Court and which are found to be violative of Article 14 of the Constitution of India, the Court would not normally tread into the domain of the State in the policy making decisions in such matters. Policy decisions are taken by the competent authorities or legislative bodies, taking into account all the relevant factors, of which, they are supposed to be the best arbiters.

11. We find in the present case that renewal of lease of the shops situated in Gingee Bus Stand based on PWD's assessment of rentals has been done in accordance with the provisions of G.O.Ms.No.92, dated 03.07.2007, and no evidence to the contrary has been placed before us to call in question such renewal, except the bald allegations against Respondent No.6. Merely because some instances of a higher revenue by way of public auction in some cases have been pointed out by the petitioner, we cannot hold that renewal of all the leases of the existing lessees on the basis of upward PWD's assessment of the rentals is per se illegal and arbitrary. It is for the Town Panchayat concerned and the State Government to take policy decisions in this regard as to whether to go for renewal after the given period by way of PWD's assessment or by fixed increase in rentals or to put all the shops to public auction for deciding the rentals from time to time. No one method alone can be decided on the anvil of Article 14 of the Constitution of India by the Court. It is a combination of multiple factors and facts, which have to be taken into account by the competent bodies concerned, and mere increase in rentals by way of public auctions cannot be considered as the sole and most suitable method of giving the public property on lease rentals.

12. Of course, public auction passes the test of fairness, transparency and maximising the revenue, but, there are other factors like continuity of business of the existing lessees in the shops for long number of years and earning a particular type of goodwill, besides consideration of livelihood. These myriad factors can only be taken into account by the competent legislative bodies or public bodies, which are required to take

policy decisions in this regard, and it is not for the Court to strike down the contracts of lease, just because some instances of fetching of higher revenue by way of public auction are brought to the notice of the Court. Neither the validity of G.O.Ms.No.92, dated 03.07.2007, has been specifically challenged on the basis of cogent material nor this Court, on an earlier occasion, despite making an observation to the contrary, chose to strike it down.

13. We are satisfied that G.O.Ms.No.92, dated 03.07.2007, as it stands, has been followed in letter and spirit while renewing the leases of the lessees at Gingee Bus Stand and there is no evidence on record to quash or strike them down. The contention that public auction would have fetched a better revenue for the benefit of the Town Panchayat in question, in our opinion, is by itself not sufficient to set aside the renewal of the leases in the present case.

14. We, therefore, do not find any merit in this Public Interest Litigation Petition, which is disposed of accordingly. No costs. Consequently, the connected W.M.P.Nos.18283 of 2018 and 2360 of 2019 are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
State of Tamil Nadu,
Municipal Administration &
Water Supply Department,
Fort St.George,
Chennai-600 009.
- 2.The Director,
O/o.Director of Town Panchayat,
Kuralagam Building,
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- 3.The District Collector,
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Town Panchayats,
Cuddalore Division,
Cuddalore.

5.The Executive Officer,
Gingee Special Grade Town Panchayat,
Gingee,
Villupuram District.

+1cc to Mr.G.Ethirajulu, Advocate SR.No.10147

+1cc to Government Pleader, High Court, Madras SR.No.10780,10559

W.P.No.15392 OF 2018

BR (CO)
GMY (05/03/2019)



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