

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:01.10.2019

Coram:

THE HONOURABLE DR.JUSTICE G. JAYACHANDRAN

Writ Petition No.28712 of 2019
and
W.M.P.No.28461 of 2019

A.Siva

.. Petitioner

/versus/

1.The Municipal Administration Zonal Director,
Office of the Directorate of the
Municipal Administrative Zonal Director,
Chengalpet (E), Tambaram,
Chennai 600 045.

2.The Commissioner,
Anagapathur Municipality,
Anagapathur, Chennai 600 070.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari
calling for the records relating to the 2nd respondent's
proceedings Na.Ka.No.767/ 2014/A1, dated 27.03.2019 and
consequent proceedings in Na.Ka.No.767/2014/A1 dated 10.09.2019.

For Petitioner :Mr.K.Sakthivel

For Respondents:Mr.N.Inbanathan, AGP for R1

Mr.P.Srinivas,
Standing Counsel for R2

O R D E R

By consent, the writ petition is taken up for final
disposal at the admission stage itself.

2. Heard Mr.K.Sakthivel, learned counsel appearing for
the petitioner and Mr.N.Inbanathan, learned Additional
Government Pleader, who takes notice for the first respondent
and Mr.P.Srinivas, learned standing counsel, who takes notice
for the 2nd respondent.

3. The petitioner herein is a successful bidder in the auction held by the Anagapathur Corporation for collecting Toll in Nalangadi. Having been successful bidder and taking the lease for a period of three years from 01.06.2018 to 31.03.2018, he has remitted the bid amount in part.

4. According to the petitioner, since the lease was not commercially viable for him, he has intimated the respondents to discontinue the lease. In his letter dated 25.03.2019, the petitioner alleged to have informed the Commissioner of Corporation that the lease shall be terminated. Thereafter, the 2nd respondent on 25.03.2019 has issued a demand notice to the petitioner saying that having been the successful bidder and failed to pay the bid amount even for the first year, his request to cancel the lease cannot be entertained in view of the ensuing parliament election and the petitioner has to abide by the terms of the lease. Subsequently, on 27.03.2019 the 2nd respondent has issued the proceedings demanding the lease amount for the second year 2019-2020 with 5% increase in the lease amount as per the original tender terms and the petitioner has also been instructed to deposit the 50% of the lease amount within two months and the balance 50% at the end of December 2019. The petitioner having received the proceedings, on 13.05.2019 has reiterated his request of cancelling the lease from 31.03.2019 and has expressed his inability to continue the contract. The second respondent pursuant to his request has issued notice dated 16.05.2019 intimating the petitioner that having taken lease and agreed to continue the lease for a period of three years with 5% increase at the end of the 1st and 2nd years, he cannot repudiate the contract and he will be held liable for all the monetary loss.

5. From the records, this Court finds that the petitioner enclosing his medical certificate again sought for cancellation of the lease agreement. Ultimately on 10.09.2019, the 2nd respondent has issued demand notice to the petitioner herein being the successful bidder calling upon him to pay the bid amount of Rs.3,75,000/- for collecting toll and also bound to make 5% increase in the bid amount for the second year of the lease period 2019-2020. In spite of intimating the same on 27.03.2019, the petitioner has not paid that money and therefore, the petitioner has to pay the money within 15 days from the date of the notice or else, action will be taken for recovery of the money. This order is impugned by the petitioner in this writ petition.

6. The contention of the learned counsel appearing for the petitioner is that having intimated the Corporation regarding his intention to repudiate the contract, there is no question of demanding lease amount for the current year and the

impugned order is per se illegal and hence, it has to be quashed.

7. After pursuing the records and hearing the submissions of the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the 1st respondent and the learned standing counsel appearing for the 2nd respondent, this Court finds that it is the clear case of breach of the terms of contract wherein the Municipality has thought it fit to recover the money pursuant to the terms of the contract. The said impugned notice cannot be interfered with. If the petitioner is not intended to continue the lease, he has to suffer the consequence for the said breach. The matter being purely contractual in nature based on the terms of the contract entered between the petitioner and the Corporation no fundamental right or constitutional right prima facie found violated. Hence, this Writ Petition is not sustainable in law.

8. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To:

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2.The Commissioner,
Anagapathur Municipality,
Anagapathur, Chennai 600 070.

+1 cc to Mr.K.Sakthivel, Advocate, S.R.No.83844

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SSV(CO)
SSM(01/10/2019)