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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2019

CORAM:

THE HONOURABLE **MR.JUSTICE T.S.SIVAGNANAM**

and

THE HONOURABLE **MRS.JUSTICE R.THARANI**

Writ Petition (MD).No.19649 of 2019

and

W.M.P(MD)No.16104 of 2019

M.Senthil Kumar

... Petitioner

Vs.

1.The Commissioner,
Madurai City Municipal Corporation,
Madurai District.

2.The Assistant Commissioner (Revenue),
Madurai City Municipal Corporation,
Madurai District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Mandamus to call for the records relating to the impugned notice kt2/k.r.1/010504/19 dated 26.08.2019 passed by the second respondent and quash the same as illegal and consequently direct the first respondent to transfer the shop license Ref.No.tp4/117675/80 dated 07.10.1980 in the petitioner's name from his father's name based on the representation of the petitioner dated 03.09.2019.

For Petitioner : Mr.M.Suresh

For Respondents : Mr.R.Murali

O R D E R

(Order of the Court was made by **T.S.SIVAGNANAM,J.**)

Heard Mr.M.Suresh, learned counsel for the petitioner and Mr.R.Murali, learned counsel who accepts notice for the respondents.

2.An earlier occasion, we have considered the validity of the identical notice and all the writ petitions have been dismissed. While dismissing the writ petitions, we took note of the direction issued by the Hon'ble Division Bench in W.P(MD).Nos.12188, 4339 and 13026 of 2019 dated 02.07.2019. The said order reads as follows:-

"This Court, in continuation and in conjunction with the orders dated 04.06.2019 and 11.06.2019, is passing the following order.



2. Heard the respective learned Counsel for the petitioners, Mr.K.Chellapandian, learned Additional Advocate General assisted by Mr.R.Murali, learned Standing Counsel appearing for Madurai Corporation and Mr.J.Gunaseelan Muthaiah, learned Additional Government Pleader appearing for the official respondents.

3. The learned Standing Counsel appearing for Madurai Corporation has produced a list of road side shops, which have been granted licence in respect of 4 zones and also the licence amount payable and arrears of licence amount and it is relevant to extract hereunder the same:

MADURAI CORPORATION ROAD SIDE SHOPS RENT PENDING ABSTRACT				
Sl.No.	Zone	No. of Shops	Current Rent Amount	Balance (March-2019)
1	ZONE-1	92	124165	1098005
2	ZONE-2	224	340013	2890924
3	ZONE-3	53	74223	733844
4	ZONE-4	173	421223	6828185
	TOTAL	542	959624	11550958

4. It is also brought to the knowledge of this Court by the learned Standing Counsel appearing for Madurai Corporation that in compliance of the order passed in W.P(MD)Nos.20571 of 2018 and 22693 of 2018, on account of demolition and reconstruction of Periyar Bus Stand in Madurai City, old shop owners have been given priority for allotment of shops and the Division Bench of this Court has also passed an order directing all the licensees of the shops to vacate the shops and till the new complex is constructed, Madurai Corporation may consider for alternative place temporarily for those persons, who are to be evicted/vacated on their own volition in the light of demolition of Periyar Bus Stand. Accordingly, the said licensees have been accommodated by permitting them to put temporary tin sheet bunk shops on the side of M.G.R. Bus Stand, Mattuthavani, especially, of the storm water drains.

5. The learned Standing Counsel appearing for Madurai Corporation also pointed out that the construction of new bus stand is proceeding smoothly and fastly and as and when the said bus stand is



completed, the licensees who are temporarily accommodated near M.G.R. Bus Stand, Mattuthavani, will be accommodated in the shops to be located in the newly constructed bus stand.

6. The fourth respondent - Divisional Engineer, Highways Department, Construction and Maintenance, Madurai, has filed a counter affidavit dated 10.06.2019 and the contents of the paragraph 3 of the affidavit would disclose that 4 shops have been allotted in favour of (i) Tamilnadu Tea Development Corporation (Near Flower Market Entrance); (ii) Tamilnadu Fisheries Department (Nearby Omni Bus Stand Entrance); (iii) Tamilnadu Fisheries Department (Nearby Fruit Market Junction); and (iv) Madurai District Co-operative Milk Producers Union Limited - Aavin (Nearby Fruit Market Junction) and would submit that most of the roads in Madurai Corporation belong to National/State Highways Department and the said submission, on instructions, is placed on record.

7. Incidental question arises for consideration is as to the rights of Madurai Corporation to allot bunk shops on the road margins de hors permission/authorisation and it is relevant to extract hereunder Section 259 of Madurai City Municipal Corporation Act, 1971:

"259. Power to allow certain projections and erections.- (1) The Commissioner may grant a licence subject to such conditions and restrictions as he may think fit to the owner or occupier of any premises-

(a) to put up or continue to have verandas, balconies, sunshades, weather frames and the like, to project over a street; or

(b) in streets in which the construction of arcades has been sanctioned by the council, to put up or continue to have an arcade; or

(c) to construct or to continue to have any step or drain covering necessary for access to the premises.

(2) With the concurrence of the Superintendent of Police, Madurai or any officer authorised by him in this behalf, the Commissioner may grant a licence subject to such conditions and restrictions as he may think fit, for any temporary construction in any street or in any public place the control of which is vested in the corporation.



(3) No licence shall be granted under sub-section (1) if the projection or construction is likely to be injurious to health or cause public inconvenience or otherwise materially interfere or result in material interference with the use of the road as such.

(4) On the expiry of any period for which a licence has been granted under this section or after due communication of an order of suspension or revocation of such licence, the Commissioner, may, without notice, cause any projection or construction put up under sub-section (1) or sub-section (2) to be removed, and the cost of so doing shall be recoverable in the manner provided in section 479 from the person to whom the licence was granted.

(5) The council shall have power to lease road sides and street margins vested in the corporation for occupation on such terms and conditions and for such period as it may deem fit:

Provided that no such lease for any term exceeding three years shall be valid unless the sanction of the Government therefor shall have been first obtained:

Provided further that the Government consider that any occupation of a road side or street margin under a lease granted by the council under this section is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road side or street margin as such, the Government may direct the council to cancel or modify the lease, and the council shall, thereupon, cancel or modify the lease accordingly."

8. Provisos 1 and 2 to sub-section 5 of Section 259 of Madurai City Municipal Corporation Act, 1971, mandate that no such lease for any term exceeding three years shall be valid unless the sanction of the Government therefor shall have been first obtained and if the Government consider that any occupation of a road side or street margin under a lease granted by the council under this provision is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road side or street margin as such, the Government may direct the council to cancel or modify the lease,



and the council shall, thereupon, cancel or modify the lease accordingly.

9. It is the submission of the learned Standing Counsel for Madurai Corporation, on instructions, that no such permission has been obtained from the Government for leasing out the road sides or street margins in favour of the licensees of bunk shops in terms of the said provision and more particularly, second proviso to sub-section 5 of Section 259 of Madurai City Municipal Corporation Act, 1971, which provides that if such location is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road side or street margin as such, the Government may direct the council to cancel or modify the lease, and the council shall, thereupon, cancel or modify the lease accordingly.

10. The application of second proviso to sub-section 5 of Section 259 of Madurai City Municipal Corporation Act, 1971, would apply only to Madurai Corporation, who has to obtain sanction and admittedly, the same has not been done. It is also conceded that licences have been granted for 542 road side shops on road margins and as already pointed out, almost all roads in Madurai Corporation belong to National/State Highways Department and in the absence of any express or written permission, such licences ought not to have been granted.

11. It appears from the submissions of the learned Standing Counsel for Madurai Corporation that no periodical inspection has also been done as to whether the licensees of bunk shops are carrying on business or whether any sub-letting has been done and whether the purpose for which licence has been granted has been misused or not and further that whether any further encroachment has been caused either in front or sideways of the bunk shops.

12. It is also the submission of the respective learned Counsel for the petitioners that the licensees continue to be in occupation for decades together and taking umbrage of G.O(Ms.)No.92, Municipal Administration and Water Supply (Finance-IV) Department, dated 03.07.2007, periodical extension of lease has been granted and thereby, the revenue which ought to have been earned by the local



body by public auction also get affected and with regard to the said submission, it is also useful to consider the decision of the Division Bench of this Court in **P.Muthusamy v. State of Tamil Nadu, rep. by its Secretary to Government, Municipal Administration and Water Supply Department, Chennai and another** reported in (2014) 5 MLJ 129 and it is relevant to extract hereunder paragraphs 20 to 24:

"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 for ever. 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 commercial in nature, the petitioners, being licensees, cannot insist that the rent, which as they think, just and proper alone is liable to be paid. Since the licence is to be granted by the respondent-Municipality, while making offer, the said authority can impose its own terms in accordance with law. While accepting the said offer, the petitioners cannot insist that the condition attached therein cannot be imposed. A perusal of the Government Orders referred to above as well as the orders impugned make it clear that the rent has been fixed based upon the prevailing market value and not otherwise. What has been given by way of extension to an existing licensee was only a concession. The subsequent extension has been made during the pendency of the writ petitions. The said decision was made in view of the undertaking given by the licensees. An undertaking was given



in connection with the payment as well as on the withdrawal of the writ petitions. The Government Orders also state that in the event of non-compliance of the conditions imposed including the payment of appropriate rent, a licensee is liable to be removed.

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22. The resolution has been passed after making detailed discussion and it was also passed as a consequence of the earlier order dated 14.12.2012 by which rent was fixed. Since the said rent so fixed was not paid, the respondent-Municipality was made to pass the impugned resolution. Therefore, it cannot be said that the impugned resolution has been unilaterally passed and as such, the said decision is in accordance with the Government Orders passed, which confer the power on the respondent-Municipality to take action towards the eviction from the shops in the event of non-payment of rent payable. The extraction of the related paragraphs of the resolution would clearly show that relevant materials have been taken into consideration while passing the same. The respondent-Municipality has got its own duty and obligation to perform. Appointments will have to be made to the public office and salaries will have to be paid. Money will have to be spent towards the welfare measures. The assessment made also indicates that the proposed auction would bring more money. The best way to get the maximum revenue is by way of public auction. This will also create a level playing field enabling others to participate along with the petitioners/licensees. Therefore, we do not find any arbitrariness in the action of the respondent-Municipality. The reliance made by the petitioners on the communication dated 12.03.2009 cannot be accepted since it cannot overreach the Government Orders which speak about removal when conditions are not complied with. The fact that the Commissioner of Municipal Administration directed the respondent-Municipality to fix the market rent as the rent payable based upon the Government Orders which in turn was complied with would also show that there is no quarrel with the position that the market rent shall be the basis for the fixation of the rent payable by the



licensees. In any case, the petitioners, being the defaulters, cannot contend that they should be allowed to continue forever. As the orders impugned have been passed by taking into consideration of the relevant materials, we do not find any room for interference.

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23. The decision relied upon by the learned counsels appearing for the petitioners Labha Ram and Sons and Others v. State of Punjab (supra) cited above has no application to the facts involved in the present cases. In the said decision the existing licensees were asked to vacate in view of the creation of a new multi complex.

24. It is settled law that an instrumentality of a State should always endeavour by following the procedure by way of public auction or inviting tender, as held in P.N.Chinnasamy and Others v. Assistant Director of Town Panchayat, Coimbatore District and Others (2011) 1 CTC 584 : LNIND 2011 MAD 102, S.Selvarani v. Commissioner, Karaikudi Municipality (2005) 1 CTC 81 : LNIND 2004 MAD 1600 : (2005) 1 MLJ 394, C.Jayanthi v. Commissioner, Mettur Municipality, Salem District (2006) 5 CTC 236 : LNIND 2006 MAD 1770 : (2006) 4 MLJ 128, D.Kannan v. Commissioner of Municipal Administration, Chepauk CDJ 2010 MHC 1636 : LNIND 2010 MAD 759 and Ram and Shyam Company v. State of Haryana and Others AIR 1985 SC 1147 : (1985) 3 SCC 267 : LNIND 1985 SC 188."

13. The booklet containing the details of road side shops, dated 07.06.2019 submitted by the Assistant Commissioner (Revenue), Madurai Corporation, as already pointed out, had disclosed the fact that licences have been granted to 542 road side shops.

14. In the considered opinion of this Court, the platforms and road side margins are meant for pedestrians and Madurai Corporation is having neither legal right nor moral obligation to use the said road side margins/storm water drainage platforms for location of bunk shops and it prima facie appears to be against the public interest also.

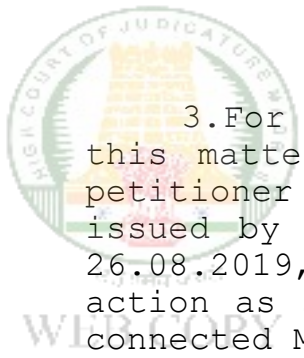


15. In the light of the above facts and circumstances of the case, the Commissioner, Madurai Corporation, with the help of the officials, shall cause inspection of all 542 road side shops which are located in Zones 1 to 4 and file a status report with supporting documents and photographs, containing the following details:

- (a) Details of licensees with Name, Address, Aadhar Card, Voter Identity Card, Driving Licence, Ration Card;
- (b) Period of licence;
- (c) Extension of period of licence for how many times;
- (d) Original licence amount and the licence amount being paid by the licensees;
- (e) Purpose for which licence as well as trade licence was granted and the present purpose that is being used by the licensees;
- (f) Whether there is any sub-letting of the licence granted to the licensees?
- (g) Whether the road side shops are abutting or encroaching upon the road margins of National/State Highways and whether there are encroachments on the part of the bunk shops owners either in front of or rear side or side ways of the bunk shops?
- (h) If food articles are sold or dispensed with, whether the said dispensation/sale/preparation of food articles are in conformity with fssai standards?
- (i) Manner in which the electricity connections have been obtained;
- (j) Availability of any other amenities other than the one permitted by Madurai Corporation;
- (k) Whether the areas in and around the bunk shops are maintained in neat, tidy and sanitary condition; and
- (l) Lastly, if not the least, what is the difficulty or inconvenience caused to the pedestrians of road users on account of location of the said bunk shops.

16. The said status report with supporting documents and photographs shall be submitted to this Court on 29.07.2019.

Call on 29.07.2019. Notice through Court as well as privately to the newly impleaded respondents by then."



3.For the above reasons, we cannot take a different view in this matter. Accordingly, this Writ Petition is dismissed. The petitioner is granted eight weeks time to comply with the direction issued by the respondents corporation in the impugned order dated 26.08.2019, failing which, the respondents corporation shall take action as stated in the impugned order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1.The Commissioner,
Madurai City Municipal Corporation,
Madurai District.

2.The Assistant Commissioner (Revenue),
Madurai City Municipal Corporation,
Madurai District.

+1 CC to M/s.R.MURALI, Advocate (SR-86360[F] dated 12/09/2019)

+1 CC to M/s.M.SURESH, Advocate (SR-86683[F] dated 13/09/2019)

Writ Petition (MD).No.19649 of 2019

12.09.2019

JM/10.10.2019/10P/5C