



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2020

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THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A(MD)No.798 of 2020
and
C.M.P(MD)No.4536 of 2020

R.Kannan

... Appellant / Petitioner

-Vs-

The Commissioner,
Srivilliputhur Municipality,
Srivilliputhur,
Virudhunagar District.

... Respondent / Respondent

Prayer: Writ Appeal - filed under Clause 15 of the Letters Patent Act, to set aside the order passed in W.P(MD)No.7915 of 2017 dated 24.07.2020.

Prayer in WP(MD). 7915 of 2017 :

Writ Petition is 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 proceedings pursuant to the Notice dt.7.4.2017 in Na.Ka.No.358/2017/A3 of the Respondent herein in respect of the Shop at No.60 Godown Netaji Road 2, Srivilliputhur, Virudhunagar District, and quash the same and consequently, direct the Respondent herein to renew the lease in respect of Shop No. 60 Godown Netaji Road 2, Srivilliputhur, Virudhunagar District in favour of the petitioner for the period from 1.4.2017 to 31.3.2020.

For Appellant : Ms.Akilandeswari for
M/s.T.Lajapathi Roy

JUDGMENT

[Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.**,]

The appellant is the writ petitioner.

2. The writ petitioner filed W.P(MD)No.7915 of 2017, praying for issuance of a Writ of Certiorarified Mandamus, calling for the

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records relating to the proceedings / notice dated 07.04.2017 in respect of the Shop bearing No.60, Godown Netaji Road 2, Srivilliputhur, Virudhunagar District and quash the same, with a consequential direction, directing the respondent / local body to renew the lease / licence in respect of the said shop in his favour for the period from 01.04.2017 to 31.03.2020. The said writ petition after contest, came to be dismissed along with connected writ petitions on 24.07.2020 by the learned single Judge and aggrieved by the dismissal of the writ petition, the present writ appeal is filed.

3. It is the case of the appellant / writ petitioner that the said shop was leased out in his favour and he is carrying on the business of Rice Merchant in the said shop and was paying the lease / licence amount regularly to the respondent / Municipality. It is further submitted by the appellant / writ petitioner that once in three years, the lease / licence amount of the shop had been increased at 15% per annum and the increased lease / licence amount was also regularly paid by him. The respondent / Municipality sent a communication on 07.04.2017, to the appellant / writ petitioner, stating among other things that the lease / licence period of the said shop, is coming to an end by 31.03.2017 and it has to be extended beyond that and in term of G.O.Ms.No.92, Municipal Administration and Water supply Department, dated 03.07.2007, the lease / licence amount has to be revised once in three years and further sent a communication dated 30.11.2016 and in and by which, the lease / licence amount sought to be revised at Rs.27,600/- per month and on that condition, the lease period will be extended from 01.04.2017 to 31.03.2020. The appellant / writ petitioner by making a challenge to the said communication dated 07.04.2017, came forward to file the writ petition and it was entertained along with similar writ petitions.

4. The learned Judge has taken note of the factual aspects, recorded a finding that after expiry of the nine years period, the lessees / licensees, can continue to occupy the shops only if they accept the demand made by the respondent and if the offer of the respondent is not acceptable, they can very well vacate and hand over the vacant possession to the respondent / Municipality and also taking into consideration the well settled legal position that the public property should be auctioned to fetch the maximum revenue and though it was offered to the appellant / writ petitioner to pay the higher lease / licence amount, he was not inclined to the same and accordingly, dismissed the writ petition vide common order dated 24.07.2020 made in W.P(MD)Nos.7914 to 7916 and 10905 of 2017. The appellant / writ petitioner aggrieved by the dismissal of W.P(MD)No.7915 of 2017, has filed this writ appeal.



5. The learned counsel appearing for the appellant / writ petitioner would submit that enhancement of the lease / licence amount manyfold is per se unreasonable and the respondent / Municipality, failed to take into consideration of the fact that whatever the increased rent during the subsistence of the earlier lease / licence period, it was promptly paid by him and further points out that subsequent to the dismissal of the writ petition, a representation was also submitted to reduce the lease / licence amount and expressed his willingness to vacate and hand over the vacant possession of the shop in question and the respondent / Municipality, is yet to respond and hence, prays for appropriate orders.

6. This Court has carefully considered the submissions made by the learned counsel appearing for the appellant and also perused the materials placed before it.

7. It is very surprised to note that though the public auctioning of the shops belonging to the local body is the usual norm for getting highest bid, which would benefit the local body. Surprisingly, the lease period is extended under the garb of G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, for the reasons best known to the said administrative Department as well as the local body.

8. In (2014) 5 MLJ 129 (*P.Muthusamy vs. State of Tamil Nadu, rep. by its Secretary to Government, Municipal Administration and Water Supply Department, Chennai and another*), auctioning of the shops belonging to the local body was put to challenge and scope of G.O.Ms.Nos.147 and 92 of Municipal Administration and Water Supply (Finance IV) Department, dated 30.12.2000 and 03.07.2007 respectively came up for consideration and it is relevant to extract the following Paragraphs:

"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.

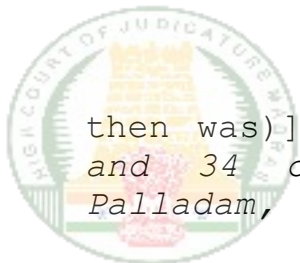


21. The object of letting out the shops is to collect more revenue for the respondent-Municipality, which is meant to be used for welfare measures. The Government Orders, as narrated above, are very specific about the purpose of auction followed by lease/licence. Since the transactions are commercial 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.

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 SCC 1147 : (1985) 3 SCC 267: LNIND 1985 SC 188."

9. The said judgment was referred to and subsequently followed by a learned single Judge Justice V.RAMASUBRAMANIAN (as the Hon'ble Judge

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then was)] in the decision reported in 2015(3) CTC 170 (C.Vinoba and 34 others vs. the Commissioner, Palladam Municipality, Palladam, Tirupur District).

10. It is a well settled legal position that getting the maximum revenue in the event of auction being conducted, for the benefit of the local body, is the norm. The respondent was fair enough to renew the lease / licence at an higher amount. However, the appellant by citing personal inconvenience, did not incline to accept the same.

11. It is once again stressed by this Court that it is better for the local bodies to go for public auction of the shops under their control so as to augment the maximum revenue for their benefit and it is high time for the Municipal Administration and Water Supply Department, is to re-look into the matter regarding G.O.Ms.Nos.147 and 92 of Municipal Administration and Water Supply (Finance IV) Department, dated 30.12.2000 and 03.07.2007 respectively etc., as expeditiously as possible.

12. At this juncture, the learned counsel appearing for the appellant would submit that the appellant / writ petitioner has also sent a representation dated 26.08.2020, praying for the reduction of the lease / licence amount and also expressing his inclination to vacate and hand over the vacant possession of the shop in question. It is open to the respondent / Municipality, to consider the same and pass appropriate orders.

13. This Court on an independent application of mind to the entire materials placed, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned Judge for dismissal of the writ petition and find no merits in this writ appeal.

14. In the result, this writ appeal is dismissed confirming the order dated 24.07.2020 passed in W.P(MD)No.7915 of 2017, subject to above observations. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl side)

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/ /2020

Sub Assistant Registrar(CS)



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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Commissioner,
Srivilliputhur Municipality,
Srivilliputhur,
Virudhunagar District.
2. The Secretary to Government of Tamil nadu,
Municipal Administration and Water Supply Department,
Chennai – 600 009.

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-17356[F]
dated 18/09/2020)

Judgment in
W.A(MD) No.798 of 2020
17.09.2020

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AVS (CO)
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