

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 23.02.2021	Delivered on 31.03.2021
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CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.No. 4402 of 2021

and

W.M.P.No. 5003 of 2021

Sekar

...Petitioner

Vs.

- 1.The Collector,
Collectorate Office,
Ariyalur District.
- 2.The Block Development Officer,
Jayamkondam, Ariyalur District.
- 3.The Tahsildar,
Tahsildar Officer,
Jayamkondam,
Ariyalur District.
- 4.The Executive Officer,
Udayarpalayam Municipality,
Town Panchayat, Udayarpalayam,
Ariyalur District.
- 5.The Special Officer,
Udayarpalayam Municipality,
Town Panchayat,
Udayarpalayam, Ariyalur District.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking issuance of writ of certiorarified mandamus, to call for the records of 4th respondent made in Na.Ka.Enn.95/2021 dated 10.02.2021 is concerned and quash the same and consequently direct the 4th respondent to consider the petitioner's representation dated on 20.02.2021 (to continue the petitioner for another three years as per the G.O.92/2007).

For Petitioner : Mr.R.Rajesh

For Respondents : Mr.D.Venkatesan, Govt.Advocate

O R D E R

This writ petition is filed as against the tender notification of the 4th respondent in Na.Ka.enn 95/2021 dated 10.02.2021 and for consequential relief for extension of lease

to the petitioner for another three years as per G.O.92/2007.

2. The petitioner is a lessee of the 4th respondent for collection of toll charges in the weekly market at Udayarpalayam. The petitioner has participated in the tender conducted by the 4th respondent in the year 2015 by floating a sum of Rs.13,71,000/-. The lease was also extended by the respondents as per G.O.92/2007, Municipal Administration Department dated 03.07.2007 till 2019 - 2020. While so, the respondents, without extending the lease period further, called for an auction by a fresh tender for the year 2021-2024. Aggrieved over the same, this writ petition is filed.

3. Mr.D.Venkatesan, learned counsel for the respondents would submit that the notification inviting tender has been issued for augmenting more revenue for the Town Panchayat and there is no explicit condition in the earlier tender notification that the period of tender would be extended for further period.

4. This Court paid its anxious considerations to the rival submissions made and also perused the materials placed on record.

5. The petitioner has made out his case by referring the G.O.MS.No.92 Municipal Administration dated 03.07.2007. As per the said Government Order, the petitioner claims that his lease has to be automatically extended. The learned counsel for the petitioner has also relied on the orders of this Court in W.P (MD).No. 2752 of 2017 in support of his contention. In the said order referred by the learned counsel for the petitioner, this Court has held that there cannot be any automatic extension of lease and it cannot be renewed on its every expiry however, granted some relief of concession depending upon the facts and circumstances of the case.

6. In yet another similar issue, a Division Bench of this Court in W.A.No. 2492 of 2018 dated 10.01.2019 has passed an order that the G.O. 92 Municipal Administration Department dated 03.07.2007 is not in consonance with the settled legal position and further held as follows:-

"11. A Division Bench of this Court in the decision reported in 2014 (5) MLJ 129 (P.Muthusamy Vs. The State of Tamil Nadu rep. By its Secretary to Government) has also considered the scope of the said Government Order and it is relevant to extract paragraph no.21,22,24 of the same:

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.

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.

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. THE ASSISTANT DIRECTOR OF TOWN PANCHAYAT, COIMBATORE DISTRICT AND OTHERS ((2011) 1 CTC 584), S.SELVARANI V. THE COMMISSIONER, KARAIKUDI MUNICIPALITY ((2005) 1 CTC 81), C.JAYANTHI V. THE COMMISSIONER, METTUR MUNICIPALITY, SALEM DISTRICT ((2006) 5 CTC 236), D.KANNAN V. THE COMMISSIONER OF MUNICIPAL ADMINISTRATION, CHEPAUK (CDJ 2010 MHC 1636) and RAM AND SHYAM COMPANY V. STATE OF HARYANA AND OTHERS ((1985) 3 Supreme Court Cases 267)."

12. The Division Bench in the above cited decision has taken into consideration, various pronouncements of the Hon'ble Supreme Court of India and observed that the instrumentality of the State should always endeavour by following the procedure by way of public auction or inviting tender. In the considered opinion of this Court, all Local Bodies should have made every endeavour to go for public auction for the reason that it was definitely inviting competition and earn / augment more revenue for the local body which can be used for public purpose and however, for the reasons best known to them, the Municipal Administration and Water Supply Department of the Government of India based on G.O.(Standing) No.92, are going on extending the license period once in 9 years, by immediate increase of the license amount. In so far as the case on hand is concerned, the appellant / writ petitioner was afforded with an opportunity to pay the increased

license amount for the period between 01.07.2016 to 31.03.2019 and he chooses to make a challenge to the said proceedings on the ground that the increase of the license amount by the respondent / local body was not at all fair.

13. In the considered opinion of this Court, the increase of the license amount has been done in a fair and appropriate manner and the procedures adopted for doing so, has been explained in Paragraph No.5 of the counter affidavit filed by the respondent in the writ petition. It is also a well settled position of law that the licensee cannot ask for renewal as a matter of right and it is for the local body to increase the license amount by adopting fair procedures for the purpose of increasing the revenue."

It is seen that there is no explicit condition in the earlier tender notification ensuring an extension of lease. More over as per the order of the Hon'ble Division Bench as stated supra, the relief sought for in this writ petition cannot be considered.

7. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS III)

/TRUE COPY/

Sub-Assistant Registrar

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To:

- 1.The Collector,
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Ariyalur District.
- 2.The Block Development Officer,
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Ariyalur District.

5.The Special Officer,
Udayarpalayam Municipality,
Town Panchayat,
Udayarpalayam, Ariyalur District.

+1CC TO M/S.GOVERNMENT PLEADER, SR.NO. 21473

GPL (CO)
KKN 27.04.2021

W.P.No. 4402 of 2021
and
W.M.P.No. 5003 of 2021



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