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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

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THE HONOURABLE MR. JUSTICE B.PUGALENDHI

W.P.No.4818 of 2021

and

WMPNos.5440 of 5444 of 2021

1.Murugesan

2.Elumalai

3.Raja

4.Sivakumar

... Petitioners

Vs

1. The District Collector,
Salem District, Salem.

2. The Assistant director of Town Panchayat,
Salem District, Salem.

3. The Executive Officer,
Kannankurichi Town Panchayat,
Salem District.

... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records of the impugned notice in Na.Ka.No.31/2021, dated 11.02.2021 issued by the third respondent, which is received on 17.02.2021 and quash the same and consequentially direct the third respondent to extend the lease of right of the Modern Pay and Use Toilets situated at Kannankurichi Town Panchyat, Salem District to the petitioners for one year, i.e., 2021-2022 to compensate the loss of lease right of year 2020-2021 by considering the abnormal Covid-19 Pandemic situation.

For Petitioners : Mr.M.Rajendran

For Respondent : Mr.Annai Ezhil
Nos.1 & 2 Government Advocate

For Respondent : Mr.Iniyan
No.3



ORDER

This writ petition is filed challenging the impugned auction notice dated 11.02.2021 issued by the third respondent in respect of public toilets in Kannankuruchi Town Panchayat and for a direction to the third respondent to extend the lease of the petitioners for a further period of one year.

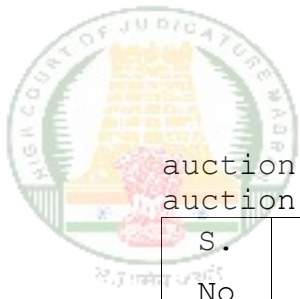
2.Learned Counsel for the petitioners submits that the petitioners have obtained lease right of the modern pay and use toilets situated at Kannankuruchi Town Panchayat, Salem District for a term of years, i.e., 2018 - 2019 to 2020 - 2021. Accordingly, they have paid the entire lease amount for the year 2018-2019. After completion of one year, the third respondent renewed the lease period for one year, i.e., 2019-2020 by increasing 5% of the last year's lease amount and they have paid the increased lease amount. They have also paid the lease amount for the year 2020-2021 on 10.02.2020.

3.The learned Counsel for the petitioners further submits that since lock down was imposed due to covid-19 pandemic, the said pay and use toilets in the Kannankuruchi Town Panchayat were closed from March 2020. Therefore, the petitioners incurred loss. While so, the petitioners made a representation to the third respondent, requesting to extend the lease period for a period of one year, i.e., 2021 - 2022.

4.The learned Counsel further submits that without considering their requests, the third respondent issued impugned auction notice dated 11.02.2021 in respect of those toilets situated in Kannankuruchi Town Panchayat. Therefore, the learned Counsel submits that when the petitioners suffered loss for a whole year, i.e., 2020-2021, they must be compensated for the same by extending the lease period for further period of one year. However, fresh auction notice has been issued by the third respondent. Therefore, the impugned auction notice is liable to be set aside.

5.The learned Government Advocate appearing for respondents 1 and 2 submits that the petitioners have obtained the lease rights in respect of the pay and use toilets in Kannankuruchi Town Panchayat for the year 2018-2019 to 2020 - 2021. They have paid the lease amount for the said period and they have enjoyed their lease rights.

6.The learned Government Advocate further submits that as per G.O.Ms.No.181 Municipal Administration and Water Supply Department dated 19.09.2008, auction has to be conducted once in a three years. Since the earlier lease period was to expire on 31.03.2021, public auction notice was issued on 11.02.2021 and



auction was also conducted on 18.02.2021. The details of the auction reads as follows:

S. No	Details	Lease holders	Lease amount for 2021-2022
1	3 rd Ward opposite to Marriage Hall	Sujai	75200
2	3 rd ward S.R.Subburayan Street	Karthikeyan	68000
3	4 th ward	Senthil Kumar	162520
4	12 th Ward	Ramajeyam	153333
5	13 th Ward	Venkatesan	71210
			530263

7.The above said bidders have also paid the lease amount on 18.02.2021 itself. However, requests were made for conducting re-auction in respect of Sl.Nos.1,2,3 and 4 and additional 10% amount with the above said lease amount has been deposited on that date itself, as follows:

S. No	Details	Lease holders	Lease amount for 2021-2022
1	3 rd Ward opposite to Marriage Hall	Murugan	82720
2	3 rd ward S.R.Subburayan Street	Sundaram	74800
3	4 th ward	Govindasamy	178772
5	13 th Ward	Sankaranarayan	78331
			414623

In view of the above, it was proposed to conduct re-auction on 03.03.2021. However, this Court has granted interim stay of the auction.

8.The learned Government Advocate also submits that though the petitioners have paid the lease amount, due to covid - 19 pandemic, lock down was imposed. Further As per the above said Government Order, once in a three years, auction has to be conducted and therefore, in view of the said Government Order, notice has been issued for conducting auction for the period 2021-2022. There is an increase in the lease amount nearly 3 to 4 fold of the last year's lease amount. The income to the Town Panchayat is paramount important than the individual.

9.This Court paid its anxious consideration to the rival



submissions and perused the materials placed on record.

10. According to the respondents, the lease amount is nearly three fold higher than the lease amount of the previous year, this itself would show that there would be much income and profit to the private lease holders. The private contractors, who are taking lease of public toilets on meagre amounts, are exploiting the general public by charging exorbitantly. People who are not affordable for their charges, are practising open defecation and urination, ultimately, the very object of the above Acts and Rules enacted in this regard and the amount spent by the Government under the Swachh Bharat Mission are defeated.

11. In this case, the petitioners claim that they have remitted the lease amount for the year 2020-2021, but they have suffered loss because of the lock down imposed due to covid - 19 pandemic. However, neither the petitioners nor the respondents have produced the lease agreement of the petitioners for the year 2020-2021. It is purely a contractual obligation and therefore, the petitioners shall approach the respondents for refund of the lease amount for the year, ie., 2020 - 2021 and the respondents, according to the terms of the lease agreement, shall take a decision for refund of the lease amount deposited by the petitioners for the year 2020 - 2021 within a period of four weeks from the date of receipt of a copy of this order.

12. Right to life guaranteed under Article 21 of the Constitution of India includes, right to live with dignity. The term 'life' means something more than animal existence. This right to live with human dignity enshrined in Article 21 of the Constitution of India is derived from the Directive Principles of the State Policy, particularly, Clauses (e) and (f) of Article 39 and Articles 41 and 42 of the Constitution of India. The right to life has been further extended by the Hon'ble Supreme Court in *Bandhua Mukti Morcha Vs Union of India*, reported in AIR 1984 SC 802, as follows.

"the right to life must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no state neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials"



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13. Human dignity means that making an individual or group to feel self respect and self worth. No human being can live with dignity, unless there are facilities to maintain basic hygiene. The right conferred by Article 21 of the Constitution of India cannot be meaningful, if facilities of clean and hygienic toilets are not provided to the common man.

14. Section 145 of the Tamil Nadu District Municipalities Act, 1920 mandates every Municipal Council to provide and maintain sufficient number of public toilets in proper and convenient places in neat and clean manner; Section 184 of The Chennai City Municipal Corporation Act, 1919, mandates to provide and maintain, in proper and convenient places, sufficient number of public toilets and maintain the same in clean and proper order; Section 110(e) of the Tamil Nadu Panchayats Act, 1994, mandates the duty of the village panchayat to provide the provision of public toilets and arrangements to clean whether public or private. The local bodies are expected to provide public toilets and maintain them neat and clean.

15. The available data would reveal that open defecation is commonly practised in Tamil Nadu. In order to stop this practise, the Government is also spending several crores of Rupees under Swachh Bharat Mission. The Hon'ble Prime Minister while introducing the scheme has expressed his anguish as follows:

"Has it ever pained us that our mothers and sisters have to defecate in open? The poor womenfolk of the village wait for the night; until darkness descends, they can't go out to defecate. What bodily torture they must be feeling, how many diseases that act might engender. Can't we just make arrangements for toilets for the dignity of our mothers and sisters?"

~~ Narendra Modi ~~

16. When the very object of the Swachh Bharat Mission itself is to prevent open defecation, the respondents also should bear in mind that the local bodies are not supposed to make money out of these public toilets and they have to frame mechanism to provide toilets at free of cost or at at least at lesser cost. When the public toilets are let on auction, the auction purchaser would be keen on making profit out of it rather than maintaining the toilets in neat and hygienic manner. The women, downtrodden and the general public could not raise their voice as against the mighty contractors, who are charging exorbitantly. The municipalities are also not having any mechanism to monitor the same. This Court is of the opinion that instead of viewing these public toilets as a source of income, the local bodies shall evolve a mechanism to provide, neat and hygienic toilets at free of cost in collaboration with NGOs, by



involving voluntary organisation and other organisations, who are willing to extend their hands in maintaining these toilets.

17. This writ petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

dsk

To

1. The District Collector,
Salem District, Salem.
2. The Assistant director of Town Panchayat,
Salem District, Salem.
3. The Executive Officer,
Kannankurichi Town Panchayat,
Salem District.

Copy to

1. The Secretary,
Municipal Administration and
Water Supply Department,
Fort Saint George, Chennai - 600 009.
2. The Commissioner
Municipal Administration and
Water Supply Department,
Chennai.

+1cc to the Government Pleader, S.R.No.62974

W.P.No.4818 of 2021

PL(CO)
SU(07/02/2022)