

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P. No. 12557 of 2021
and
W.M.P.No.13349 of 2021

D.Suguna

... Petitioner

-vs-

1. The State of Tamil Nadu
Rep. by its Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai - 600 009.
 2. The Commissioner of Municipal Administration,
No. 78, Urban Administrative Building,
Santhome High Road, MRC Nagar,
Raja Annamalaipuram, Chennai - 600 028.
 3. The District Collector,
District Collector Officer,
Coimbatore District.
 4. The Pollachi Municipality,
Palakad-Pollachi Road,
Pollachi - 642 001.
- ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari and Mandamus, calling for the records of the Fourth Respondent in proceedings R.C. No. 497/2020/A6, dated 03.06.2021 and quash the proceedings dated 03.06.2021 in so far the demand of license fee for the complete lockdown period to COVID-19 pandemic and consequently, directing the Respondents to grant waiver of the license fee for the period from 24.03.2020 to 06.09.2020; 20.04.2021 to the date when transport services are resumed and to reduce, revise and re-fix the license fee in a manner proportionate with the time permitted for vehicle movement for the period from 07.09.2020 onwards, in respect of the Two Wheeler parking facility at Nachimuthu Maternity Hospital, Pollachi Municipality.

For Petitioner :Mr. A.M.Esakkiappan

For Respondents :Dr. S.Suriya
Government Advocate (For R1 to R3)

Mr. B.Anand (For R4)

ORDER

The final notice dated 03.06.2021, directing the writ petitioner to deposit the balance lease amount of Rs.13,12,840/- within three days is under challenge in the present writ petition. The impugned notice states that in the event of non-payment, the licence will be cancelled and an open public auction will be conducted.

2.The petitioner was a leaseholder for running a two-wheeler parking facility for the commuters of the Pollachi bus stop and more specifically, at Nachimuthu Maternity Hospital, Pollachi Municipality. The fourth respondent invited public tender for grant of licence to collect parking charges and the petitioner was a successful bidder for the two-wheeler parking facility in Nachimuthu Maternity Hospital. As per the tender condition, the period of licence was for three years commencing from 01.02.2019 to 31.03.2022. The annual licence fee for the first year (2019-2020) is Rs.20,82,000/- and it will be increased by 5% for subsequent years. For every year, the annual licence fee has to be deposited in an advance and a sum of Rs.6,00,000/- has to be paid as refundable deposit. The petitioner had paid the amount for the first year and security deposit in advance. Accordingly, the fourth respondent/Municipality issued licence in favour of the petitioner in proceedings dated 31.01.2019 and the said licence is valid from 01.02.2019 to 31.03.2022.

3.The petitioner states that he paid the entire 2nd year amount of Rs.21,86,100/- for the period commencing from 01.02.2020 to 31.01.2021. Due to COVID-19 pandemic, the Government imposed travel restrictions and therefore, the petitioner could not able to operate the two-wheeler parking facility and she was not in a position to run the business profitably. The lockdown period was extended and partial lifting and relaxation of the restrictions were not created any conducive atmosphere for running the two-wheeler parking facility. Thus, the petitioner could not able to pay the further amount for the period from 01.02.2021 to 31.01.2022. The fourth respondent adjusted the deposit amount of Rs.9,82,568/- and directed the petitioner to deposit the balance amount of Rs.13,12,840/-. The petitioner has not paid the said

amount for more than four months and therefore, the fourth respondent issued final notice calling upon the petitioner to pay the balance amount within three days failing which, the licence will be cancelled as per the terms and conditions and the leasing right would be placed for open public auction.

4.The learned counsel for the petitioner states that the petitioner could not able to pay the amount immediately due to COVID-19 situation and therefore, in this regard, a representation dated 31.05.2021 was also sent to the respondents to consider the case of the writ petitioner. Thus, further time is to be granted for the payment of the lease amount as sought for by the respondents.

5.This Court is of the considered opinion that the licence was granted for a tenure of three years. The petitioner had already completed two years. The respondents have called for the petitioner to pay the licence fee for the third year and even after a lapse of four months, the petitioner has not paid the said amount. The fourth respondent/Municipality has to implement various welfare schemes for the benefit of the public at large from and out of the funds collected by way of tax, lease amount etc. In the event of non-payment of lease or licence amount, the same would affect the interest of the Municipality, which would result denial of basic amenities to the citizens of the local area.

6.Courts are expected to be cautious in the matter of collection of revenue by the competent authorities. Only in the event of establishing a right or violation by the authorities, then alone the relief can be granted and in all other circumstances, the licence holders are bound to pay the dues as per the terms and conditions of the lease agreement between the parties. The scope of interference to the revenue matters by the Court is limited and only if statutory violations are established, relief can be granted and in the present case, the petitioner has already earned profit for more than two years and therefore, she cannot refuse to pay the balance licence amount to the fourth respondent. Already a period of four months has lapsed and the fourth respondent has also granted time to pay the balance amount.

7.In view of the fact that the petitioner has not paid the amount for more than four months and the lease is going to expire on 31.01.2022, the fourth respondent issued a final notice calling upon the petitioner to pay the balance licence amount. This being the factum, there is no infirmity or perversity as such in respect of the notice issued by the fourth respondent. The petitioner has to pay the balance amount or handover the possession of the subject property to the fourth

respondent immediately enabling them to proceed with open public auction. The impugned notice was issued on 03.06.2021 granting three days time to the petitioner. Already the period granted was lapsed. Thus, the petitioner is at liberty to pay the licence amount on or before 16.06.2021. In the event of such payment, the respondent shall allow the petitioner to continue the lease till the date of expiry, failing which, the respondents are at liberty to proceed with open public auction without any further delay.

8. With the above observations and directions, this writ petition stands disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

abr/maya
To

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
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