

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.3.2021

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.Nos.17634, 17602, 17779 17796, 17798 of 2020,
36, 38, 42 and 1548 of 2021
and

W.M.P.Nos.21820, 22039, 22042, 22071,
22072, 22075 and 22076 of 2020 and 1753 of 2021

W.P.17634/2020

A.L.Srinivasan

Petitioner

vs.

1. The Commissioner,
Villupuram Municipality,
Villupuram,
Villupuram District

2. M.Fakrudeen
(R2 impleaded vide order in
WMP 2023/2021)

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondent to allot the shop No.1, situated at Old Bus Stand, Villupuram, Villupuram District to the petitioner within stipulated period.

For Petitioner : Mr.D.Rameshkumar
For R1 : Mr.V.Jayaprakash Narayanan,
Government Pleader
For R2 : Mr.N.Suresh

W.P.17602/2020

M.A.Ahamed

Petitioner

vs.

1. Commissioner of Municipal
Administration,
Commissionerate of Municipal
Administration,
No.78, Urban Administrative Building,
Santhome High Road,
Chennai-28.

2. The Commissioner,
Villupuram Municipality,
Villupuram.

3. S.Mohammed Rafi

4. M.Sarangabani

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records pertaining to the impugned letters in Na.Ka.No.7098/2014/A1 dated 29.10.2020 on the file of the 2nd respondent addressed to the respondents 3 and 4 and quash the same; consequently direct the 2nd respondent to receive the caution deposit, advance lease amount for confirmation of lease in favour of the petitioner in respect of the Shop No.4 (Old No.7) for Rs.10,500/- as monthly rent and Shop No.7 (Old No.2) for Rs.7000/- as monthly rent, in old Bus Stand of Villupuram as per the pre-bid taken place on 29.10.2020.

For Petitioner : Mr.R.Neelakandan

For R1 & R2 : Mr.V.Jayaprakash Narayanan,
Government Pleader

W.P.17779/2020

Ziauddinkhan.N

Petitioner

vs.

1. Commissioner of Municipal Administration,
Chepauk, Chennai.

2. The Commissioner,
Villupuram Municipality,
Villupuram,
Villupuram District

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the impugned notice proceedings No.Na.Ka.No.7098/2014/1A dated 3.11.2020 issued by the second respondent and quash the same and consequentially directing the 2nd respondent to allot the shop No.2 forthwith.

For Petitioner : Mr.Chellapandian for
Mr.K.Karuppaiya Moopanar

For R1 & R2 : Mr.V.Jayaprakash Narayanan,
Government Pleader

W.P.17796/2020

P.Prema

Petitioner

vs.

1. Commissioner of Municipal Administration,
Chepauk, Chennai.
2. The Commissioner,
Villupuram Municipality,
Villupuram.

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the impugned notice proceedings No.Na.Ka.No.7098/2014/1A dated 3.11.2020 issued by the second respondent and quash the same and consequentially directing the 2nd respondent to allot the shop No.3 forthwith.

For Petitioner : Mr.Chellapandian for
Mr.K.Karuppaiya Moopanar

For R1 & R2 : Mr.V.Jayaprakash Narayanan,
Government Pleader

W.P.17798/2020

G.Suresh Babu

Petitioner

vs.

1. Commissioner of Municipal Administration,
Chepauk, Chennai.
2. The Commissioner,
Villupuram Municipality,
Villupuram.

3. M.Sathiqua Ameen
(R3 impleaded vide order in
W.M.P.No.2028/2021)

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the impugned notice proceedings No.Na.Ka.No.7098/2014/1A dated 3.11.2020 issued by the second respondent and quash the same and consequentially directing the 2nd respondent to allot the shop No.5 forthwith.

For Petitioner : Mr.Chellapandian for
Mr.K.Karuppaiya Moopanar

For R1 & R2 : Mr.V.Jayaprakash Narayanan,
Government Pleader

For R3 : Mr.N.Suresh

W.P.36/2021

M.Fakrudeen

Petitioner

vs.

1. The Commissioner,
Villupuram Municipality,
Villupuram 605 602.

2. A.L.Srinivasan

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the 1st respondent to allot Shop No.1 (formerly shop No.10) at Pandit Jawaharlal Nehruji Road, Villupuram on lease to the petitioner forthwith as per Letter Na.Ka.No.7098/2014/A1 dated 29.10.2020.

For Petitioner : Mr.N.Suresh

For R1 : Mr.V.Jayaprakash Narayanan,
Government Pleader

For R2 : Mr.D.Rameshkumar

W.P.38/2021

P.Manickaraj

Petitioner

vs.

1. The Commissioner,
Villupuram Municipality,
Villupuram 605 602.

2. Prema

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the 1st respondent to allot Shop No.3 (formerly shop No.8) at Pandit

Jawaharlal Nehruji Road, Villupuram on lease to the petitioner forthwith as per Letter Na.Ka.No.7098/2014/A1 dated 29.10.2020.

For Petitioner : Mr.N.Suresh

For R1 : Mr.V.Jayaprakash Narayanan,
Government Pleader

W.P.42/2021

Sathiquaal Ameen

Petitioner

vs.

1. The Commissioner,
Villupuram Municipality,
Villupuram 605 602.

2. G.Suresh Babu

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the 1st respondent to allot Shop No.5 (formerly shop No.6) at Pandit Jawaharlal Nehruji Road, Villupuram on lease to the petitioner forthwith as per Letter Na.Ka.No.7098/2014/A1 dated 29.10.2020.

For Petitioner : Mr.N.Suresh

For R1 : Mr.V.Jayaprakash Narayanan,
Government Pleader

For R2 : Mr.Chellapandian for
Mr.Karuppaiya Moopanar

W.P.1548/2021

S.Mohamed Rafi

Petitioner

vs.

1. The Commissioner,
Villupuram Municipality,
Villupuram 605 602.

2. M.A.Ahamed

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the 1st respondent to allot Shop No.4 (formerly shop No.7) at Pandit Jawaharlal Nehruji Road, Villupuram on lease to the petitioner forthwith as per Letter Na.Ka.No.7098/2014/A1 dated 29.10.2020.

For Petitioner : Mr.N.Suresh

For R1 : Mr.V.Jayaprakash Narayanan,
Government Pleader

For R2 : Mr.R.Neelakandan

COMMON ORDER

Heard the learned counsel for the respective petitioners and Mr.V.Jayaprakash Narayanan, learned Government Pleader appearing for the Respondent-Villupuram Municipality.

2. The factual matrix behind the filing of the above writ petitions is as under:-

The one and the same grievance of the petitioners in all these writ petitions is that they require an allotment of shop in the Old Bus Stand Complex, West Neruji Road, Villupuram Municipality on monthly rental basis under the tenancy of the Villupuram Municipality. Originally, there was a building of the year 1967, belonging to Villupuram Municipality containing several shops and in the year 2017, nearly after 50 years, the Villupuram Municipality had decided to demolish the old building and construct a new one as it was found that the existing building was in a dilapidated condition and therefore, issued eviction notice to the then allottees of the shops. The said notice was put to challenge by the then allottees/tenants in W.P.Nos.29058, 29059 & 28831 to 28837 of 2017 which came to be disposed observing as under:-

"In view of the facts discussed supra and the fact that the building is in dilapidated condition, the respondents should give four months time to vacate the premises from today. If any of the petitioners seek for extension of time to vacate the shop, the time granted by this court will automatically be withdrawn and the petitioners are deemed to have vacated the premises, and the Municipality will remove the belongings found in the premises and they are not responsible for damage of any of the belongings of the petitioners. If commercial complex is constructed and other things being equal, the petitioners shall be given preference with regard to the allotment of shop in the complex and that the petitioners shall pay the rent/lease amount that may be fixed by the respondents on that date."

3. Now, after the completion of construction of the new building, auction notice dated 14.10.2020 was issued incorporating the said preference clause and an auction was conducted by the Villupuram Municipality on 29.10.2020 and the petitioners in these writ petitions have also participated in that auction. On opening the tenders, the Villupuram Municipality had exercised the said clause by sending offer letters dated 29.10.2020 to the erstwhile tenants quoting the highest bid made in respect of the shops and sought for the consent of the erstwhile tenants within a period of 3 days from the date of receipt of such offer letter and the erstwhile tenants also have submitted their acceptance letter and in fact, they have quoted the amount which is slightly higher than the highest bid amount.

4. Whiles, the successful bidders have filed Writ Petitions in W.P.Nos.17634, 17602, 17779, 17796 and 17798 of 2020 challenging the offer letters dated 29.10.2020 sent by the Municipality to the erstwhile tenants and sought for confirmation of allotment of shops in their favour and this court has directed the Respondent Municipality to keep entire allotment process in abeyance.

5. In the meanwhile, the erstwhile tenants have filed W.P.Nos.36, 38, 42 and 1548 of 2021 seeking direction from this court to the respondent Municipality for allotment of the shops in their favour on the basis of their acceptance of the offer made by the Respondent Municipality.

6. The crux of the submissions made by the respective learned counsel appearing for the highest bidders is that they participated in the tender genuinely and quoted highest bid amount and therefore, their bids have to be confirmed and the erstwhile tenants are not entitled claim priority when once tenders were called for.

7. The submission of the learned counsel appearing for the erstwhile tenants is that when once the special condition is incorporated in the Tender Notification and the bidders have participated in the auction, it is deemed that they had accepted for such a preference clause and now, they cannot challenge the offer letters sent by the respondent Municipality and thereby stall the entire allotment process especially, when they had submitted their acceptance of the offer by agreeing to pay the monthly rent slightly higher than the amount quoted by the highest bidders.

8. The only impediment brought to the notice of the court by the learned Government Pleader is that though the erstwhile tenants had accepted the offer made by the respondent

Municipality, it was accepted by such tenants belatedly.

9. On the basis of the above facts and circumstances of the case, this court feels that it is necessary to see that whether the erstwhile allottees are entitled to get allotment based on the preference clause exercised by the respondent Municipality and whether they have submitted their acceptance letters belatedly and to what relief the other bidders, who quoted the highest bid amount is entitled.

10. Having perused the materials available on record in the light of the submissions made by the learned counsel for the parties, this court is of the view that the petitioners, who are said to have quoted highest bid, having participated in the public auction on basis of the conditions cannot question the same at a later stage. It is well settled that so long as the bid has not been accepted, the highest bidder acquires no vested right to have the auction concluded in his favour.

11. In *Laxmikant & Others vs Satyawar & Others* (1996 SCC (4) 208), it has been held as under:-

It has been repeatedly pointed out that State or the authority which can be held to be State within the meaning of Article 12 of the Constitution is not bound to accept the highest tender or bid. The acceptance of the highest bid is subject to the conditions of holding the public auction and the right of the highest bidder has to be examined in context with the different conditions under which such auction has been held. In the present case no right had accrued to the respondent either on the basis of the statutory provision under Rule 4(3) or under the conditions of the sale which had been notified before the public auction was held.

12. The acceptance of the highest bid is subject to the conditions of holding the public auction and the right of the highest bidder has to be examined in context with the different conditions under which such auction has been held. The law relating to award of contract by State and public sector corporations was reviewed in *Air India Ltd. v. Cochin International Airport Ltd.* (2000 (2) SCC 617) and it has been held therein that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction, it can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held therein that the State, its Corporations, instrumentalities and agencies

have the public duty to be fair to all concerned and even when some defect is found in the decision making process, the Court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point and the Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not and only when it comes to a conclusion that overwhelming public interest requires interference, the Court should interfere.

13. In the light of the ratio laid down in the above decisions, this court is of the view that there is no illegality or infirmity in the action of the respondent Municipality in making the offer to the erstwhile allottees of the shops seeking their acceptance.

14. So far as the delay in acceptance by the erstwhile shop allottees is concerned, a perusal of the materials produced by them like postal endorsements would prove that the offer letter dated 29.10.2020 itself was despatched by the Respondent Municipality through Registered Post only on 5.11.2020 and the same was received by the erstwhile allottees only on 6.11.2020 and immediately, thereafter, they had submitted their acceptance and therefore, there is no delay on the part of the erstwhile allottees.

15. The petitioners in other writ petitions, who had quoted highest bid are concerned, they are bound by the special condition incorporated in the Tender Notification and therefore, they cannot, question the offer letters issued by the respondent Municipality to the erstwhile allottees, however, their case can be considered by the respondent Municipality as against any other shops in the event of their being unoccupied.

16. In view of the above, W.P.Nos. 36, 38, 42 and 1548 of 2021 are allowed and W.P.Nos. 17634, 17602, 17779, 17796 and 17798 of 2020 are disposed of. No costs. The connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

ssk.

To

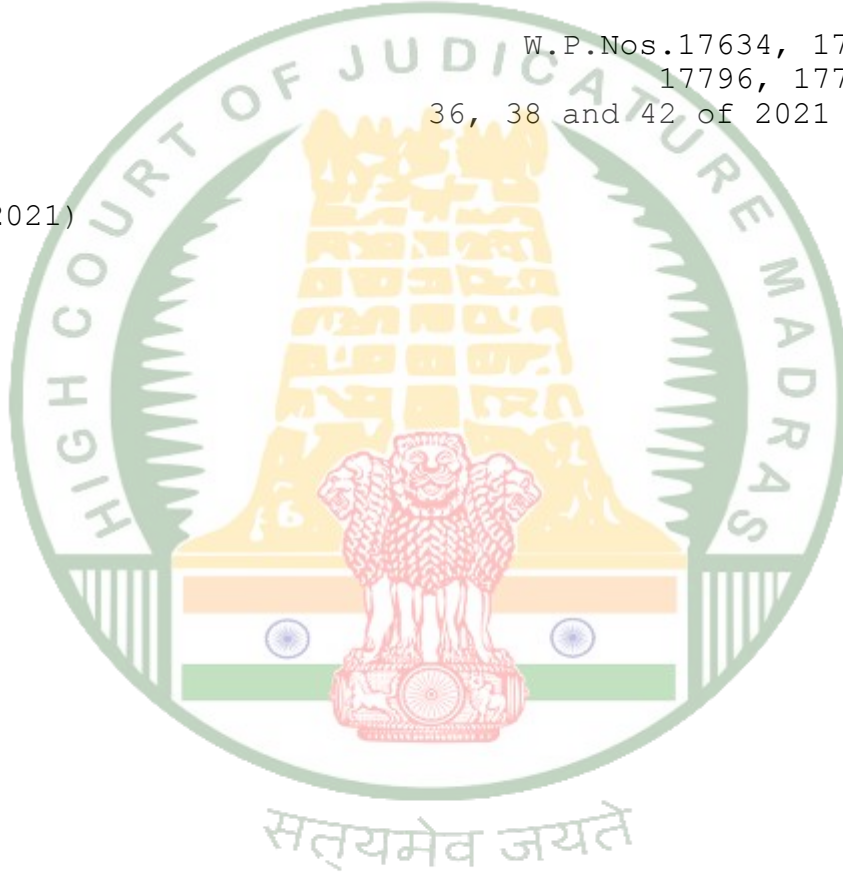
1.The Commissioner of Municipal Administration,
Chepauk, Chennai.

2.The Commissioner,
Villupuram Municipality,
Villupuram,
Villupuram District.

+4cc to Mr.N.Suresh, Advocate, S.R.No. 15624, 15623, 15622, 15621

W.P.Nos.17634, 17602, 17779
17796, 17798 of 2020,
36, 38 and 42 of 2021 & 1548/2021

RR(CO)
GN(24/03/2021)



WEB COPY