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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2021

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THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 24401 of 2021

and

W.M.P. Nos. 25712 and 25714 of 2021

V.Nandhagopal

... Petitioner

-vs-

1. The Commissioner,
Salem Corporation,
Kottai, Salem - 1.

2. The Assistant Commissioner,
Kondalampatti, Kondalampatti Ward Office,
Salem Corporation,
Gugai, Salem - 6.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the final notice issued by the second respondent in Na.Ka.No.M2/1729/2020 dated 22.10.2021 and quash the same and further direct the respondents to receive the tender amount in four installments for the period 2021-2022, 2022-2023.

For Petitioner : Mr.S.Parthasarathy

For Respondents : Mr.T.Arioli
for Mr.S.Sathish
Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records relating to the final notice issued by the second respondent in Na.Ka.No.M2/1729/2020 dated 22.10.2021 and quash the same and further direct the respondents to receive the tender amount in four installments for the period 2021-2022, 2022-2023.

2. That the petitioner had been given the right of collecting toll at a market under the respondents Corporation upto 21.08.2021 for the year 2021. For the subsequent year also, i.e., the current year 2021-2022, that right has been



20.09.2021 by enhancing 5% of the lease amount. Therefore, a sum of Rs.33,66,000/- has been fixed as a lease amount for the current year which should be paid by the petitioner at once within a period of seven days from the date of confirmation of the extension.

3. However, the petitioner was able to pay only a sum of Rs.8,41,575/- and the remaining amount, i.e., Rs.25,60,888/- had not been paid.

4. In this regard, though time was given till the impugned communication dated 22.10.2021 was issued, the petitioner did not come forward to pay the remaining lease amount. Therefore, the final demand notice was issued on 22.10.2021 directing the petitioner to pay the remaining amount within 24 hours, failing which, the contract, i.e., lease given in favour of the petitioner or extended in favour of the petitioner would be cancelled. Challenging the same, the present Writ Petition has been filed.

5. When this Writ Petition came up for hearing on 18.11.2021, after hearing both the learned counsel appearing for the parties, I have passed the following order:

"The petitioner had been given the right of collecting toll at a market under the respondent Corporation upto 21.08.2021 i.e., in the year 2021 and for the subsequent year i.e., the current year 2021-22, that right has been extended by the order of the respondent Corporation dated 20.09.2021 by enhancing 5% of the lease amount i.e., Rs.33,66,000/- which should be paid at once by the petitioner by executing an agreement in this regard.

2. Despite this order has been passed and the one year extension was given to the petitioner, the petitioner admittedly has paid only Rs.8,41,575/-. Therefore, the remaining amount payable by the petitioner is Rs.25,60,888/-, which the petitioner did not pay even upto 22.10.2021, a final notice has been given on 22.10.2021, giving 24 hours time to pay the remaining lease amount, otherwise the lease would be cancelled. As against the said communication dated 22.10.2021, the present writ petition has been filed.

3. Heard Mr.S.Parthasarathy, learned counsel appearing for the petitioner, who submitted that, due to the COVID-19 second wave, there has been some difficulty for the petitioner to mobilize the funds, but anyhow within 24 hours as given in the impugned communication, it was very difficult for the petitioner to mobilize such a huge amount of Rs.25 lakhs and odd and therefore, that order became unworkable. Hence, a representation has



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been given by the petitioner dated 26.10.2021 and the same has also not been considered. Therefore, the petitioner is under the threat of termination of the lease at any time. Hence, he seeks the indulgence of this Court.

4. Heard Mr.S.Sathish, learned Standing Counsel appearing for the respondent Corporation, who would submit that, as per the conditions at the time of extension of the lease, in the order dated 22.10.2021 it has been specifically made clear that, the lease and license amount should be paid at once. Till date, beyond the said amount of Rs.8,41,575/-, nothing has been paid and the due is more than Rs.25 lakhs and therefore the impugned communication has been issued on 22.10.2021 and even after that date, till today nothing has come out from the petitioner, as he has not come forward to pay the amount. Therefore, the learned Standing Counsel seeks dismissal of this writ petition.

5. I have considered the rival submissions made by the learned counsel on either side and after having considered the factual matrix of this case as well as the circumstances projected by the learned counsel for the petitioner, this Court feels that, in order to test the bonafide on the part of the petitioner, a week's time can be given to pay at least 50% of the remaining amount and thereafter, if the petitioner complies with the said order, further one week time may be given to pay the remaining 50% of the due amount, and that would meet the ends of justice.

6. Hence this Court, by way of an interim arrangement, hereby directs the petitioner to pay 50% of the remaining amount due i.e., Rs.25,60,888/- within a period of one week from today. Depending upon the compliance of this direction, a further time of one week would be given to the petitioner for paying the remaining 50% of the amount due.

7. For reporting compliance, post the matter on 26.11.2021."

6. Pursuant to which, the case has come up again for further hearing. Today, Mr.S.Parthasarathy, learned counsel appearing for the petitioner would submit that, the petitioner is able to mobilize only a sum of Rs.2½ Lakhs and if three months time is given, he would be in a position to pay 50% of the remaining amount and thereafter, he needs further three months time.



7. However, Mr.S.Sathish, learned Standing counsel appearing for the respondents Corporation has pointed out that, after the lease was confirmed within seven days, the entire amount should be paid by the petitioner along with 1% income tax and the same since has not been paid and he has admittedly paid only a sum of Rs.8,41,575/-, there has been a huge arrears of remaining amount to be paid by the petitioner, i.e., Rs.25,60,888/- and though the respondents Corporation waited for some time, since the petitioner had not come forward to pay the amount that the impugned demand notice was given on 22.10.2021, giving a last chance to the petitioner before proceeding to cancel the lease granted in favour of the petitioner.

8. I have considered the said rival submission made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

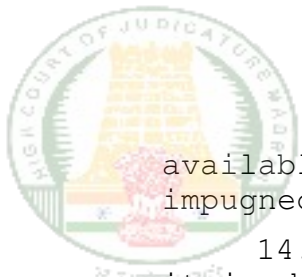
9. As per the lease condition, the entire lease amount of Rs.33,66,000/- should have been paid at once within a period of seven days from the date of confirmation, however, the petitioner admittedly paid only a sum of Rs.8,41,575/-.

10. Therefore, after giving some long rope when the final demand notice dated 22.10.2021 was issued by the respondents Corporation, the same has been put under challenge by the petitioner.

11. However, this Court after having considered the plea raised by the petitioner was pleased to give further time of one week to the petitioner to pay at least 50% of the remaining amount payable to the Corporation. When the case is taken up for hearing today, the learned counsel appearing for the petitioner, on instructions, would submit that, the petitioner is not able to mobilize remaining 50% even and he was able to mobilize a very meager sum of Rs.2½ Lakhs.

12. If the petitioner is not able to pay even the substantial amount of the lease amount or the full amount even till today, absolutely there is no right on the part of the petitioner to seek for any indulgence from this Court to get further time to make the payment, that too like some months as requested by the learned counsel appearing for the petitioner.

13. Since it is a violation of the tender condition or a lease condition where the lease amount in entirety should have been paid at once in advance, i.e., seven days from the date of confirmation, however admittedly not even 50% of the amount has so far been paid. Therefore, this Court is not inclined to entertain this Writ Petition as there is no plausible reason



available for the petitioner to challenge successfully the impugned order dated 22.10.2021.

14. With the result, this Writ Petition fails and hence, it is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(co)

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Sub Assistant Registrar

vji

To

1. The Commissioner,
Salem Corporation, Kottai, Salem - 1.

2. The Assistant Commissioner,
Kondalampatti, Kondalampatti Ward Office,
Salem Corporation, Gugai, Salem - 6.

+1 cc to Mr.S.Parthasarathy, Advocate Sr.NO. 61679

W.P. No. 24401 of 2014
and

W.M.P. Nos. 25712 and 25714 of 2021

mt(CO)

A.SK(09.02.2022)