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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No. 24924 of 2021

K.Jothi Chandran

... Petitioner

-vs-

1. The District Collector,
Coimbatore District,
Coimbatore.
2. The Assistant Commissioner,
North Zone,
Corporation of Coimbatore,
Coimbatore.
3. The Assistant Revenue Officer/
Assistant Executive Engineer,
North Zone,
Corporation of Coimbatore,
Coimbatore.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the respondents herein to consider the representation of the petitioner dated 23.10.2021 to grant extension of the contract for a further period of six months from 30.11.2021 for collecting toll in Thudiyalur Weekly Market as the same remained closed for the period from 24.04.2021 to 10.10.2021 due to onset of second wave of Covid-19 Pandemic.

For Petitioner : Mr.S.Senthil

For Respondents : Mrs.Akila Rajendran
Government Advocate for R1
Mr.K.Magesh
Standing Counsel for R2 and R3

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the respondents herein to consider the representation of the petitioner dated 23.10.2021 to grant extension of the contract for a further period of six months from 30.11.2021 for



collecting toll in Thudiyalur Weekly Market as the same remained closed for the period from 24.04.2021 to 10.10.2021 due to onset of second wave of Covid-19 Pandemic.

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2. In order to give the right of collecting toll in Thudiyalur Weekly Market, the respondents / Coimbatore Corporation invited tender from all eligible persons for the period of three years from 01.04.2018 to 31.03.2021 as per G.O.Ms.No.181, Municipal Administration and Water Supply Department, dated 19.09.2008. The petitioner also was one of the tenderer and he become successful. Therefore, the second respondent passed proceedings dated 27.04.2018 in favour of the petitioner by awarding the said contract as per the terms and conditions set out therein for a period from 01.04.2018 to 31.03.2021.

3. The petitioner had paid full auction amount for the said period. Thereafter, the petitioner had paid further auction amount for the next years, i.e., from 01.04.2019 to 31.03.2020 with increase of 5% from the previous amount and also for the further period from 01.04.2020 to 31.03.2021 with a further increase of 5% from the previous amount. The aforesaid payments were duly acknowledged by the respondents by issuing receipts.

4. While that being so, due to the first wave of Covid-19 pandemic, as per the instructions given by the Government, the said Weekly Market at Thudiyalur was closed from 24.03.2020. Therefore, the petitioner could not collect any toll in view of the closure of the market. Even on the date of closure, i.e., on 24.03.2020, the petitioner has remitted the said amount.

5. Thereafter, on partial lifting of the lockdown in the month of July 2020, the petitioner sent representation on 21.07.2020 to the respondents seeking to grant extension of contract period for further period of one year from the date of lifting of the lockdown. Considering the said request of the petitioner, a proceeding was issued on 20.11.2020 permitting to open the Thudiyalur Weekly Market with usual and universal pandemic restrictions and the same was also sent to the petitioner.

6. Since the extension as sought for by the petitioner was not given, the petitioner approached this Court by filing a Writ petition in W.P. No.1427 of 2021 for extending the contract period for a further one year, due to the loss he sustained



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because of the first wave of Covid-19 lockdown. The said Writ Petition was disposed of on 25.01.2021 by this Court, where direction was issued to consider the representation of the petitioner dated 21.07.2020 and to pass orders on merits. In pursuance of the said order passed by this court, the second respondent has passed an order dated 31.03.2021 extending the contract for a further period of eight months, i.e., up to 30.11.2021 from 31.03.2021.

7. Though, the eight months period was extended, the second wave of Covid-19 has come in. Therefore, it become necessitated to close the market once again as per the directions given by the Government. Therefore, according to the petitioner, the market was closed from 24.04.2021 to 10.10.2021. According to the petitioner, during this period, there was no noted activities, therefore, there had been no chance for the petitioner to collect any toll.

8. Only in the month of October, since the market was again reopened, the petitioner made request to the respondents on 23.10.2021 to grant extension of the contract for a further period of six months from 30.11.2021 for collecting the toll in the said Weekly Market, as according to the petitioner, the market was closed between 24.04.2021 to 10.10.2021 due to the second wave of Covid - 19 pandemic.

9. Since the said representation has not been considered, he has approached this Court by filing the present writ petition with the aforesaid prayer.

10. Heard Mr.S.Senthil, learned counsel appearing for the petitioner who having reiterated the aforestated would seek indulgence of this Court to give a direction to the respondents Corporation to give extension of the contract for a further period of six months from 30.11.2021. However, Mr.K.Magesh, learned Standing Counsel appearing for the second and third respondents, on instructions, would submit that, due to Covid-19 second wave, as per the directions of the Government, the market was closed from the end of April to June 2021. Thereafter, from the first week of July 2021, the markets were permitted to open and this market also, i.e., Thudiyalur Weekly Market was permitted to open from first of July 2021. Therefore, the plea raised by the petitioner in this regard that the market was closed between 24.04.2021 to 10.10.2021 is not correct. Therefore, the plea raised by the petitioner that, he can be extended with a contract for a further period of six months is



untenable. Therefore, the same cannot be considered and decided in favour of the petitioner, he contended.

11. Heard Mrs. Akila Rajendran learned Government Advocate appearing for the first respondent, who also on instruction, would submit that, throughout the State due to second wave of Covid-19 pandemic, the shops and establishments were closed during the month of May and June and thereafter, it was relaxed and the markets like the present market which is in question also was permitted to be opened from the first week of July 2021. Therefore, if the six months extension sought for by the petitioner is considered and granted, that would set a bad precedent as the Covid-19 first wave or second wave is an universal phenomena and that will be applicable to all Departments in the State. Therefore, that kind of indulgence cannot be shown by this Court, she contended.

12. 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.

13. Though it was claimed by the petitioner that, due to the second wave of Covid-19 pandemic, the market in question was closed between 24.04.2021 to 10.10.2021, according to the respondents, who are the Governmental Authorities, the market was closed only during the last week of April and the whole month of May and June, 2021, according to them, the market was reopened in the first week of July, 2021.

14. This position has not been seriously disputed by the petitioner, as no such contra evidence would be produced by the learned counsel appearing for the petitioner to establish the case of the petitioner that the market was closed even up to October, 2021.

15. Therefore, this Court can only take the said factor that, the market was closed only for two months and one week, i.e., from 24.04.2021 till 30.06.2021 and in that case, there may be justification on the part of the petitioner to seek for extension of contract period only for two months period and not for six months.

16. Therefore, the two months extension beyond the expiry of the extended period already been given to the petitioner can



very well be given to the petitioner and thereafter only, it is open to the third respondent to go for creating any third party right by conducting public auction.

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17. In this regard, though it was brought to the notice of this Court by the third respondent that, the public auction already been conducted on 24.11.2021, this Court by order dated 23.11.2021 had directed that, no confirmation shall be made in respect of the proposed auction pertaining to the leasehold right of the petitioner.

18. Now in view of the decision, which is being taken herein that the petitioner is entitled to get extension of further two months period of his contract, if at all any third party right is created or to be created pursuant to the auction which was conducted on 24.11.2021, such third party right can be commenced only from the end of the two months period extension to be given to the petitioner.

19. In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following orders:

"that there shall be a direction to the second and third respondents to extend the contract period of the petitioner for collecting the toll in the Thudiyalur Weekly Market under the second respondent for the further period of two months, i.e., beyond the period which has already been expired or going to be expired by the earlier extension and after the expiry of the two months extended period, it is open to the second and third respondents to create any third party right, for the said purpose, if any third party is already identified pursuant through the public auction conducted on 24.11.2021, that shall go on subject to the aforesaid conditions."

20. With these directions and observations, this Writ Petition is ordered accordingly. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar



vji / sp

To

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1. The District Collector,
Coimbatore District,
Coimbatore.
2. The Assistant Commissioner,
North Zone,
Corporation of Coimbatore,
Coimbatore.
3. The Assistant Revenue Officer/
Assistant Executive Engineer,
North Zone,
Corporation of Coimbatore,
Coimbatore.

+1cc to Mr.S.Senthil, Advocate, S.R.No.61715
+1cc to Mr.K.Magesh, Advocate, S.R.No.61427
+1cc to the Government Pleader, S.R.No.62245

W.P. No.24924 of 2021

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NSK 14/02/2022