



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.339 and 1381 of 2021

and

W.M.P. (MD)Nos.258, 259, 262, 1181 and 1182 of 2021

R.Karthishwaran

... Petitioner in both W.Ps.

Vs.

The Commissioner,
Kadayanallur Municipality,
Kadayanallur - 627 751.

... Respondent in both W.Ps

Prayer in W.P. (MD)No.339 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned final notice in Na.Ka.No.4003/2017/93 dated 22.12.2020 of the respondent and further direct the respondent to extend the period of license for collecting fee from the vendors for 9 months at Peraringar Anna daily market at Kadayanallur, Tenkasi District.

Prayer in W.P. (MD)No.1381 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to tender notification in Na.Ka.No.4959/2020/93 dated 30.12.2020, in respect of Item No.1 pertaining to license/lease for collecting fees from the vendors at Peraringar Anna daily market at Kadayanallur, Tenkasi District and quash the same and further direct the respondent to extend the period of license for collecting fee from the vendors at Peraringar Anna daily market at Kadayanallur, for 8 months from 31.03.2021 to 31.11.2021.

(in both W.Ps)

For Petitioner : Mr.Mohamed Mohideen.T.S.

For Respondent : Mr.M.Rajarajan,
Additional Government Pleader

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner was granted license to collect fees from the users of the market in question. It is a three year license. There is no dispute that the petitioner paid the license fee for the first and second years. But in respect of third year, he had paid part of the license fee. This Court can take judicial notice of the fact that the markets were ordered to be closed and were under lockdown for close to seven months. The petitioner cannot obviously be expected to pay license fee for the said period. Of course, the



learned Additional Government Pleader would state that question of granting waiver does not arise and that the respondent is governed by the Government Orders in this regard.

3. But I have held in more than one case that when the petitioner had not collected the users fee by virtue of the orders passed by the Government, it would be unfair to expect him to pay the license fee. Therefore, the respondent has to necessarily exonerate the petitioner from payment of any license fee for the period when the lockdown was in force. It appears that the petitioner's deposit is lying with the respondent. An approximate calculation would indicate that it is the respondent, who has to make refund. I am not going into concrete details. However, I direct the respondent to calculate the refund to be made to the petitioner in the light of what has already been indicated above. Such a refund by the respondent to the petitioner shall be made within a period six weeks from the date of receipt of a copy of this order. Since the petitioner cannot be said to be in arrears, the petitioner is entitled to take part in the impending auction/tender. The petitioner is of course entitled to carry on with the work of collection till the end of the license period namely., 31.03.2021.

4. The writ petitions are allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Commissioner,
Kadayanallur Municipality,
Kadayanallur - 627 751.

+2 CC to M/s.M.RAJARAJAN, Advocate (SR-2451[F] dated 29/01/2021)

+1 CC to Mr.Mohamed Mohideen.T.S, SR.No.2493 dated 29/01/2021

W.P(MD)Nos.339 and 1381 of 2021
27.01.2021

SV2 (CO)

KB(09.02.2021) 2P 5C