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W.P.(MD)NO.555 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2021

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 555 of 2021

and

W.M.P. (MD) Nos. 476 & 477 of 2021

S. Murugan,
S/o. Sivaperumal,
Sunday Sandai Licensee,
Kaliyammann Koil Street, Mettupatti,
Dindigul

... Petitioner

Vs.

1. The District Collector/
(Disaster Management Department),
Dindigul District.

2. The Commissioner,
Oddanchatiram Municipality,
Dindigul District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned tender notice by the second respondent in Na.Ka. No.1015/2017/E1 dated 29.12.2020 inviting for public tender auction to be held on 21.01.2021 and quash the auction in so far with respect to serial No.3 (weekly Sunday Sandai Market Toll/Fee collection for cows, buffaloes, calfs) and consequently direct the second respondent to extend the petitioner's present contract/lease period for collection of weekly Sunday Sandai Market fee for one year from 01.04.2021 on account of Covid-19 pandemic lock down without payment of amount.

For Petitioner	: Mr.M.S.Sureshkumar
For R-2	: Mr.L.P.Mouria

* * *

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for the second respondent Municipality.



2. The petitioner was granted license in January 2018 to collect fee from the users of the petition mentioned Sunday weekly market. The license was for three years period from 01.04.2018 till 31.03.2021. The Municipality has now issued the impugned tender notification dated 29.12.2020 proposing to conduct auction for finalising the issuance of license for the period commencing from 01.04.2021 to 31.03.2024. The ground on which the challenge is made is that during the pandemic period, the market was closed and that therefore the petitioner should be given corresponding extension of the license period.

3. The learned Standing counsel appearing for the Municipality points out that this request cannot be accepted. He would contend that one of the license conditions was that the licensee has to bear the burden of the loss arising out of certain unforeseen courses. He would also state that the Government has issued G.O.(D).No.298 Municipal Administration and Water Supply (MA.IV) Department dated 02.09.2020 wherein the Government had passed orders directing that necessary orders should be issued by the Commissioner of Municipal Administration for waiver of the payment of lease/rental amount for the lock down period from 01.04.2020 to 31.05.2020 by the lessees in respect of the leased out properties of Urban Local Bodies covering Greater Chennai Corporation, 14 other Corporations, 121 Municipalities and 528 Town Panchayats.

4. I am not persuaded by the aforesaid statement of the learned Standing counsel appearing for the Municipality. It is beyond dispute that the market in question was ordered to be closed with effect from 22.03.2020. It appears to have been reopened only on 04.10.2020. Of course the learned Standing counsel has stated that it was reopened on 01.10.2020. There is not much of difference between the dates. To expect the petitioner to pay the license fee even for this period, in my view is preposterous. This is because of the lock down restrictions announced by the Government, the market in question was not functioning. If due to natural calamity or other incidents, the market in question was closed, then probably the learned Standing counsel's contentions can be countenanced. The case on hand would fall under those categories. If due to Covid-19 outbreak, people have not thronged the market and if as a result, the petitioner had suffered a loss, then certainly the contention of the learned Standing counsel will have to be upheld. But here, the market was directed to be closed by the order of the Government. Hence, I therefore hold that the petitioner is entitled to waiver for the period from 22.03.2020 till 01.10.2020 or till it was directed to be reopened as per the specific order passed by the second respondent.

5. The impugned tender process has to go on. The petitioner can also take part in the same. The petitioner cannot be



disqualified in the tender for non-payment of the licence fee for the aforesaid period. This writ petition stands disposed of on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (RTI)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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:

1. The District Collector/
(Disaster Management Department),
Dindigul District.
2. The Commissioner,
Oddanchatiram Municipality,
Dindigul District.

+1 CC to Mr.M.S.SURESH KUMAR, Advocate (SR-1041[F] dated 19/01/2021)

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11.01.2021

VB (10.02.2021) 3P 4C