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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.A(MD)No.1618 of 2021

and

C.M.P(MD)No.6982 of 2021

Thanjavur Municipal Corporation,
Rep. by its Commissioner cum
Special Officer,
Thanjavur.

... Appellant/Respondent/Respondent

Vs.

R.Ganesan

... Respondent/Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 23.08.2021 made in W.M.P(MD)No.11787 of 2021 in W.P(MD)No.14874 of 2021 on the file of this Court.

Prayer in WP(MD). 14874/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI calling for records relating to the impugned notification issued by the respondent in Na.Ka.No.7485/2015/MCA5 dated 27.07.2021 published in the Dina Thanthi Daily on 11.08.2021 insofar as it relates to Shop No.17, Phase II New Corporation Bus Stand, Thanjavur is concerned and quash the same as illegal pass such further or other orders as this Honble court may deem fit and proper in the circumstances of the case and thus render justice.

For Appellant	: Mr.N.Dilip Kumar
For Respondent	: Mr.M.Ajmal Khan
	Senior Counsel

JUDGMENT

(Judgment of the Court was delivered by M.DURAI SWAMY, J.)

Challenging the interim order of stay passed in W.M.P(MD)No.11787 of 2021 in W.P(MD)No.14874 of 2021, dated 23.08.2021, the respondent in the Writ Petition has filed the above Writ Appeal.

2.The respondent filed the Writ Petition to issue a Writ of Certiorari, to call for the records relating to the impugned notification issued by the respondent dated 27.07.2021 published in the Dhina Thanthi Daily on 11.08.2021 insofar as it relates to Shop No.17, Phase II New Corporation Bus stand, Thanjavur is concerned



and to quash the same. The respondent also filed a Miscellaneous Petition in W.M.P(MD)No.11787 of 2021 seeking for an order of interim stay of the impugned notification dated 27.07.2021.

3.The contention of the respondent before the learned Single Judge was that the license granted in his favour was extended upto 2024 by a renewal order issued in the year 2021. Therefore the notification calling for tender/auction is liable to be set aside.

4.The learned Single Judge, taking into consideration the submissions made by the learned counsel on either side, granted an order of interim stay for a period of two weeks subject to the condition that the respondent should pay the license fee including the enhanced license fee in case such licensee in terms of the second term of three years extension. Further, the learned Single Judge made it clear that the order of interim stay will not stand in the way of the appellant Corporation initiating action in accordance with law and the terms of the respective licenses with regard to any breach of the terms thereof. Further, the learned Single Judge granting two weeks time for filing counter-affidavit, directed the matter to be listed on 06.09.2021. Challenging this order, the Corporation has filed the above Writ Appeal.

5.Mr.N.Dilip Kumar, learned counsel appearing for the appellant Corporation submitted that the appellant had already commenced the tender process as well as auction on 25.08.2021 at 11.00 a.m. Therefore, the appellant may be permitted to accept the tender from the prospective bidders and also to conduct the auction otherwise the appellant would be put to prejudice and unnecessary expenditure.

6.Mr.A.Ajmal Khan, learned Senior Counsel appearing for the respondent submitted that the order of interim stay granted by the learned Single Judge is perfectly right for the reason that the license granted in favour of the respondent / lessees were already extended by order of renewal issued in the year 2021 till 2024. Further, the learned Senior Counsel submitted that when the appellant had renewed the license till 2024, calling for tender / auction in respect of the very same shop is erroneous.

7.After careful consideration of the materials available on record and the submissions made by the learned counsel on either side, since it is brought to the notice of this Court that the appellant had already commenced the tender process and also conducted auction in respect of the shops on 25.08.2021 at 11.00 a.m., we are of the considered view that the impugned order of interim stay can be modified to the extent permitting the appellant to receive the tender and conduct auction in respect of the shops, however, they should be prevented from confirming the tender or auction in favour of any successful bidder till the learned Single Judge dispose of the Writ Petition. Accordingly, we permit the appellant Corporation to accept the tender and conduct auction in



respect of the shops, however, they should not confirm the tender / auction till the disposal of the Writ Petition in W.P(MD)No.14874 of 2021.

8.With these observations, the Writ Appeal is disposed of.

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9.The learned counsel appearing for the appellant Corporation submitted that the appellant would file a vacate stay petition before the learned Single Judge and contest the Writ Petition as early as possible subject to the convenience of the learned Single Judge.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

// 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 cum Special Officer,
Thanjavur Municipal Corporation,
Thanjavur.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-27449[F] dated 26/08/2021)

W.A(MD)No.1618 of 2021

26.08.2021

RS (06.09.2021) 3P 3C