



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.A(MD)No.1670 of 2021

and

C.M.P(MD)No.7218 of 2021

WEB COPY

The Commissioner cum Special Officer,
Thanjavur Corporation,
Thanjavur.

... Appellant/3rd Respondent/
3rd Respondent

Vs.

1.S.Kirubakaran

... 1st Respondent/Petitioner/
Writ Petitioner

2.The Secretary to Government,
Department to Municipal Administration and
Water Supply,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

3.The Director of Municipal Administration,
Chepauk,
Chennai - 600 005.

... Respondents 2 & 3/
Respondents 1 & 2/
Respondents 1 & 2

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.11908 of 2021 in W.P(MD)No.14975 of 2021 on the file of this Court.

Prayer in WMP(MD). 11908/ 2021 :

To Stay the impugned public Auction-Cum-Tender Notification in Na.Ka.No.7485/2015/M.C.A5) dt. 27.07.2021 issued by the 3rd respondent as per Resolution No.207 dt. 27.07.2021 and published in Dinathanthi Tamil News Paper, Thanjavur dt. 11.08.2021, in so far as petitioners Shop No.19, D-Block, Phase-I, in SI.1 therein is concerned pending disposal of the above writ petition and 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 R - 1 : Mr.P.Vadivelu

<https://hcservices.ecourts.gov.in/hcservices/> FOR R 2 & 3 : Mr.P.Thilak Kumar, Government Pleader

**JUDGMENT**

(Judgment of the Court was delivered by **M.DURAISWAMY, J.**)

Challenging the interim order of stay passed in W.M.P(MD)No.11908 of 2021 in W.P(MD)No.14975 of 2021, dated 23.08.2021, the first respondent in the Writ Petition has filed the above Writ Appeal.

2.The first respondent filed the Writ Petition to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Public Auction-cum Tender notification in Na.Ka.No.7485/2015/M.CA5 dated 27.07.2021 issued by the third respondent as per Resolution No.207 dated 27.07.2021 and published in Dinathanthi Tamil News Paper, Thanjavur dated 11.08.2021 in so far as petitioner's Shop No.19, 'D-Block' Phase-I in Sl.1 therein is concerned and consequently forbearing the respondents, their officials, subordinates and their men from in any manner interfering with the petitioner's possession and enjoyment during subsistence of lease of Shop No.19, 'D-Block' Phase-I, New Bus Stand left side, Southern portion, Thanjavur New Bus Stand, Thanjavur District and to quash the same. The first respondent also filed a Miscellaneous Petition in W.M.P(MD)No.11908 of 2021 seeking for an order of interim stay of the impugned notification issued by the third respondent dated 27.07.2021.

3.The contention of the first 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 impugned 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 first 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.P.Vadivelu, learned counsel appearing for the first 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 first respondent / lessees were already extended by order of renewal issued in the year 2021 till 2024. Further, the learned 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.14975 of 2021.

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

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.

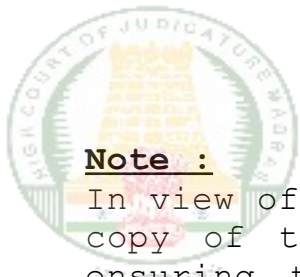
Sd/-

Assistant Registrar (CS I)

// 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

- 1.The Secretary to Government,
Department to Municipal Administration and
Water Supply, Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
- 2.The Director of Municipal Administration,
Chepauk,
Chennai - 600 005.
- 3.The Commissioner cum Special Officer,
Thanjavur Municipal Corporation,
Thanjavur.

**W.A(MD)No.1670 of 2021
02.09.2021**

DJ(CO)
SB(27.09.2021)4P 4C