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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.NO.3103 OF 2021

AND

W.M.P.NOS.3503 & 3505 OF 2021

C.R.Marimuthu

...Petitioner

Vs.

1. The Additional Chief Secretary,
Government of Tamil Nadu,
Saint Gorge Fort, Chennai-600 009.
2. The Commissioner of Municipal Administration,
Chennai-600028.
3. The Commissioner,
Dharapuram Municipality,
Dharapuram,
Tiruppur District.

...Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned G.O.(D).No.298, Municipal Administration and water supply (MA.IV) Department, dated 02.09.2020 issued by the 1st respondent and consequential Final demand Notice-3, dated 08.12.2020, in Na.Ka.No.5001/2017/A3, issued by the 3rd respondent quash the same as illegal, incompetent and without jurisdiction and consequentially directing the respondents to waive the Lease amount from 01.03.2019 to 30.09.2020 or to extend the lease period of 19-months from 01.04.2021 in respect of collecting the fees to Selling of Snacks (murukku & ginger sweets) in Dharapuram Municipality at Tiruppur District.



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For Petitioner : MA.P.Thangavel
For R1 and R2 : Mr.V.Manoharan
Additional Government Pleader
For R3 : Mr.P.Srinivas

O R D E R

The Government Order issued in G.O.(D).No. 298, Municipal Administration and Water Supply (MA.IV) Department, dated 02.09.2020 by the first respondent and consequential demand notice dated 08.12.2020 are under challenge in the present Writ Petition.

2. The petitioner seeks waiver of lease amount for about 19 months. The petitioner was a successful lessee/ highest bidder in the auction of collecting the fees to Selling of Snacks (murukku & ginger sweets) in Dharapuram Municipality at Tiruppur District. The period of license is for three years from 01.04.2018 to 31.03.2021.

3. The learned counsel appearing on behalf of the petitioner mainly contended that the entire pandemic lock down period has not been considered by the Government for the purpose of grant of waiver and two months waiver of lease amount is granted in the impugned government order, which will affect the collection of rent as per the terms and conditions of the lease and therefore, the Government Order is to be quashed and the waiver is to be extended for about 19 months.

4. The demand notice was issued asking the petitioner to pay the lease amount by deducting two months waiver granted by the Government in G.O.(D).No. 298, Municipal Administration and Water Supply (MA.IV) Department, dated 02.09.2020.

5. The learned counsel for the petitioner mainly contended that, the petitioner could not able to collect the fees in respect of the leased out cycle stand during the pandemic period. The entire period of lock down is to be taken into consideration for the purpose grant of waiver. Thus, the impugned Government Order is to be quashed and the period of waiver is to be extended.

6. The learned Standing Counsel appearing on behalf of the third respondent objected the said contention by stating that as per the lease terms and conditions, the petitioner is bound to pay the lease amount. Considering the pandemic situation, the Government granted two months waiver. The demand notice has been



issued, which is impugned in this Writ Petition. In respect of the lease amount for the entire period of pandemic, waiver cannot be granted by the Municipality and more so, it is a policy decision taken by the Government for grant of waiver and under those circumstances, the Writ Petition is liable to be rejected.

7. The contractual obligations between the parties in the lease agreement need not be adjudicated in a writ proceeding under Article 226 of the Constitution of India. This agree terms and conditions of the contract. Undoubtedly, they are binding on the parties. However, in the present case, considering the pandemic situation, a policy decision has been taken by the Government for grant of waiver of two months rent uniformly to all the shops across the State of Tamilnadu. The Government also in this regard implemented cannot be interfered with by the Court. Further, the Court cannot extend the concession of waiver granted by the Government which involves huge financial implications. In respect of financial implications, the Courts are always slow in interfering with the decisions taken by the Government by way of policy. Therefore, the very relief sought for to extend the waiver period cannot be granted by the High Court and if at all, any further concession is to be granted, the Government alone is competent to take a policy decision considering various factors including the financial constraint of the public exchequer.

8. In respect of the extension of lease period also, the Court cannot take a decision as the terms and conditions of the agreement between the parties are binding on them. Therefore, for extension of any concession contrary to the agreed condition between the parties, the parties have to negotiate and take a decision and the High Court may not have any role to interfere or issue a direction in favour of any one of the parties to the contract which is not desirable.

9. Even in case of dispute between the parties with reference to the terms and conditions of the contracts, the parties are bound to approach the competent Civil Court of law for adjudication. This being the basic principles to be followed. The quashing of the Government Order does not arise as it provides two months waiver, extension of waiver cannot be granted by the High Court as in the event of considering the same would run contrary to the terms and conditions admitted between the parties which is a contract.

10. In view of the facts and circumstances, the petitioners are at liberty to approach the competent authorities for redressal of their grievances and more specifically with reference to the terms and conditions of the contract between



the parties. However, the petitioners are entitled for the waiver of two months rent in accordance with the Government Order already passed and the said benefit alone can be extended by the competent authorities.

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11. Accordingly, this Court has no hesitation in forming an opinion that the petitioner is not entitled for any relief and consequently, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Jeni/Cse

To

1. The Additional Chief Secretary,
Government of Tamil Nadu,
Saint Gorge Fort, Chennai-600 009.
2. The Commissioner of Municipal Administration,
Chennai-600028.
3. The Commissioner,
Dharapuram Municipality,
Dharapuram,
Tiruppur District.

+1cc to the Government Pleader, S.R.No.7441

W.P.No.3103 of 2021

CP(CO)
PM/15/02/2022