



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.15800 of 2022
and WMP Nos.15086 and 15088 of 2022

P.Nithya

... Petitioner

Versus

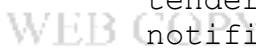
1. The Chief Commercial Manager,
Commercial Branch,
Southern Railway,
Chennai-600003.
2. The Senior Divisional Commercial Manager,
Divisional Office,
Commercial Branch,
Southern Railway,
Chennai - 600003.
3. The Station Manager,
Jollarpettai Railway Station,
Jollarpettai,
Thirupathur District.
4. The General Manager,
Vellore-Thiruvananthapuram District,
Co-Operative Milk Production Union Ltd,
No.142, Arcot Salai-Savanchai
Vellore

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records relating to the impugned Tender Notification issued by the second respondent vide Srl.No.16, Tender No.COMML-22016-MMPS-16-JTJ, Jollarpettai Station, Location PF.2/3 Dated 08.06.2022, quash the same and further direction directing the respondent to renew the license to run the Milk Stall at Jollarpettai Railway Station, Location PF.2/3.

For Petitioner : R.Govindasamy

For Respondents: Mr.Prasad Vijayakumar
For R.1 to R.3



ORDER



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5. Learned counsel for the petitioner submits that even as early as on 02.08.2021, a request was made through Vellore District Co-operative Milk Production Union Limited, seeking for renewal of the lease. Therefore, according to the learned counsel for the petitioner, even before the six months period before the expiry of the lease, the petitioner had requested for renewal of the lease with the respondents.

6. Learned counsel for the petitioner also drew the attention of this Court to the letter dated 18.02.2022 sent by the petitioner to the fourth respondent requesting for renewal of the lease for a further period. He also drew the attention of this Court to the rejection order dated 18.05.2022 passed by the second respondent rejecting the petitioner's representation, seeking for renewal of the lease on the ground that the petitioner has not submitted the renewal application six months prior to the expiry of the lease. Learned counsel also drew the attention of this Court to the interim order granted by this Court in WMP No. WMP No.13175 of 2022 in WP No.13911 of 2022 dated 03.06.2022, under which, the rejection order dated 18.05.2022 came to be stayed. According to the petitioner, possession of the petitioner over the Aavin Parlour cannot now to be disturbed. Learned counsel also drew the attention of this Court to the decision of the Hon'ble Supreme Court in the case of Senior Divisional Commercial Manager and Others vs S.C.R Caterers, Dry Fruits, Fruit Juice Stalls Welfare Association and another in Civil Appeal Nos.618-620 of 2016 rendered on 29.01.2016 and would submit that in similar circumstances, the Hon'ble Supreme Court had protected the interest of the lessee. According to him, under the aforementioned decision, the canteen Policy, 2010 of the Railways was also under consideration and the lessee was protected from eviction.

7. Mr.Prasad Vijayakumar, learned Standing Counsel appearing for the respondents 1 to 3 submits that there is an arbitration agreement available under the contract entered into between the petitioner and the respondents. He also submits that the same has been suppressed in the affidavit filed in support of the writ petition as well as in the affidavit filed in support of the earlier writ petition. According to the learned Standing Counsel when there is alternative efficacious remedy available to the petitioner, the present writ petition is not maintainable. According to him, earlier the request for extension of lease was rejected only on the ground that the said application was not submitted by the petitioner before six months from the expiry of the licence. He also submits that for the non-operative period of the lease, the petitioner was granted extension and for the extended period, he was permitted to run the Aavin Parlour without payment of any additional lease



rentals. Further, he would submit that impugned tender auction notification has been issued only in public interest. He would submit that the petitioner can participate in the impugned auction if he so desires to continue with the running of the Aavin Parlour.

Discussion :

8. Admittedly, the period of lease granted to the petitioner has come to an end. He has also been granted extension for the non-operative period due to COVID-19 Government imposed lockdown. The petitioner has also utilised the said extended period. In the lease agreement entered into between the petitioner and the respondents, there is a clause which provides for extension of lease at the option of the respondents. The right for extension under the said agreement is vested only with the respondents. The petitioner had also submitted an application seeking for extension of lease on 18.02.2022 with the fourth respondent which has been rejected by the second respondent on 18.05.2022 on the ground that the petitioner has not applied for extension of lease before six months from the date of expiry of the lease. However, according to the petitioner, she had submitted the application through Self Help Group viz., Sri Ganapathy Women's Self Help Group before the six months period which is disputed by the learned Standing Counsel for the respondents, who submits that the petitioner has not submitted all the relevant documents in time and therefore, the application submitted through Vellore District Co-operative Milk Production Union Limited on 02.08.2021 seeking for renewal cannot be considered to be a proper application as per the lease agreement. The application for renewal dated 18.02.2022 submitted by the petitioner with the fourth respondent has also been rejected on 18.05.2022 on the ground that the petitioner's application has been submitted belatedly. The petitioner has challenged the rejection order dated 18.05.2022 by filing a writ petition in W.P.No.13911 of 2022. Even though an order of interim stay was granted on 03.06.2022 in WMP No.13175 of 2022 in W.P.No.13911 of 2022, the grant of stay by this Court on 03.06.2022 has no relevance to the facts of this case as it has only stayed the rejection order. In the said order, the petitioner's interest to remain in possession of the Aavin Parlour has not been protected and only the rejection order has been stayed.

9. In the case on hand, the petitioner has challenged the impugned tender notification issued by the respondents. Any auction is conducted only in public interest and only to get the best deal for the best possible price. There is no prohibition for the petitioner or her representative to participate in the impugned auction. A policy decision has been taken by the respondents to call for the tender in respect of the shop, which is presently under the occupation of the



petitioner. Unless and until the policy decision is arbitrary, irrational and illegal and shocks the conscience of this Court, this Court cannot interfere with the impugned tender notification. The impugned auction notification will not fall under the said category. There is also an arbitration agreement under the contract. The petitioner has also not exercised the same, but, instead, has chosen to file this writ petition.

10. For the foregoing reasons, there is no merit in this writ petition and the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

sr/vsi2

To

1. The Chief Commercial Manager,
Commercial Branch,
Southern Railway,
Chennai-600003.
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Co-Operative Milk Production Union Ltd,
No.142, Arcot Salai-Savanchai
Vellore

+1cc to Mr.R.Govindasamy, Advocate SR.No.39507

+1cc to Mr.Prasad Vijayakumar, Advocate SR.No.40577 (01/07/2022)

W.P.No.15800 of 2022

BP (CO)

GMV (29/06/2022)