



WEB COPY

W.A(MD)No.220 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A(MD)No.220 of 2021

and

C.M.P.(MD)No.661 of 2021

The Commissioner
Oddanchatiram, Municipality,
Dindigul District.

... Appellant / 2nd Respondent

Vs.

1.R.Sakthi Ramasamy

... 1st Respondent / Petitioner

2.The District Collector /
Disaster Management Department,
Dindigul District.

... 2nd Respondent / 1st Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 19.01.2021 passed in W.P(MD)No.796 of 2021 by the learned Single Judge.

Prayer in WP(MD). 796/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ , Order or Direction in the nature of Writ of Certiorarified Mandamus or any other in the nature of Writ 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.6 (Murukku Sales in Plates in Oddanchatiram Bus Stand) and consequently direct the second respondent to extend the petitioners present contract / lease period for the same Murukku Sales in Plates in Oddanchatiram Bus Stand for one year from 01/04/2021 on account of Covid - 19 pandemic lockdown without payment of amount

For Appellant

: Mr.L.P.Maurya

For Respondent No.1

: Mr.M.S.Suresh Kumar

For Respondent No.2

: Mr.K.Balasubramani,
Special Government Pleader.

<https://hcservices.ecourts.gov.in/hcservices/>



J U D G M E N T

[Delivered by PARESH UPADHYAY, J.]

Challenge in this appeal is made to the order dated 19.01.2021 recorded on W.P(MD)No.796 of 2021. This appeal is by the respondent Municipality which was respondent in the writ petition.

2. Heard the learned advocates.

3. Learned advocate for the appellant Municipality has vehemently submitted that, the Municipality being subordinate to the State authority, the order passed by learned Single Judge cannot be implemented by it, since it would be in conflict with the directions of the State and therefore this appeal be entertained. It is submitted that the directions to refund the proportionate licence fee is illegal and therefore the same be set aside. It is submitted that this appeal be entertained.

4. It is noted that, this appeal was notified for hearing along with almost identical group of appeals being W.A(MD) Nos.428, 493 to 496, 754, 958, 959, 960, 961, 980 and 988 of 2021 and 136 of 2022.

5. Heard learned Special Government Pleader for second respondent.

6. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds that, this appeal was listed for hearing along with cognate appeals which are decided by this Court vide order dated 22.03.2022, however since on fact, there could be some distinction, this appeal was ordered to be separately heard today.

7. Having heard learned advocates for the respective parties and having considered the relief granted by learned Single Judge so also by this Court, we find that no different view needs to be taken *qua* this writ petitioner as well. It is noted that when the question of license fee was considered by this Court, the relief which was granted by learned Single Judge was not interfered with and the appeals filed by the Municipal Corporation were dismissed [Reference : W.A(MD)Nos.428, 493 to 496, 958, 959, 960, 961, 980 and 988 of 2021] and the writ petitions in which such relief was not granted, those appeals (by the writ petitioners) were allowed by this Court [Reference W.A(MD)Nos.754 of 2021 and 136 of 2022]. We find that no different view needs to be taken. Only because the writ petitioner has already paid license fee, that itself should not be treated as a factor against him. The direction given by the learned Single Judge to refund proportionate license fee, in the facts of this case, according to us, need not be interfered with.



8. So far as the submission of learned advocate for appellant that it is for the Government to take decision to refund the amount is concerned, we find that, the group of appeals referred above were decided after hearing the learned Special Government Pleader. According to us no different view needs to be taken in this matter. The order which is passed in this appeal filed by the Municipality shall bind Government as well and we note that the District Magistrate is already respondent, who is the face of the Government before this Court.

9. Learned advocate for the appellant has further submitted that, the order of the Government was waiver of the license fee only for two months. As already noted earlier, it is on the basis of the lock down of the months of April and May that proposal was made in June which was acted upon by the Government in September and not taking into consideration the subsequent development is not a factor which would detain this Court while exercising power under Article 226 of the Constitution of India and therefore, this argument is rejected.

10. Learned advocate for appellant has also relied on the decision of the Delhi High Court in RC.REV.447/2017, decided on 21.05.2020 [Ramanand & Ors. v. Dr.Girish Soni and Another] and the decision of the Hon'ble Supreme Court in Raja Dhruv Dev Chand v. Raja Harmohinder Singh and Another reported in AIR 1968 SC 1024. We find that in the facts of this case, those Judgments will not have any applicability and we note that we have already decided identical question in a set of appeals and taking any different view in the matter would stand in conflict with the orders of this Court, which cannot be done. Therefore, this argument is rejected.

11. For the above reasons, this appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

12. It is noted that submissions are made at length on behalf of the appellant on the point with regard to implementation of the order of learned Single Judge. We find that when the direction is issued by learned Single Judge with regard to refund of proportionate amount, the authority which had accepted that amount is the only authority, which need to refund it. Therefore, it is directed that the appellant Municipality will refund the required amount not later than 25.04.2022.



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13.

List for compliance on 27.04.2022.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

smn/12

To

The District Collector /
Disaster Management Department,
Dindigul District.

+1 CC to M/s.SPL GP (SR-13913[F] dated 23/03/2022)

+1 CC to M/s.L.P.MAURYA, Advocate (SR-13990[F] dated 24/03/2022)

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KB(07.04.2022) 4P 4C