



WEB COPY

W.A(MD)No.980 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A(MD)No.980 of 2021

and

C.M.P. (MD)No.4425 of 2021

The Commissioner,
Kodaikanal Municipality,
Dindigul District.

... Appellant /Respondent

Vs.

P.Chandrasekaran

.. Respondent / Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 12.02.2021 passed in W.P(MD)No.2543 of 2021 by the learned Single Judge.

Prayer in WP(MD). 2543/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondent herein to extend the lease for collection of fee from the vegetable vendors in the weekly shandy at Kavi Thyagarajar Salai, Kodaikanal Municipality, for a period of one year from 1.4.2021 to 31.3.2022 with an increase of 5 percentage increase on the previous lease amount paid by the petitioner to the respondent in the wake of pandemic Covid-19 having lost life and livelihood having paid entire third year lease amount to the tune of Rs. 8,25,000/- 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.L.P.Maurya

For Respondent

: Mr.K.Appadurai

J U D G M E N T

[Delivered by PARESH UPADHYAY, J.]

Challenge in this appeal is made to the order dated 12.02.2021 recorded on W.P(MD)No.2543 of 2021. This appeal is by the respondent Municipality. By the impugned order, learned Single Judge has granted relief to the writ petitioner of not paying any licence fee to the Municipal Corporation (for the shop he is occupying, for the lock-down period (March to September, 2020)).



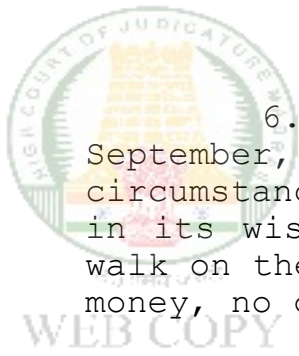
2.Learned advocate for the appellant has submitted that the relief granted by learned Single Judge of waiving the licence fee for the entire lock-down period i.e., for the period from 24.03.2020 to 06.09.2020 is inconsistent with the policy of the State and no relief could have been granted to the petitioner. It is submitted that, when the shop in question was leased, the tender condition also stipulated that in the event of default of payment of rent / license fee, no concession will be granted under any of the circumstances including pandemic. Learned advocate for the appellant - Municipal Corporation has further submitted that, in view of the Government Order dated 02.09.2020 waiving the lease / rent for only two months i.e., for April and May, 2020, it is not open to the Corporation to give any further concession.

3.Learned advocate for the appellant further submitted that the action of the Municipal Corporation, on the basis of the Government Order cannot be said to illegal and therefore no interference should have been made by the Writ Court. It is further submitted that, since the proposal by the Commissioner of Municipal Administration dated 18.06.2020 was for two months, consequential Government Order was passed and beyond that no Government Order is passed by the State and therefore the writ petitioner not entitled to any relief. It is further submitted that it is the policy of the State and therefore in such policy decisions, discretion under Article 226 of the Constitution of India should not be exercised. It is submitted that this appeal be entertained.

4.On the other hand, learned advocate for the original writ petitioner has submitted that the entire affair of the Country was standstill in view of the total lock-down announced by the Government and the petitioner could not have gone to attend his livelihood much less to pay to the Government and therefore the discretion exercised by learned Single Judge is just and proper and no interference be made by this court. Attention of the Court is also invited to G.O.(D)No.298, dated 02.09.2020, which was stated to have been issued on the basis of the recommendation of the Commissioner of Municipal Administration dated 18.06.2020. It is submitted that this appeal be dismissed.

5.The point at issue before this Court in this appeal is, whether the relief granted by learned Single Judge to the writ petitioner of waiver of license fee for the period of lock-down (from 24.03.2020 to 06.09.2020) can be said to be erroneous in any manner, which may call for any interference in this intra-court appeal.

6.Having heard learned advocates for the respective parties and having considered the material on record this Court finds as under:-



6.1 The difficulties faced by the nation (during March to September, 2020) was like once in century. The extraordinary circumstances can not be met with by ordinary measures. The State in its wisdom thought it proper not to permit any citizen even to walk on the road during the said period. No one would go out to earn money, no one would go out to spent money.

6.2 Considering this, Government passed order on 02.09.2020 accepting the proposal of the Commissioner of Municipal Administration dated 18.06.2020, which was for waiver of the license fee for the months of April and May 2020. We do not find any fault in the proposal of the Commissioner which was made in the month of June, 2020 because that would not have taken into consideration the eventualities of the months coming thereafter. If the said proposal was based on the lock-down for the months of April and May, 2020, we do not see any change of circumstances for remaining period of the lock-down upto September, 2020. Only because no proposal was made by the Commissioner of Municipal Administration in that regard or the Government not passing any consequential order can not be a guiding factor to meet with such circumstances.

6.3 We find that, these are circumstances in which the State on its own should have taken care of the citizen. Having failed to do so, when this Court in exercise of powers under Article 226 of the Constitution of India has granted that relief, the same can not be said to be erroneous in any manner. Not only we do not find any error therein, we confirm the said view. For these reasons, this appeal needs to be dismissed.

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

Sd/-
Assistant Registrar(CS III)

/TRUE COPY/

/ /2022
Sub Assistant Registrar(CS)

To

+1 CC to M/s.K.APPADURAI, Advocate (SR-13976[F] dated 23/03/2022)

W.A(MD)No.980 of 2021
22.03.2022

MK/31.03.2022/3P/2C