



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. (MD) .Nos.20077 and 20079 of 2019

and

W.M.P. (MD) .Nos.16608, 16609, 16614 and 16615 of 2019

W.P. (MD) .No.20077 of 2019

G.Thambiraj

... Petitioner

Vs.

The Joint Commissioner / Executive Officer,
Kanyakumari District Temples,
Susindram,
Agastheeswaram Taluk,
Kanyakumari District.

...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to proceedings of the respondent made in Na.Ka.No.591/2019 B.1 dated 09.09.2019, in respect of Shop No.8 and quash the same and consequently direct the respondent to extend the lease period in respect of Shop No.8 at Thirparappu, Kanyakumari District, by fixing appropriate rent.

For Petitioner	:	Mr.R.Murali
For Respondent	:	Mr.K.Sathiya Singh, Standing Counsel.

W.P. (MD) .No.20079 of 2019

J.Sureshkumar

... Petitioner

Vs.

The Joint Commissioner / Executive Officer,
Kanyakumari District Temples,
Susindram,
Agastheeswaram Taluk,
Kanyakumari District.

...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to proceedings of the



respondent made in Na.Ka.No.591/2019 B.1 dated 09.09.2019, in respect of Shop No.16 and quash the same and consequently direct the respondent to extend the lease period in respect of Shop No.16 at Thirparappu, Kanyakumari District, by fixing appropriate rent.

For Petitioner : Mr.R.Murali
For Respondent : Mr.K.Sathiya Singh,
Standing Counsel.

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COMMON ORDER

These writ petitions pertain to shop Nos.8 and 16 of the respondent temple in Kanyakumari District. The petitioner had participated in the tender and had paid a sum of Rs.50,000/- towards deposit and 12 months rent in advance. Apart from the above, at the time of taking the property under licence from the respondent temple, these petitioners have paid a sum of Rs.1,04,600/- in W.P. (MD).No.20079 of 2019 and sum of Rs.1,03,200/- in W.P. (MD).No.20077 of 2019.

2. The learned counsel for the petitioners submits that though the petitioners have challenged the tender notification, the petitioners would be satisfied if the respondent refunds the amount, collected contrary to the tender documents. The learned counsel for the petitioners further submits that the petitioners are small vendors who hoped to do the business from the licenced premises, but were unable to continue the same due to the intervening attempt of the respondents to cancel the licence by calling for fresh licence. It is further submitted that due to the out break of Covid-19 Pandemic, the petitioners were out of business for almost a year and a half. It is submitted that the temple has started receiving footfalls and there is hope for the petitioners to revive the business provided if there are no interference from the respondent temple to dispossess them.

3. Opposing the prayer, the learned counsel for the respondent submits that the writ petitions have become infructuous, in view of the interim order passed by this Court. It is submitted that no further tenders have been called for. It is submitted that the petitioners were in arrears of licence fee and therefore the amount that was paid by the petitioners towards security deposit is liable to be adjusted towards past dues. It is further submitted that the petitioners voluntarily paid a donation of Rs.1,04,600/- in W.P. (MD).No.20079 of 2019 and sum of Rs.1,03,200/- in W.P. (MD).No.20077 of 2019 and therefore the petitioners cannot ask for any equitable relief in these writ petitions for refund of the amounts. It is further submitted that it is open for the petitioners to work out their remedy in accordance with law before the appropriate Forum to recover the aforesaid amount, if it is the case of the petitioners that the aforesaid amounts were not collected as a donation. It is not open for the petitioners to ask for refund either before this Court or before any other Court and therefore prayed for dismissal of the writ petitions.



4. I have considered the arguments advanced by the learned counsel for the petitioners and the learned standing counsel for the respondent.

5. The petitioners have successfully managed the stall auction of the shops for being leased/licenced for the ensuing period. Therefore, no orders are required to be passed in these writ petitions for further continuance. However, there are intervening circumstances on account of out break of Covid-19 pandemic. Neither the petitioners nor the respondent had any regular income during the period when the lock down was in force.

6. Considering the same, I am inclined to direct the respondent to adjust the deposit made by the petitioners towards the arrears of rent for the period up to the date of outbreak of Covid-19 Pandemic and the demand the balance, if any, from the petitioners. For the period after the lockdown was imposed, the respondent may consider request of the petitioner on humanitarian grounds. The respondent can proceed to issue fresh auction notice for a fresh period in which the petitioners can be allowed to participate subject to their paying the arrears upto March 2020. The respondent shall also obtain the consent letter from the petitioners to the effect that the petitioners will vacate the premises. The petitioners may be allowed to occupy the shops till the fresh auction subject to their paying/clearing the past arrears for the period after the lock down has been revoked. The petitioners are also entitled to participate in the proposed tender and shall vacate the premises in case, the petitioners remains unsuccessful in the ensuing tender. The amount collected from the petitioners towards donation, may be refunded back to them after adjustment of the arrears.

7. The writ petitions stand dismissed as infructuous with the above observations. No costs. Consequently, the connected Miscellaneous Petitions are closed

Sd/-
Assistant Registrar(CS I)

/TRUE COPY/

/ /2022
Sub Assistant Registrar(CS)

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To

The Joint Commissioner / Executive Officer,
Kanyakumari District Temples,
Susindram,
Agastheeswaram Taluk,
Kanyakumari District.

+2 CC to M/s.T.SATHIYA SINGH, Advocate (SR-11729, 11731[F] dated
14/03/2022)

+1 CC to M/s.M.SURESH KUMAR, Advocate (SR-11933[F] dated 14/03/2022)

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MK/04.04.2022/4P/5C