



W.P (MD) No.26255 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 21.12.2022

Coram

THE HONOURABLE **Mrs. JUSTICE V.BHAVANI SUBBAROYAN**

W.P.(MD) No.26255 of 2022 &
W.M.P.(MD) Nos.20429 and 20430 of 2022

S.M.Shanmugavelu

.. Petitioner

Vs.

The Joint Commissioner / Executive Officer,
Arulmigu Aranganathaswamy Thirukovil,
Srirangam,
Trichy District

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the impugned shops tender / public auction notice issued by the respondent in Na.ka.No.5393/1431/C3/ dated 08.11.2022 and quash the same in so far as the Shop Nos.2 & 3 are concerned.

For Petitioner : Mr.R.V.Rajkumar

For Respondent : Mr.M.Saravanan
Standing Counsel

ORDER



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The petitioner has preferred the present Writ Petition for issuance of a Writ of Certiorari to call for the records pertaining to the impugned shops tender / public auction notice issued by the respondent in Na.ka.No.5393/1431/C3/ dated 08.11.2022 and quash the same in so far as the Shop Nos.2 & 3 are concerned.

2. The case of the petitioner, in brief, is as follows:-

The respondent during August, 2007, through a public auction, has leased out 12 shops belonging to the respondent temple, situated at Aswatheertha Kulam Complex in S.No.763/3, Block No.18, Ward No.2, Gandhi Road, Srirangam. The petitioner participated in the said auction and was allotted two shops, viz., Shop Nos. 2 and 3, on rental basis, as per O.Mu. No. 64402 of 2007 dated 24.12.2007. The petitioner is running a two wheeler spare parts shop and paying the rent regularly. The lease of the petitioner was lastly renewed in the year 2019. While so, the respondent issued the impugned tender/auction notice dated 08.11.2022 for letting out the Shops 1 to 12 belonging to the temple Situated at Aswa theerthakulam shopping complex on auction. Hence this petition.

3. The learned counsel for the petitioner would submit that as per G.O.Ms.No.456 dated 09.11.2007, every three years, the rent has been



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increased by 15% and accordingly, the petitioner has remitted the rent regularly without any default and there is no other complaint whatsoever and thus, the impugned order is not sustainable. Further, in the impugned tender cum auction proceedings, it is stated that the license is for a period of five years, which is unreasonable, as it is settled norms that the tender cum auction can be only for a period of one year or three years and hence prayed that the impugned proceedings is liable to be quashed.

4. Per contra, the learned standing counsel appearing for the respondent drawn the attention of this Court to the communication letter dated 4.10.2004 by the Special Commissioner to the respondent, wherein it could be seen that the Shops are rented to the petitioner for a period of three years. The Petitioner has admitted in his affidavit that the lease was lastly renewed in the year 2019 and was not renewed thereafter. The persons in occupation either licensees/lessees are bound to vacate the premises after expiry of the period. The petitioner has every right to participate in the auction and obtain fresh license and cannot seek to quash the aucution notice for the mere reason that he had remitted the rent regularly without default, thereby sought to dismiss



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the writ petition.

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5. Heard the learned counsel on either side and perused the documents placed on record.

6. On a close reading of Section 34 of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959, states that, *any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void*, the Act does not contemplate that the license period must be only for a term of 3 years. If at all the petitioner contends that the license period should not be for a period 5 years, he has to prove the same with a valid provision of law.

7. It is relevant to note that mere contentions of the petitioner that the tender cum auction can only be for a period of one year or three years on the ground that as per G.O.Ms.No.456 dated 09.11.2007, the rent is hiked by 15% for every 3 years and that he is paying the said rents regularly without any default, is not a valid ground to quash the



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impugned tender notice, the same does not put an embargo that the license period must only be for a period of 1 or 3 years.

8. Besides the above, Hon'ble Apex Court in catena of Judgements has held that Tenders are not open to judicial scrutiny under Article 226 of the Constitution of India. In the Judgment [**Airport Authority of India versus Centre for Aviation Policy, Safety & Research (CAPSR) & Others**] reported in 2022 SCC OnLine SC 1334, at Paragraph no.27, among other things, it is held as under:-

"27.... while exercising the powers under Article 226 of the Constitution of India. As per the settled position of law, the terms and conditions of the Invitation to Tender are within the domain of the tenderer/tender making authority and are not open to judicial scrutiny, unless they are arbitrary, discriminatory or mala fide. As per the settled position of law, the terms of the Invitation to Tender are not open to judicial scrutiny, the same being in the realm of contract. The Government/tenderer/tender making authority must have a free hand in setting the terms of the tender."

9. Further, in the Judgment [**Jagdish Mandal v. State of Orissa**] reported in (2007) 14 SCC 517, it is held by the Supreme Court as under:



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"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance..."

10. It is an admitted fact that by way of communication letter dated 4.10.2004 by the Special Commissioner to the respondent, the subject mentioned Shops are rented to the petitioner for a period of three years and the petitioner has admitted in his affidavit that the lease was lastly renewed in the year 2019 and was not renewed thereafter.

11. Further, as per Explanation (b) of Section 78(1) of HR&CE Act, an encroacher includes any person, who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or license granted to him. Hence the persons in occupation of a temple property as licensees/lessees are bound to vacate the premises after expiry of the period. In this regard, it is worthwhile to refer to the Judgment of the Division Bench of this Court in **Arulmigu**



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Dhandayutghapani Swamy Thirukovil V. R.Sundaresan [Writ Appeal (MD) Nos.511 to 594 of 2015], wherein it is held as follows:-

“13.At the outset, it should be pointed out that the respondents cannot be said to have a cause of action to approach the Court and stall the auction. By putting the leasehold rights or licensee rights to run the shops to auction, the appellant did not seek to interfere with the possession of the respondents. It is only when the appellant sought to throw out the respondents, either by taking recourse to the procedure prescribed by law or in any case without taking recourse to due process of law, the respondents would have had a cause of action to challenge the auction notice.

14. An auction notice could have served several purposes for the department. In case the auction notice had resulted in some people offering a rent or licensee fee which is lower than what is now paid by the respondents, the appellant might have even continued the status quo without any hindrance to the shop keepers. Alternatively, if the auction had resulted in many people offering a high rate as lease rent or as licensee fee, the appellant could have made use of the said offer for the fair rent proceedings against the tenants.

.....

18.It appears that atleast in respect of four shops, auction went on and it fetched amounts which are 10 times more than the amount now paid. The occupants of those four shops have accepted the auction and they have got fresh lease/licence. Therefore, the respondents cannot object even to the auction being conducted by the appellant.

19.On the ground that the proceedings dated 07.05.2015 have not been communicated, the respondents have conveniently gone into a slumber. Therefore, if no auction is conducted and the hands of the appellant are tied, the temple may not be able to augment its resources. Such a state of affairs cannot be brought forth by the Court as



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observed by the Supreme Court in A.A.Gopalakrishnan Vs. Cochin Devaswom Board {2007 (7) SCC 482}.”

12. It is not in dispute that the petitioner has not renewed license after the year 2019, further, Section 34 of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959, does not contemplate that the license period must be only for a term of 1 or 3 years and the petitioner has also not proved the same by way of any documentary evidence.

13. On going through the entire facts and circumstances of the case in a wholesome manner and as held by the Hon'ble Supreme Court and the Hon'ble Division Bench of this Court, as mentioned supra, that the 'Tender' are not open to judicial scrutiny under Article 226 of the Constitution of India unless they are arbitrary, discriminatory or mala fide and applying such principle to the case on hand, it is clear that there is no such arbitrary, discriminatory or mala fide arisen in this case warranting interference to stall the commencement of the tender process, this Court is not inclined to interfere with the same. Also, the petitioner cannot seek to quash the auction notice merely on the ground that he had remitted the rent regularly without any default. In reality, it is



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the settled position that the persons in occupation either licensees/lessees are bound to vacate the premises after expiry of the period. Whether it is a lease or license to run a shop, the same can only be done by a public auction and the petitioner has no valid right to challenge it, as he is only a license holder.

In view of the above, the Writ Petition is dismissed. However, the petitioner is at liberty and has every right to participate in the auction and obtain fresh lease / license. Consequently, connected miscellaneous petitions are closed. No costs.

21.12.2022

Speaking order / Non speaking order

Index :Yes / No

Internet :Yes / No

ssd

To

The Joint Commissioner / Executive Officer,
Arulmigu Aranganathaswamy Thirukovil,
Srirangam, Trichy District



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V.BHAVANI SUBBAROYAN,J.,

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