



W.A.Nos.1718 and 667 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.A.Nos.1718 and 667 of 2023

W.A.No.1718 of 2023:

M.Selvam

.. Appellant

Vs

1.S.Kaliappan

2.The Commissioner,  
Coimbatore Corporation,  
Town Hall Road,  
Coimbatore-641 001.

3.The Assistant Commissioner,  
West Zone, Coimbatore Corporation,  
Ramanathapuram Road,  
Coimbatore-641 002.

.. Respondents

W.A.No.667 of 2023:

1.The Commissioner,  
Coimbatore Corporation,  
Town Hall Road,  
Coimbatore-641 001.



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2.The Assistant Commissioner,  
West Zone, Coimbatore Corporation,  
Ramanathapuram Road,  
Coimbatore-641 002.

.. Appellants

Vs

S.Kaliappan

.. Respondent

Prayer: Appeals under Clause 15 of the Letters Patent against the order passed by the learned Single Judge in W.P.No.15871 of 2022 dated 15.12.2022.

W.A.No.1718 of 2023:

|                     |                                                             |
|---------------------|-------------------------------------------------------------|
| For the Appellant   | : Mr.K.S.Viswanathan<br>Senior Counsel<br>for Mr.J.Rajmohan |
| For the Respondents | : Mr.M.Purushothaman<br>for respondent No.1                 |
|                     | : Mr.Najeeb Usman Khan<br>for respondent Nos.2 and 3        |

W.A.No.667 of 2023:

|                    |                        |
|--------------------|------------------------|
| For the Appellant  | : Mr.Najeeb Usman Khan |
| For the Respondent | : Mr.M.Purushothaman   |



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COMMON JUDGMENT  
(Delivered by the Hon'ble Chief Justice)

We have heard Mr.K.S.Viswanathan, learned Senior Counsel for the appellant in W.A.No.1718 of 2023; Mr.M.Purushothaman, learned counsel for the first respondent in W.A.No.1718 of 2023 and the sole respondent in W.A.No.667 of 2023; and, Mr.Najeeb Usman Khan, learned Standing Counsel for respondents 2 and 3 in W.A.No.1718 of 2023 and the appellants in W.A.No.667 of 2023.

2. The first respondent in W.A.No.1718 of 2023 had filed the writ petition bearing W.P.No.15871 of 2022 thereby assailing the impugned tender-cum-auction notice. The said writ petition is allowed by the learned Single Judge.

3. W.A.No.1718 of 2023 is filed by one of the bidders in the auction conducted and he claims to be the highest bidder. W.A.No.667 of 2023 is filed by the Coimbatore Corporation.



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4. The original petitioner was awarded tender for collection of the market user fee. The tender was for the period from 2021 to 2024. The first year auction amount was deposited by the original writ petitioner. On or about 28.5.2022, the Corporation had floated a fresh tender, compelling the original petitioner to file the writ petition.

5. The learned Single Judge allowed the writ petition, thereby setting aside the notification of the fresh tender. The original petitioner was directed to pay the remaining amount as per the original conditions of tender within a period of one month and the Corporation was directed to renew the licence for other two years as per the contract. Now, as per the original tender, about six months remain.

6. Learned counsel for the Corporation and learned Senior Counsel for the highest bidder in the subsequent tender proceedings submit that, in case of tender, the learned Single Judge ought not to have interfered and the remedy that would be



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available to the original petitioner would be for damages in case the original petitioner is aggrieved by any action.

7. Learned counsels further submit that the original petitioner did not place on record the correct copy of resolution no.84. In the said resolution, a decision was taken to re-auction. However, the said fact was not brought to the notice of the learned Single Judge. The original petitioner had committed a breach of the terms of licence/lease. The original petitioner has failed to deposit the amount for the second year. As breach was committed, the Corporation was well within its right to terminate the contract. Reliance is placed by learned counsels on Clause 7 of the licence agreement.

8. Learned counsels further submit that the question is about the public exchequer. In a fresh tender, much higher amount is received. The learned Single Judge ought to have considered the benefit to the public exchequer also. However, the same is not considered. A party, who breaches the contract, has no locus to



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challenge the action of the Corporation, more particularly, when the same is permissible under the contract itself.

9. Learned counsel for the original petitioner submits that the original petitioner, in fact, had not committed any breach. The original petitioner has paid the first year amount as per the contract. However, an agitation was conducted by the traders, wherein they were demanding collection of the market user fee at old rates. The Commissioner of Coimbatore Corporation has directed the original petitioner to collect the market user fee at old rates, which had put the original petitioner in hardship.

10. Learned counsel for the original petitioner further submitted that unilaterally the Corporation could not have taken a decision to float a fresh tender, thereby cancelling the licence agreement. No opportunity was given to the original petitioner before cancelling the licence agreement.



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11. We have considered submissions.

12. It is a fact that in matters of tender and contract, the Courts would be slow to interfere. It is also trite that the appellate court would be loath to interfere with the decision of the learned Single Judge unless it is demonstrated that the decision is perverse, arbitrary or not in consonance with the statutory provisions.

13. The learned Single Judge has observed that the original writ petitioner had not paid the second year licence fee on or before 31.3.2022. However, considering that the traders were protesting against the new revised rate fixed in the auction dated 19.10.2021, the original petitioner was forced to collect the market user fee as per 2015 by-law. The same was pursuant to the instructions of the Corporation. The original petitioner has also made representations on 30.12.2021, 07.1.2022, 26.1.2022 and 21.3.2022. On 21.3.2022, the Corporation sent a notice requiring the original petitioner to pay an amount of Rs.51,38,728/-. The petitioner sent



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a representation on 29.3.2022 stating that he has collected only a sum of Rs.33,88,150/- and he has disputed the amount claimed by the Corporation. However, subsequently, the original petitioner has shown his willingness to deposit the amount of Rs.51,38,728/-. The Corporation thereafter had passed resolution no.84 on 26.5.2022 and also took a decision to proceed for re-auction and did not renew the licence.

14. The fact that the Corporation directed the original petitioner to collect the market user fee from the traders at old rates is not disputed. The original petitioner protested initially, however, subsequently, agreed to pay the licence fee though he was directed to collect the market user fee at old rates. The Corporation certainly was entitled to cancel the agreement and proceed for re-auction in view of Clause 7 of the licence agreement. However, the circumstances were considered by the learned Single Judge and he exercised the discretion by interfering with the fresh auction.



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15. We have been told that the contract of the original petitioner is up to 31.3.2024. Hardly, six months remain. The original petitioner has already deposited the amount for the period up to 31.3.2023. The said fact is also admitted by learned counsel for the Corporation. In view of the above, no fruitful purpose would be served in rescinding the contract with the original petitioner for remaining period of six months.

16. In view of the aforesaid also, we are not inclined to interfere with the order of the learned Single Judge. Moreover, no vested right is created in favour of the highest bidder. No concluded contract exists between the highest bidder and the Corporation. If the highest bidder has paid the earnest money deposit etc., he would be entitled for repayment of the same by the Corporation.

17. In the light of the above, we are not inclined to interfere with the impugned judgment and order delivered by the learned



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Single Judge.

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18. The writ appeals, as such, are disposed of. There will be no order as to costs. Consequently, C.M.P.Nos.15215 and 6642 of 2023 are closed.

(S.V.G., C.J.)

(P.D.A., J.)

15.09.2023

Index : Yes/No  
Neutral Citation : Yes/No  
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To

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Town Hall Road,  
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- 2.The Assistant Commissioner,  
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