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**W.P.(MD) Nos.15044, 2115 15116, 2110 and
2178 of 2021**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD) Nos.15044, 2115 15116, 2110 and 2178 of 2021
and**

W.M.P.(MD) Nos.1774, 1776, 1819, 3916, 1818, 1778, 1779 and 1772 of 2023

W.P.(MD) No.15044 of 2021

Thiruganan Sambantham

... Petitioner

-VS-

1. The District Collector,
Sivagangai District, Sivagangai.

2. The Executive Officer,
Thiruppathur Town Panchayat
(Selection Grade),
Thiruppathur,
Sivagangai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing to the 2nd respondent to consider the petitioners representation dated 15.07.2021 seeking to call for public auction and allot the



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shops for qualified persons for the newly built shop s at Thiruppathur Bus Stand ,
Thirupathur, Sivagangai District.

W.P.(MD) No.2115 of 2021

P.Mohamed Kani

... Petitioner

-VS-

1. The District Collector,
Sivagangai District, Sivagangai.
2. The Executive Officer,
The Selection Grafe Town Panchayat,
Thirupathur , Sivagangai District.
3. The Special Officer Cum
Assistant Director For Town Panchayat ,
Sivagangai Regional , Sivagangai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for records of 2nd and 3rd respondent pertaining the tender cum public Auction scheduled to be conducted on 05/02/2021 for the newly constructed shops within the Thirupathur Town Panchayat Sivagangai District Bus Stand Vide Notification in Na.Ka.No.A5/854/2020 dated 20.01.2021 and quash the same as illegal and consequently direct the 1st respondent to issue fresh notification without affording priority to former tenants to conduct the tender cum auction under the superintendence of the 1st respondent based on petitioners representation date



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11.01.2021.

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W.P.(MD) No.15116 of 2021

Seenivasan

... Petitioner

-VS-

1. The District Collector,
Sivagangai District, Sivagangai.

2. The Executive Officer,
Thiruppathur Town Panchayat
(Selection Grade),
Thiruppathur,
Sivagangai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing to the 2nd respondent to consider the petitioners representation dated 16.07.2021 seeking to call for public auction and allot the shops for qualified persons for the newly built shop s at Thiruppathur Bus Stand , Thirupathur, Sivagangai District.

W.P.(MD) No.2110 of 2021

D.Kulantdhai Vel

... Petitioner

-VS-

1. The District Collector,
District Collector Office,
Sivagangai District, Sivagangai.



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2. The Director of Town Pnchayats,
4th Floor , Kuralagam, Chennai - 108.
3. The Assistant Director of Town Panchayat,
Sivagangai District, Sivagangai.
4. The Executive Officer,
Thiruppathur Town Panchayat
(Selection Grade) , Thiruppathur,
Sivagangai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned notification passed by the 3rd and 4th respondent in Na.Ka.No.A5/854/2020 dated 20/01/2021 and quash the same as illegal and consequently direct the 3rd and 4th respondent to allotment of new shop bearing number 42 or any other shop to the petitioner on priority basis at Thiruppathur Bus Stand Complex, Thiruppathur , Sivagangai District, within the time stipulated by this Hon'ble Court.

W.P.(MD) No.2178 of 2021

Anandhamurugan

... Petitioner

-VS-

1. The District Collector,
District Collector Office,
Sivagangai District , Sivagangai.
2. The Executive Officer,



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Thiruppathur Town Panchayat
(Selection Grade) , Thiruppathur,
Sivagangai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent impugned Tender Notification Na.Ka.no.A5/854/2020 dated 20.1.2021 and quash the same as devoid of merits consequently direct the 2nd respondent to allot a shop to the petitioner in the newly constructed complex at Thirupattur Bus Stand or in the available vacant site at exist point on the South West of the Bus Stand under the quota of physically challenged person under the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (1 of 1996) in view of the assurance of the 2nd respondents letter dated 24.10.2019 and order in wp.no.4623/2020 dt 4.3.2020 by considering.

For Petitioners : Mr.M.Natarajan (in all Writ Petitions)

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.P.Thilak Kumar
Government Pleader for R2
Mr.S.P.Maharajan
Special Government Pleader for R1
(in W.P.(MD) Nos.15044 and 15116 of 2021)

Mr.S.P.Maharajan
Special Government Pleader for R1 to R3
Mr.Veera Kathiravan



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Additional Advocate General
assisted by Mr.P.Thilak Kumar
Government Pleader for R4
(in W.P.(MD) No.2110 of 2021)

Mr.S.P.Maharajan
Special Government Pleader for R1 & R3
Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.P.Thilak Kumar
Government Pleader for R2
(in W.P.(MD) No.2115 of 2021)

Mr.S.P.Maharajan
Special Government Pleader for R1
Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.P.Thilak Kumar
Government Pleader for R2
(in W.P.(MD) No.2178 of 2021)

COMMON ORDER

[Order of the Court was made by R.SUBRAMANIAN, J.]

There are five writ petitions in this batch of cases which relate to the auction of shops constructed in the new bus stand of Thiruppathur Selection Grade Panchayat, while the writ petition in W.P.(MD) Nos.15044 and 15116 of 2021 are by the third parties filed in public interest seeking a direction for



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conduct of auction of the right to do business in the shops that are constructed in the new bus stand as per subsisting government orders and regulations.

2. W.P.(MD) No.2110 of 2021 has been filed by an existing lessee seeking priority. W.P.(MD) No.2178 of 2021 has been filed by a physically disabled person seeking reservation. W.P.(MD) No.2115 of 2021 has been filed by a third party to remove the special condition in the auction notice which enables priority or preference to the existing shop owners who had vacated the shop at the request of the Municipality. The existing shop owners, who seek priority or preference, rely upon the order of this Court in W.P.(MD) No.20326 of 2018, where this Court while recording the arrangement between the parties, viz., Thiruppathur Special Grade Town Panchayat and the petitioners in those writ petitions, who are the existing licensees, by which the Special Grade Town Panchayat has agreed to give preference to the existing shop owners had issued certain directions which enable the Thiruppathur Special Grade Town Panchayat to give priority to the existing licensees. This order has become final. It is pursuant to this order, the Municipality had included the special condition in the



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auction notice which stipulates that if an existing licensee matches the highest bid, he will get priority provided he agrees to pay five percent over and above the bid.

3. The petitioner in W.P.(MD) No.2110 of 2021 seeks to enforce this special condition. The other petitioners who are not licensees, viz., petitioners in W.P.(MD) Nos.2115, 15044 and 15116 of 2021 would contend that the right being only a licence, a licensee does not acquire any vested right in the property by being a successful bidder by one of the auctions. Therefore, the special condition ought not to have been included. It is also contended that the special condition will prejudice the right of third party and it will also have an effect of lowering the bid.

4. We have heard the learned counsel appearing for the petitioners in all these writ petitions and Mr.Veera Kathiravan, learned Additional Advocate General instructed by Mr.P.Thilak Kumar, learned Government Pleader appearing for the respondents.



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5. Mr.Veera Kathiravan, learned Additional Advocate General would submit that the subsequent development, namely, the notification of the Tamil Nadu Urban Local Bodies Act and the Rules creates an entirely new scenario in matters relating to auctions of right to conduct business in shops belonging to Municipalities and local bodies. Rule 316 which has been framed under the rule making powers conferred on the Government under Section 198 of the Tamil Nadu Urban Local Bodies Act, 1998, reads as follows:-

“316. Licencing or leasing of immovable properties.-

(1) The Municipal Council may grant licence or lease to any person for use and occupation of any land or building belonging to the municipality for a period of three years.

(2) After the completion of the period prescribed in sub-rule (1), no extension or renewal of the same lease shall be permitted and any applications for the same shall be considered afresh in accordance with provisions of the Act and Rules.

(3) The licence fee or lease rent for lands let out for public purpose or for use by Central Government or State



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Government Departments or Public Sector Undertakings shall be based on the guideline value of the land as per the following table:-

Usage.	Lease rate as percentage of guideline value.
(1)	(2)
Charitable and Religious	0.5%
Private Schools	3%
Aided Schools where percentage of students in aided section is less than 50% of total school strength.	1.5%
Aided Schools where percentage of students in aided section is less than 50% of total school strength. (In this category, aided school alone should be functioning in the premises leased and no other educational or related activities should be undertaken).	0.5%
Lease to Central Government or State Government departments or Public Sector Undertakings other than Metro Rail Organisations.	3%
Metro Rail Organisation.	1%

(4) The licence fee or lease rent for buildings let out for public purpose shall be based on the annual rental value derived for the purpose of calculation of property tax.

(5) Licence or lease for land and buildings let out for



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commercial or residential purpose including shopping complexes or public markets belonging to the municipality shall be effected by public auction-cum-tender which shall be conducted by the Commissioner or by a person duly authorized in this behalf.

(6) The auction floor price shall be fixed as below:-

Category.	Auction Floor Price.
(1)	(2)
Land – Commercial.	3% of Guideline Value of Land.
Land – Residential.	1.5% of Guideline Value of Land.
Land – Agricultural.	0.5% of Guideline Value of Land.
Building – Commercial other than shopping complexes or public markets.	Commercial Annual Rental Value as decided for Property Tax assessments.
Building – Shopping complexes or public markets.	Based on the actual rental value prevailing in the locality with such variations based on location of the shop in the market, demand, current vacancy levels, infrastructure facilities available, as may be decided by the council.
Building – Residential.	Residential Annual Rental Value as decided for Property Tax assessments.

(7) The bids at the auction-cum-tender shall be placed by the Commissioner before the council or a committee to accept the highest bid or bids.

(8) A person occupying a municipal land or building shall be liable to



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payment of a damage fee for use and occupation at the same rate as the licence fee or lease rent, if the occupation is without a licence or lease or continues beyond the period of the said licence or lease until the person is evicted from such illegal occupation:

Provided that mere payment of damage fee shall not entitle such illegal occupant to any rights over the said land or building.

(9) Auction-cum-tender.- The Commissioner or a person duly authorized by him should conduct the auction-cum-tender and shall not permit any person who fails to deposit as security such sum as may be specified in the preliminary notice to bid at the auction.

(10) The Commissioner shall, after the auction-cum-tender is completed, place before the Council, a list of bids at the auction-cum-tender and the highest bidder shall be granted the licence or lease:

Provided that if the highest bid has to be rejected for any reason, the reasons for the same shall be recorded in writing.

(11) (a) In case of auction for licence of rental shops belonging to the municipality, the Council may, on application by the concerned person, give preference to,-



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**(i) in case of demolition and reconstruction, existing
licensees of the demolished shopping complex;**

**(ii) licensees of another shopping complex belonging
to the municipality which was demolished or diverted to some
other use by the municipality;**

**(iii) Commercial shop owners in lands acquired by
the municipality;**

**(b) (1) Any person claiming such preference shall be
required to match the highest bid price and submit necessary
documents proving eligibility for preference;**

**(ii) The order of preference shall be in the same
order as in clause (a) and within each category, the preference
shall be in order of seniority within that category with respect to
the month and year of demolition or acquisition;**

**(iii) Preference in allotment shall not be applicable
to legal heirs of such persons if the said person is deceased;**

**(c) Five per cent of the shops may be allotted to persons
with disability, willing to match the highest bid.**

(12) Immediately after the auction has been confirmed,



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the intimation about the acceptance shall be communicated to the bidder to pay the entire amount of the first installment within the date stipulated and the necessary particulars shall be entered in the Demand Register.

(13) The licensee or lessee shall enter into an agreement with the municipality, within one week of confirmation of auction-cum-tender by the council.” *(emphasis supplied)*

6. Particularly, Rule 316 (11) shows that there is an obligation that has been imposed upon the local body to give priority to some of the existing licensees and to make a reservation for persons with disabilities who are willing to match the highest bid. A reading of the above rules would show that an obligation has been imposed upon the local body to give certain preference to the existing licensees in the event they fall under any one of the categories mentioned under sub-clause I, II and III of Rule 11(a).

7. In view of the said notification and change in law, we are of the considered opinion that the impugned auction notice has to be set aside with



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liberty to the authority to notify the auction in accordance with the Rules that has now been notified. We also place on record the fact that the Rules require a reservation for a physically disabled person provided he matches the highest bid. The writ petitions are disposed of with the direction to the Thiruppathur Selection Grade Town Panchayat to notify the auction in accordance with Rule 316 with specific emphasis to sub-rule 11 of the same. Though there is a government order, namely, G.O.Ms.No.85, dated 19.07.2000, in view of the subsequent statutory provisions that has been introduced, the same may not have a binding force as of today prohibiting any priority or preference. No costs. Consequently, the connected miscellaneous petitions are closed.

[R.S.M., J.]

[L.V.G., J.]

15.06.2023

NCC : No
Index : No
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