



W.P(MD)No.25678 of 2023 etc.,batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.25678, 25690 to 25694, 25804 to 25810, 25746, 25800, 25801, 25702, 25753, 25803, 25689, 25716, 25733, 25734 to 25738, 25703, 25714, 25715, 25717, 25718, 25719, 25720, 25789, 25790, 25791, 25798, 25799, 25802, 25783, 25784, 25785, 25795, 25796, 25797, 25792, 25793, 25794, 25773 to 25782, 25679 to 25688, 25695 to 25701, 25704 to 25713, 25721 to 25732, 25739 to 25745, 25747 to 25752, 25754 to 25772, 25786 to 25788 of 2023

and

W.M.P.(MD)Nos.22051, 22052, 21943, 21969, 21966, 21967, 21968, 21976, 22012, 22015, 22016, 22017, 21915, 21981, 21916, 21917, 21890, 21907, 21908, 21909, 21910, 22035 to 22038, 21920, 22043, 22044, 22075 to 22078, 22079, 21918, 21852 to 21855, 21911, 21912, 21974, 21975, 21977, 21978, 21979, 22018, 21998, 21856 to 21889, 21891 to 21906, 21913, 21914, 21919, 21921 to 21942, 21944 to 21965, 21970 to 21973, 21980, 21982 to 22014, 22019 to 22034, 22039 to 22042, 22045 to 22050, 22053 to 22074, 22080 to 22111, 22114 to 22117, 22120, 22122 of 2023

In W.P.(MD)No.25678 of 2023
K.Sivaram

... Petitioner

Vs.

1.The District Collector,
Nagercoil,
Kanyakumari District.

2.The Executive Officer,
Kanyakumari Special Grade Town Panchayat,
Kanyakumari,
Kanyakumari District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.667/2023/A2, dated 29.09.2023 on the file of the second respondent and quash the same as illegal and consequently, forbear the second respondent from evicting the petitioner without following due process of law and pass further orders within a time frame stipulated by this Court.

For Petitioner : Mr.T.Lajapathy Roy
Senior Advocate
for M/s.Lajapathi Roy & Associates

For Respondents : Mr.P.Thilak Kumar
Government Pleader

COMMON ORDER

Heard the learned senior counsel appearing for the writ petitioners and the learned Government Pleader appearing for the respondents.

2. The impugned notices are a fallout of the order dated 01.08.2023 in W.P.(MD)No.28639 of 2022. It is stated by the learned senior counsel appearing for the petitioners that Review Application No.178 of 2023 has been filed. It was admitted on 21.09.2023. Notice has been ordered. When the Hon'ble Division Bench is seized of the Review Application, it would not be proper for the second respondent to render it infructuous by securing the eviction of the writ petitioners.



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3. The Government Pleader relied on Rule 316 of Tamil Nadu Urban

Local Bodies Rules, 2023. It 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 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
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 school, where the percentage of students in the aided section is more 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 Organisations	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



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Property Tax.

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



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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,—

(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) (i) 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, 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.



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4. The learned senior counsel would submit that this Rule may not have an application in the case of the petitioners because they are paying only ground rent to the local body and that the superstructure belongs to them. Be that as it may, issues will have to be necessarily answered only by the Hon'ble Division Bench. It is for this reason, the impugned notices are directed to be put on hold. The rights of the parties will abide by the outcome of Review Application No.178 of 2023.

5. These Writ Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

20.10.2023

Index : Yes / No
Internet : Yes/ No
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To

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Kanyakumari District.

2.The Executive Officer,
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