



W.P(MD)No.28522 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.28522 of 2023

and

W.M.P.(MD)Nos.24583 & 24584 of 2023

J.Daniel Raj

... Petitioner

Vs.

1.The Commissioner,
Thoothukudi City Municipal Corporation,
Thoothukudi.

2.M.Sridhar

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, by calling for the entire records pertaining to the impugned resolution that has been made ready vide an agenda in Serial No.3 (E) by the 1st respondent dated 24.11.2023 so as to place the same before the council meeting of Thoothukudi City Municipal Corporation scheduled to be taken place on 30.11.2023 in respect of granting of leasehold right to Shop No. G12 situated within the campus of Old Bus Stand, Thoothukudi and quash the same and consequently direct the 1st respondent to grant such leasehold right in his favor as per the tender notification dated 24.09.2023 published in Dinakaran Tamil Daily.



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For Petitioner : Mr.R.Anand

For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.N.Anand Kumar for R1

ORDER

Heard the learned counsel for the petitioner and the learned Additional Advocate General assisted by the learned standing counsel for the respondents.

2. The petitioner had earlier filed W.P.(MD)No.24386 of 2023. The said writ petition was disposed of in the following terms:-

“Heard the learned counsel appearing for the writ petitioner and the learned Additional Advocate General assisted by the learned Standing Counsel appearing for the Thoothukudi Town Municipal Corporation.

2. The petitioner challenges the impugned tender notification primarily on the ground that the tender process is riddled with uncertainty. My attention has been drawn to the order dated 19.12.2018 made in W.P(MD)No.24461 of 2018 (Anna Perunthu Nilaya Vattara Viyaparikal Nala Sangam Vs The State of Tamil Nadu & Others). Paragraphs 2, 3, 6 and 9 of the order read as follows: --

“2. The members of the Association are the licensees under the Tuticorin Municipal Corporation. They are in possession of the shops located inside the old bus stand, Tuticorin. The Corporation initiated action for eviction of the existing licensees for reconstruction of bus stand and the same resulted in filing this Writ Petition.

3. The Tuticorin Municipal Corporation is included in the smart city project. In order to make the city smart, the Municipal Corporation initiated various measures, which includes the reconstruction of the bus stand. The existing licensees were directed to vacate the premises with an undertaking



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that they would be given allotment once the bus stand is re-constructed. However, the proposal was not acceptable to the traders, resulting in taking up follow-up action by the Municipal Corporation for their eviction.

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6. The Commissioner, Tuticorin Municipal Corporation filed an affidavit dated 10 January, 2019, undertaking to allot shops to the existing licensees after re-construction of the bus stand. The Commissioner, in his affidavit, referred to the undertaking affidavits submitted by the existing licensees. There is a dispute with regard to the undertaking affidavits given by the licensees of premises in Serial Nos.9, 22, 27, 28, 29, 30, 45, 48 and 49.

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9. The existing licensees have given undertaking affidavits before the Tuticorin Municipal Corporation to vacate and hand over vacant possession on or before 31 January, 2019. However, they would be given time to vacate the premises till 14 February, 2019. The vacant possession should be handed over to the Tuticorin Municipal Corporation by 15 February, 2019. We make it clear that in case the shops are not handed over to the Local Body on or before 15 February, 2019, such defaulters shall be thereafter evicted forthwith without any further notice and they would not be given allotment of new shops after re-construction.” The petitioner's case is that even if he turns out to be the highest bidder for a particular shop, there is no guarantee that he will get the same if the earlier lessee offers to match the bid. The learned counsel appearing for the petitioner is right in his contention that the process is shrouded in uncertainty.

3. But in view of the earlier order passed by the Hon'ble Division Bench and also Rule 316(1) of the Tamil Nadu Urban Local Body Rules, 2023, this outcome is unavoidable. The object of the corporation is to ascertain the market price. The ascertainment is possible only by holding a proper public auction. Nobody is compelling the petitioner to participate in



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this tender process. It is a matter of his choice. He may get the shop for which he has bid or he may not. In view of the statutory position and also the earlier order of the Hon'ble Division Bench, no relief can be granted in the writ petition.

4. However, considering the special facts and circumstances obtaining in this case, the petitioner is permitted to apply for tender schedule. If the petitioner's nominee Thiru.M.Thangaraj, S/o.Muthu Krishnan applies for issue the tender schedule before 01.00 p.m today (09.10.2023), it shall be issued. The nominee has to fill up the same immediately. The said nominee is permitted to fill up the tender schedule on behalf of the writ petitioner. He is also permitted to pay the caution deposit as cash. He shall be permitted to submit the tender in sealed cover and if any auction takes place today (09.10.2023), the petitioner's representative can also participate therein. Since the order copy cannot be issued before 06.00 p.m, the learned Standing Counsel is directed to inform the respondent about the terms of this order.

5. This writ petition is dismissed with the aforesaid liberty to the petitioner. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.”

3. On the said date, the petitioner had offered his tender for a sum of Rs.23,800/-. According to the learned Additional Advocate General, the second respondent had taken part in the tender and had offered a sum of Rs.12,000/-. When the outcome of the tender was announced, the second respondent increased its offer and he was ready to match the petitioner's offer. Therefore, the Corporation authorities have chosen to allot the shop in favour of the second respondent. Challenging the same, the petitioner has filed the present writ petition.



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4. The learned counsel for the petitioner states that only tender was conducted and no auction was held. The petitioner is ready for the competitive bidding with the second respondent. The argument is no doubt very attractive at the first look. The learned Additional Advocate General points out that as per the order passed by the Hon'ble Division Bench and as per Rule 316 of the Tamil Nadu Urban Local Bodies Rules, aim is to enable the existing licensee to match the highest offer. There cannot be a competitive bidding between the existing licensee and the third party. At the end of the tender process, the petitioner's offer turned out to be highest. Since there was no other rival person, the question of holding auction does not arise at all. Therefore, the second respondent was right in not challenging the petitioner for conducting auction. The corporation rightly allotted the shop in favour of the second respondent. The approach adopted by the corporation cannot be faulted on any ground. I sustain the stand of the learned Additional Advocate General.

5. The Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
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