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W.P. No. 22385 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM

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

W.P. No. 22385 of 2023

and

W.M.P. No. 21779 of 2023

S.Manavalan

... Petitioner

-VS-

The Commissioner
Nagapattinam Municipality
Ngapattinam.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondent to renew the lease for further three years from 01.08.2023 to 31.07.2026 dispensing with public auction in favour of the Petitioner in respect of the shop No. 25-A, running in the name and style of Sri Siva Jothi Sweets & Juice Corner at Anna New Bus Stand, Nagapattinam.

For Petitioner : Mr. N.Sampath

For Respondent : Mr. T.C.Harinath

ORDER

Heard Mr. N.Sampath, Learned Counsel for the Petitioner and Mr. T.C.Harinath, Learned Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.



W.P. No. 22385 of 2023

2. It is borne out from the materials placed on record that the Respondent by

Proceedings in Na.Ka. No. 2407/2017/A4 dated 04.08.2020 had allotted the Shop No. 25A in Anna New Bus Stand, Nagapattinam (herienafter referred to as 'the Shop' for short) belonging to it to one Paramayee Ammal for lease for the period from 04.08.2020 to 31.07.2023 and that she had died on 12.05.2021 during its tenure. There had been disputes amongst her legal heirs regarding their entitlement to succession of the lease-hold right in that shop causing law and order problems affecting public peace in the locality. In those circumstances, the Respondent by Na.Ka. No. 2407/2017/A4 dated 26.06.2023 had called upon the rival claimants to submit documentary evidence relating to their respective claims, failing which it was informed that public auction would be conducted for grant of fresh lease of the shop. While the matter stood as narrated supra, the Petitioner, viz., S.Manavalan, who is one of the legal heirs of the said Paramayee Ammal, has filed this Writ Petition seeking direction to extend the benefit of renewal of lease in his favour for a period of 3 years from 01.08.2023 to 31.07.2023 relying on G.O. (Ms.) No. 92, Municipal Administration and Water Supply (Fin.4) Department dated 03.07.2007 issued by the Government of Tamil Nadu.



W.P. No. 22385 of 2023

3. Learned Counsel appearing for the Respondent highlights that G.O. (Ms.)

No. 92, Municipal Administration and Water Supply (Fin.4) Department dated 03.07.2007 issued by the Government of Tamil Nadu is no longer applicable in view of the Tamil Nadu Urban Local Bodies Act, 1998 (hereinafter referred to as 'the TNULB Act' for short), which has come into effect from 13.04.2023, and Rule 316 of the Tamil Nadu Urban Local Bodies Rules, 2023 (hereinafter referred to as 'the TNULB Rules' for short) framed in the exercise of powers conferred under Section 198 of the TNULB Act, which is extracted below:-

“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:–



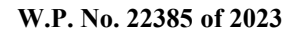
W.P. No. 22385 of 2023

THE 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 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 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
(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 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



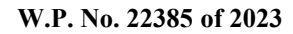
W.P. No. 22385 of 2023

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,—

- (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



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

(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.”

4. There is substantial force in the said contention, which deserves acceptance. The Hon'ble Supreme Court of India in the decision in ***Union of India -vs- Ashok Kumar Aggarwal*** [(2013) 16 SCC 147] has reiterated the legal position that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. When Rule 316(2)



W.P. No. 22385 of 2023

of the TNULB Rules mandates that after the completion of the prescribed period of 3 years for grant of lease, no extension or renewal of the same lease shall be permitted, it would necessarily follow that clauses 4(ii) and (iii) of G.O. Ms. No. 92, Municipal Administration and Water Supply Department dated 03.07.2007 issued by the Government of Tamil Nadu, which had hereto provided for automatic renewal of lease for 3 block periods of 3 years each aggregating to 9 years on enhancement at 15% of the existing rent, would stand superseded. Further, Rule 316(11)(b)(iii) of the TNULB Rules has made it clear that preference in allotment shall not be applicable to legal heirs of deceased lessees.

5. In this context, reference must be made to the dictum laid down by the Hon'ble Supreme Court of India in the decision in ***Director of Settlements, A.P. -vs- M.R. Apparao*** [(2002) 4 SCC 638], which reads as follows:-

“17. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus.

“Mandamus” means a command. It differs from the writs of prohibition or



W.P. No. 22385 of 2023

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certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (**Kalyan Singh -vs- State of U.P.** (AIR 1962 SC 1183). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law....”

Applying the aforesaid principles to the facts of this case *viz-a-viz* the cogent reasons assigned by the Respondent for refusing to accede to the claim made by the Petitioner, it is not possible to grant the relief as sought by the Petitioner in the Writ Petition. However, it is made clear that if the Petitioner is otherwise eligible and not disqualified, he shall not be precluded from participating in the fresh auction of the shop when conducted by the Respondent.



W.P. No. 22385 of 2023

In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, connected Miscellaneous Petition is closed. No costs.

05.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

Maya

To

The Commissioner
Nagapattinam Municipality
Ngapattinam.



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W.P. No. 22385 of 2023

P.D. AUDIKESAVALU, J.

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W.P. No. 22385 of 2023

05.03.2024