



W.P(MD)No.2156 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.02.2024

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition(MD)No.2156 of 2024
and
W.M.P(MD)Nos.2152 and 2153 of 2024

Krishnan

.. Petitioner

Vs

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Commissioner of Corporation,
Tirunelveli Corporation,
Tirunelveli.

3.The Assistant Commissioner of Corporation (in-charge)
Tirunelveli Corporation,
Tirunelveli Zone.

..Respondents

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 the impugned notification in Na.Ka.No. Thi.Va.A1/370/2023 issued by the 3rd respondent in Dinamani Tamil Daily News Paper and quash the same and consequently, direct the 3rd respondent to conduct the public auction in accordance with Tamil Nadu Transparency Tender Act.



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For Petitioner : Mr.M.Ramu

For Respondents : Mr.SRA.Ramachandran
Addl. Govt. Pleader (for R1)

Mr.S.P.Maharajan (for R2)
Mr.A.Sivanu Pandian (for R3)

ORDER

This writ petition is filed challenging the impugned notification in Na.Ka.No. Thi.Va.A1/370/2023 issued by the 3rd respondent in Dinamani Tamil Daily News Paper and seeking a consequential direction to the 3rd respondent to conduct the public auction in accordance with Tamil Nadu Transparency in Tenders Act.

2. The learned counsel for the petitioner would submit that the petitioner is doing vegetable business in street. On 14.01.2024, the third respondent published public auction-cum-tender notification in daily Tamil Newspaper inviting the interested persons to participate in the public auction scheduled to be held on 30.01.2024, for the newly constructed shops at Nethaji Bose Market, Tirunelveli Town under Smart City Scheme. According to the petitioner, there are 75 newly constructed shops under the said scheme. When the petitioner



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went to the office of the third respondent to get auction application form, the third respondent informed him that the application was not ready. Hence, on 19.01.2024, the petitioner has presented his representation along with relevant documents in the box, which states in the third respondent's Office. On 26.01.2024, the third respondent issued amended notification for the public auction-cum-tender, which was fixed on 30.01.2024 and extended the time for the public auction on 02.02.2024. In the amended notification, it is stated that preference will be given to the old shop owners and they are entitled, on preference, to get one shop, as per agreement of the year 2020. Objecting the said notification, the petitioner has sent a representation on 30.01.2024 to the respondents. The learned counsel would further submit that beyond the scope of the Tamil Nadu Transparency in Tenders Act, the third respondent issued the amended notification by giving preference to old shop owners, which is not valid in the eye of law. Hence, challenging the said notification, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner would submit that as per the order of the Hon'ble Division Bench in W.P(MD)No.19052 of 2021 dated 26.10.2021, preference cannot be given to the existing lessees.



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4. The learned counsel for the second respondent Commissioner would submit that totally 85 shops were constructed in the market which were existing and at the later point of time, Smart City Scheme came into force and they have to provide various amenities and hence, 75 shops alone were constructed. According to the respondent Corporation, 53 persons are the original lessees and others are sub lessees. The respondent Corporation had a meeting with the said shop owners and at the time of meeting, there was a talk and accordingly, the second respondent Corporation has passed a resolution that preference will be given to the old shop owners in the newly constructed shops. According to the respondent Corporation, out of 75 shops, 53 shops are for the original lessees and now, only 22 shops are vacant, which will be given to the private individuals. This is challenged by the petitioner. The learned counsel would further submit that only few people have come and got application. According the learned counsel for the second respondent Commissioner, preference will be given to the existing lessees. In support of his contention, he has produced a copy of the order of the Honourable Division Bench in W.P(MD)No.19906 of 2019 dated 17.09.2019.



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19906 of 2019 dated 17.09.2019 would show that there is no such order passed in respect of giving preference to the existing lessees. Further, it is seen that in the order of the Hon'ble Division Bench in W.P(MD)No.19052 of 2021 dated 26.10.2021, the Honourable the Chief Justice has clearly stated that there cannot be any differentiate between the existing shop owners and the fresh bidders.

6. In view of the decision of the Honourable the Chief Justice, the resolution passed by the respondent corporation giving preference to the existing lessee, cannot be accepted. Accordingly, the respondents are directed to issue application to whoever is seeking shops and after receiving the applications, the respondents have to proceed further by fixing auction date as 19.02.2024. The petitioner is at liberty to participate in the auction. It is made clear that whoever's bids is high, they will be given preference. It is also made clear that the respondents can conduct auction only when sufficient number of persons have participated.



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7. With the above observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

02.02.2024

NCC : Yes/No

Index : Yes/No

Internet: Yes

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Note : Issue order copy on 13.02.2024.

To

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Commissioner of Corporation,
Tirunelveli Corporation,
Tirunelveli.

3. The Assistant Commissioner of Corporation (incharge)
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V.BHAVANI SUBBAROYAN, J.

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