



W.A.(MD) No.685 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2024

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR**

W.A.(MD) No.685 of 2021

and

C.M.P.(MD) No.2967 of 2021

The Commissioner
Oddanchatiram Municipality
Dindigul District

... Appellant

-vs-

1.S.Murugan

2.The District Collector
Disaster Management Department
Dindigul District

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 11.01.2021, passed in W.P.(MD) No.555 of 2021, on the file of this Court.

For Appellant : Mr.T.Lenin Kumar

For Respondents : Mr.M.S.Suresh Kumar for R1
Ms.D.Farjana Ghoushia
Special Government Pleader for R2



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J U D G M E N T

[Judgment of the Court was made by RMT.TEEKAA RAMAN, J.]

The first respondent / writ petitioner was granted license in January, 2018 to collect fee from the users of the petition mentioned Sunday Weekly Market. The license was for three years period from 01.04.2018 till 31.03.2021. The appellant – Municipality issued a tender notification dated 29.12.2020 proposing to conduct auction for finalising the issuance of license for the period commencing from 01.04.2021 to 31.03.2024, which was challenged by the first respondent on the ground that during the pandemic period, the market was closed and therefore he should be given corresponding extension of the license period.

2. Learned Standing counsel for the appellant – Municipality pointed out that the request of the first respondent cannot be accepted. He further contended that one of the license conditions was that the licensee has to bear the burden of the loss arising out of certain unforeseen courses. He also stated that the Government has issued G.O.(D).No.298, Municipal Administration and Water Supply(MA.IV) Department, dated 02.09.2020 wherein the Government had passed orders directing that necessary orders should be issued by the Commissioner of Municipal Administration for waiver



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of the payment of lease/rental amount for the lock down period from 01.04.2020 to 31.05.2020 by the lessees in respect of the leased out properties of Urban Local Bodies covering Greater Chennai Corporation, 14 other Corporations, 121 Municipalities and 528 Town Panchayats.

3. The learned Single Judge, by order dated 11.01.2021, has observed as follows:

“4. I am not persuaded by the aforesaid statement of the learned Standing counsel appearing for the Municipality. It is beyond dispute that the market in question was ordered to be closed with effect from 22.03.2020. It appears to have been reopened only on 04.10.2020. Of course the learned Standing counsel has stated that it was reopened on 01.10.2020. There is not much of difference between the dates. To expect the petitioner to pay the license fee even for this period, in my view is preposterous. This is because of the lock down restrictions announced by the Government, the market in question was not functioning. If due to natural calamity or other incidents, the market in question was closed, then probably the learned Standing counsel's contentions can be countenanced. The case on hand would fall under those categories. If due to



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Covid-19 outbreak, people have not thronged the market and if as a result, the petitioner had suffered a loss, then certainly the contention of the learned Standing counsel will have to be upheld. But here, the market was directed to be closed by the order of the Government. Hence, I therefore hold that the petitioner is entitled to waiver for the period from 22.03.2020 till 01.10.2020 or till it was directed to be reopened as per the specific order passed by the second respondent.

5. The impugned tender process has to go on. The petitioner can also take part in the same. The petitioner cannot be disqualified in the tender for non-payment of the licence fee for the aforesaid period. This writ petition stands disposed of on these terms. No costs. Consequently, connected miscellaneous petitions are closed.”

4. Aggrieved by the same, the Municipality has filed this appeal.

5. Whether the first respondent / writ petitioner is entitled for waiver of the lease amount during the Covid Pandemic period between 22.03.2020 to 01.10.2020 or not is the subject matter of consideration in this matter.



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6. The above issue is no longer *res integra* in view of the Judgment of the Division Bench of this Court, dated 22.03.2022, in W.A.(MD) Nos.493 to 496 of 2021 [***The Nagercoil Municipal Corporation vs. V.Manokaran***], wherein a similar set of facts was considered and refund was ordered in respect of the lock down period. The relevant portion of the said decision is extracted hereunder:

“6.2 Considering this, Government passed order on 02.09.2020 accepting the proposal of the Commissioner of Municipal Administration dated 18.06.2020, which was for waiver of the license fee for the months of April and May 2020. We do not find any fault in the proposal of the Commissioner which was made in the month of June, 2020 because that would not have taken into consideration the eventualities of the months coming thereafter. If the said proposal was based on the lock-down for the months of April and May, 2020, we do not see any change of circumstances for remaining period of the lock-down upto September, 2020. Only because no proposal was made by the Commissioner of Municipal Administration in that regard or the Government not passing any consequential order can not be a guiding factor to meet with such circumstances.”



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6. We are of the view that the said decision is squarely applicable to the case on hand and the first respondent / writ petitioner is entitled for the relief sought for in the writ petition.

7. Accordingly, this writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[T.K.R., J.] [N.S., J.]

02.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:
The District Collector,
Disaster Management Department,
Dindigul District.



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