



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.05.2017

Delivered on : 30.05.2017

CORAM :

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
and
The HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.A. (MD)No.539 of 2017
and
C.M.P. (MD)Nos. 4536, 4579 & 4592 of 2017

M.Velmurugan

... Appellant /Respondent/Petitioner

Vs.

The Commissioner,
Ramanathapuram Municipality,
Ramanathapuram Municipality Office,
Ramanathapuram District. ... Respondent/Petitioner/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 21.04.2017, made in W.M.P.(MD)No.4219 of 2017 in W.P.(MD)No.4395 of 2017, on the file of this Court.

Prayer in WMP(MD)No. 4219/ 2017 IN
WP(MD)No.3526/2017 IN WP(MD)No.4395/2017:

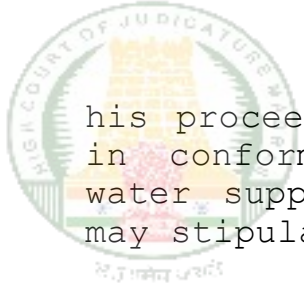
To vacate the Status quo order passed by this Honble Court in WMP(MD)No.3526 of 2017 in WP(MD)NO.4395 of 2017 dated 16.03.2017 and to dismiss the Writ Petition With exemplary cost as not maintainable due to suppression of facts and devoid of merits.

Prayer in WMP(MD). 3526/ 2017 IN WP(MD)No.4395/2017 :

To grant an Ad-Interim Stay of operation of the impugned auction cum tender notification issued by the respondent in his proceedings Nil dated 16.02.2017 pending disposal of the above writ petition.

Prayer in WP(MD). 4395/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus to call for the records relating the impugned auction cum tender notification issued by the respondent in his proceedings Nil dated 16.02.2017 and quash the same as illegal and consequentially to direct the respondent to permit the petitioner to collect rent from the street vendors upto 31.03.2018 in terms of the order of confirmation issued by the respondent in



his proceedings Na.ka.No.73/2015/F2 dated 23.04.2015 and strictly in conformity with G.O.Ms.No.181 Municipal Administration and water supply Department dated 19/09/2008 within the period that may stipulated by this Honourable Court.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates
For Respondent : Mr.A.Kannan
Mr.T.Lajapathi Roy
For Caveator

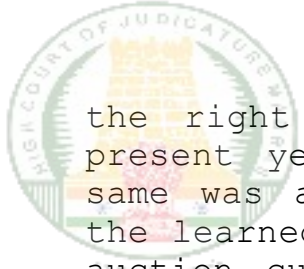
JUDGEMENT

The instant Writ appeal is filed against the order passed in WMP (MD) No.4219/of 2017 in writ petition No.4395/of 2017 dated 21.04.2017. The background of the writ appeal is that the writ petitioner filed a writ petition challenging the tender cum auction notification dated 16.02.2017. By considering the case of the writ petitioner, an order of status-quo was passed on 16.03.2017. Subsequently, the respondent filed a petition to vacate the interim order of status-quo passed in WMP(MD) No.3526 of 2017. Considering the totality of the case, by the order dated 21.04.2017, this court vacated the earlier interim order of status-quo and against the same; the instant writ appeal is filed.

2. It is the case of the appellant that the order passed by the learned judge is contrary to the settled principles of law and without considered the rivals submissions, the order was passed. Further, the learned judge without considered the fact that the period of lease was fixed for three years as per the Government Order 181 of Municipal Administration and Water Supply Department dated 19.09.2008. Further, it is stated by the appellant that as long as the order of confirmation issued in his favour is in force up to 31.03.2018, the respondent shall not entitle to disturb the appellant, hence the subsequent tender notification is bad in law. Hence, it is in correct and the interim order of status-quo ought not to have been vacated and therefore, he prays that the writ appeal is to be allowed.

3. On the other hand, the learned Government Advocate has submitted that the appellant is a defaulter and has not complied with any of the conditions imposed upon him as contemplated in the original auction cum tender notification. Once, he has failed to comply with the condition stipulated in the auction cum tender notification, the appellant is not entitled to get the benefit of the terms of the tender notification including the extension of the subsequent years, hence the writ appeal and the grounds raised therein are not fit for consideration in any manner.

4. Apart from that an application for impleading in WMP(MD) No.3884 of 2017 was filed by the subsequent tenderer who was given



the right of collecting rent from the street vendors for the present year based on auction cum tender notification, and the same was allowed by this court. While submitting his arguments, the learned advocate has pointed out that the respondent issued an auction cum tender notification dated 16.02.2017 and the tender was opened on 19.03.2017. In this tender, the appellant did not participate, but it was awarded in his favour and he has started to collect the rents from the street vendors since 27.04.2017. Further, it is also made it clear that as against the order of interim stay passed by this court in the writ appeal in W.A.(MD) No.539 of 2017, he has filed a petition in CMP(MD) No.4592 of 2017 and he prays for the dismissal of the writ appeal, as the writ appeal itself is infructuous.

5. Heard Mr.H.Mohammed Imran, learned counsel for the petitioner and Mr.A.Kannan, learned counsel for the respondent and all the materials available on record are perused.

6. The point for determination is that whether the claim made by the appellant in the writ appeal is entitle for consideration or not.

7. It is the case of the appellant that when he was awarded the auction cum tender in the year 2015, a stipulation was therein to enjoy the benefit of the auction cum tender for two more years that is up to 31.03.2018. The learned counsel for the appellant has contended that once the auction cum tender notification is awarded in favour of the appellant for a period of three years, the respondent Municipality is estopped from issuing from auction cum tender notification prior to 31.03.2018. Further, the subsequent tender notification issued by the Municipality dated 16.02.2017 is untenable as the same is issued against the terms of the previous tender notification. Hence, the same is liable to be quashed by allowing the writ appeal.

8. On the other hand, the learned Government Advocate, on instructions pointed out that though the previous tender notification is meant for three years, it will be subsisted only when all the conditions incorporated therein are complied with by the parties concerned. Apart from that he has also pointed out that the appellant has not come forward with clean hands as he has failed to bring the total facts. Because, the appellant has not paid the lease amount for the subsequent years and has not got the auction cum tender renewed in his favour as per the condition of the original tender notification. Even as on today, the appellant cannot deny, that he failed to get renewed the tender by paying the 5 % increased lease amount for the succeeding year. Once, he failed to comply with the stipulation made therein in the tender notification, the Municipality is very well entitled to issue fresh tender notification as it is the income source to the Municipality. Therefore, he prays that no illegality is taken place in the subsequent issuance of tender notification. Moreover,



it is also brought to the notice of this court, that at present the impleading petition namely Jeyabharath is awarded the right to collect rents from the street vendors and he has started to collect the rents from 27.04.2017 and the same is completely in accordance with law.

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9. Apart from that the learned advocate for the present lessee has pointed out that the respondent issued an auction cum tender notification dated 16.02.2017 and the tender was opened on 19.03.2017. In this tender, the appellant did not participate, but it was awarded in his favour and he has started to collect the rents from the street vendors since 27.04.2017. Hence, he prays for the dismissal of the writ appeal, as the writ appeal itself is infructuous. Besides, he has also pointed out that the original tender notification never authorized the parties concerned to pay the lease amount for the subsequent years on installment basis. So, it is very clear once the tenderer failed to pay the lease amount for the subsequent year within the stipulated time, he has no locus even to challenge the subsequent tender notification. Further, it is pointed out that there is no clause in the tender notification that the lease amount for the subsequent period can be paid on installment basis and the same can be accepted by the Municipality. Moreover, the appellant has not come forward with a case that he has paid the lease amount for the subsequent year in full with the Municipality. When no such averment is raised in the writ appeal, he is not entitled to make any claim based on the previous tender notification. Moreover, he has started to collect the rents from the street vendors wholly as per law and his interest is to be protected.

10. When this court is perused the tender notification, it is made it clear that though it meant for three years, the lease amount for the extended subsequent year is to be paid within the time stipulated and there is no clause even the Municipality can receive the lease amount on installment basis. So, it is very clear that the appellant has not remitted the lease amount for the subsequent period by hiking 5% of the previous year lease amount. Further, he has not made ground as to what prevented him from making the payment of lease amount for the subsequent year. Once, he has failed to comply with the condition, it is for him to convince the authorities concerned as to why he was not able to pay the lease amount within the period stipulated. When the appellant is failed to comply with the condition of the original tender notification, this court has no other option to hold that he has no locus-standi to agitate against the subsequent tender notification and its award to the eligible tenderer. Moreover, the present tenderer has complied with all the conditions of the present tender notification and no malafide is alleged in the finalization of the tender. In these circumstances, the grounds raised by the appellant in the appeal are not deserved for consideration in any manner.



11. Therefore, in the light of the above discussion, this court is unable to appreciate the grounds raised in the appeal, hence the writ appeal fails, accordingly dismissed. No order as to costs.

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Sd/-
Assistant Registrar

Sub Assistant Registrar

To

The Commissioner,
Ramanathapuram Municipality,
Ramanathapuram Municipality Office,
Ramanathapuram District.

+2cc to M/s.T.LAJAPATHI ROY Advocate in SR. No.58005
+1cc to M/s. AJMAL ASSOCIATES Advocate in SR. No.58037
+1cc to M/s.A.KANNAN Advocate in SR. No.58017
SKN
JS/MMS/SAR.3/1.06.2017/5P-6C

**Pre-Delivery Judgment made in
W.A. (MD) No.539 of 2017
and
C.M.P. (MD) Nos. 4536, 4579 & 4592 of 2017
30.05.2017**