

(1990) 03 MAD CK 0024
In the Madras High Court

C. Thulasimani

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 01-03-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 29

Citation : (1990) 2 LW 322 : (1991) 252 MLJ 1

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

Srinivasan, J.—There is no merit in this writ petition. The petitioner became the successful bidder in the auction held in 1987 and was

granted a lease for a period of 3 years. He took possession of the shop on 27.2.1987. One of the specific conditions was that the lease will be

operative for a period of three years from the date of taking possession. Consequently, his period ended on 26.2.1990. The second respondent

notified and held a fresh auction on 4.1.1990. The 4th respondent is the successful bidder in the auction held on 4.1.1990. The petitioner has come

forward with this writ petition for the issue of a writ of certiorarified mandamus calling for the records of the second respondent notifying the

auction and quashing the same, and directing respondents 1 to 3 to permit the petitioner to continue in his shop as long as he pays the rent

regularly.

2. The first contention raised by the learned Counsel of the petitioner is that he is entitled to the benefits of G.O.Ms. No. 285, dated 29.4.1985,

Under the said G.O. the government provided for municipal buildings being leased out for three years and for increase of rent in the second and

third year at particular rates mentioned in the G.O. The auction in which the petitioner participated and became the successful bidder in 1987 was

held only in pursuance of the said G.O. The maximum period fixed by the Government Order is only three years. That period having come to an

end, the petitioner cannot claim the benefit under the said G.O.

3. The next contention is that G.O.Ms. No. 285 is not valid and number of writ petitions are pending in this Court and also before the Supreme

Court, questioning the validity of the G.O. It is stated that the Supreme Court has stayed in some cases the fresh auction held by the municipality. I

am of the view that it is not open to the petitioner to challenge the validity of the G.O. after having taken part in the auction which was held in

pursuance of the said G.O. Having enjoyed the fruits of the lease granted in his favour pursuant to the said auction, the petitioner cannot challenge

the G.O. at this stage. The G.O. is challenged only by the prior lessees who were in possession at the time of the G.O. and the petitioner cannot

place himself on par with them.

4. The third contention is that the municipality cannot misuse the exemption granted by the government under the provisions of Section 29 of the

Tamil Nadu Buildings (Lease and Rent Control) Act. According to the petitioner, it is because of the exemption from the provisions of the Rent

Control Act, the municipality is resorting to eviction within a short period of three years as in this case. The contention cannot be accepted as there

is no challenge of the exemption as such. So long as the exemption is in force, the municipality is certainly entitled to impose its own terms on its

lessees. Having entered into a contract with the municipality for taking the shop on lease and having enjoyed the fruits of the lease for the entire

period fixed in the contract, the petitioner cannot now contend that the municipality is misusing the exemption granted under the Rent Control Act.

5. The next contention put forward is that the municipality has continued the lease in respect of some other lessees, but is denying the same to the

petitioner herein. There is no averment in the affidavit to that effect. However, some documents were produced before me today to show that the

municipality has granted such lease to some other lessee, and thus there is discrimination between the petitioner and the others. No materials are

placed before me to show that the petitioner is in the same position as the other

lessees. Therefore, I am of the view that this contention also cannot be sustained.

6. In substance, learned Counsel for the petitioner makes an attempt to enforce a contract of lease between the petitioner and the municipality. The contract between the municipality and the petitioner is a non-statutory one. The Supreme has held in *Berailly Development Authority and Anr. v. Ajay Pal Singh and Ors.* AIR 1989 S.C. 1075 that a non-statutory contract cannot be enforced under Article 226 of the Constitution. Hence this writ petition fails and is accordingly dismissed. No costs.