

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 17901 to 17909 of 2015

&

M.P. Nos. 1 of 2015

K.M. Kandasamy	..Petitioner in WP.17901/15
S.A.Hameed	..Petitioner in WP.17902/15
S.Ahamed Meeran	..Petitioner in WP.17903/15
S.Anvar Deen	..Petitioner in WP.17904/15
S.A.Abdul Azeez	..Petitioner in WP.17905/15
S.Khasa Mohideen	..Petitioner in WP.17906/15
T.P.N.Sait Mohamed	..Petitioner in WP.17907/15
K.M.Jamaldeen	..Petitioner in WP.17908/15
K.M.Abdul Hakkim	..Petitioner in WP.17909/15

Vs.

1. The Secretary to Govt. Of Tamil Nadu,
Municipal Administration & Water
Supply Department,
St. George Fort,
Chennai - 600 009.
2. The Commissioner of Municipal
Administration,
Chepauk, Chennai - 600 005.
3. The Commissioner,
Kallakkurichi Municipality,
Villupuram District. ..Respondents in all Wps.

Common Prayer: Petitions under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records pertaining to the portion of the notice sent by the 3rd respondent Municipality bearing Na.Ka.No. 3639/2012-A3 dated 06.05.2015 in so far as it relates to the payment of advance amount of Rs. 10,00,000/-, quash the same and also direct the 3rd respondent to accept reasonable advance which may be stipulated by this Court.

For Petitioner in all
the writ petitions

:: Mr.V. Raghupathi

For Respondents

:: Mr.V.Jayaprakash Narayanan,
Special Govt. Pleader for R1 & R2
Mr.A.S. Thambusamy for R3

O R D E R

The petitioners are merchants occupying some of the shops owned by the Kallakurichi Municipality on a monthly rent for the past 25 years and they have been paying the rent regularly. While so, the 3rd respondent conducted an emergent meeting on 31.12.2007 in which several resolutions were passed. As per Resolution Nos. 28 and 29, it was decided to ask the tenants to vacate the shops at 12 p.m. at midnight for demolition and reconstruction. According to the petitioners, there is no necessity for demolition and reconstruction as the shops and building are in good condition, for which tenants of the shops have been paying increased monthly rent every three year period. As the existing lease period was to come to an end on 31.03.2009, the petitioners, in order to get extension of lease, submitted applications on 31.12.2008 to the 3rd respondent for renewal. During the pendency of the said applications, the 3rd respondent had issued a notification calling for tenders for leasehold rights in respect of shops belonging to the Municipality, including those shops which are occupied by the petitioners. The petitioners filed W.P. Nos. 5653 of 2009 to 5821 of 2009 challenging the said notification, which came to be subsequently dismissed as infructuous. On 18.04.2009, independent eviction notices were given to the petitioners and others to vacate the shops in their occupation. The eviction notices were challenged in W.P. Nos. 11080 to 11090 of 2009. The said writ petitions were disposed of by this Court on 22.06.2009 directing the petitioners to file an appeal before the Appellate Authority. Since the Appellate Authority rejected the appeals preferred by the petitioners on 23.09.2009, the writ petitioners filed W.P. Nos. 21221 to 21229 of 2009, which were disposed of by a common order dated 11.12.2009 remanding the matter to the Appellate Authority for fresh consideration. Again, the Appellate Authority, by order dated 03.10.2010, again rejected the petitioners' appeals directing them to vacate the shops under their occupation within thirty days. As against the common order dated 03.10.2010, the petitioners filed W.P. Nos. 11070 to 11079 of 2010, which were dismissed on 26.11.2010. The said order was challenged before the Division Bench of this Court in W.A. Nos. 557 to 565 of 2011 which were also dismissed on 31.10.2011 with the following observation:

"Moreover, the ground on which the Municipality wants the appellants to vacate the shops is to construct a new commercial complex. If tht is the case of the Municipality, whenever new shops are located, the

Municipality can consider the case of the appellants for re-allotment of the shops to the appellants. The writ appeals are dismissed. However, thirty days time is granted to the appellants to vacate the shops in their occupation and hand over the same to the respondent - Municipality...."

As against the common order dated 31.10.2011 passed in W.A. Nos. 557 to 565 of 2011, the petitioners filed SLP(C) Nos. 32780 to 32788 of 2011 were filed before the Honourable Supreme Court. During the pendency of the said appeals, as per the direction of the Apex Court, the petitioners vacated the old shops occupied by them to enable the 3rd respondent to reconstruct the new shops. The 3rd respondent constructed new shops (13 shops in the front row and 13 shops on the rear side) instead of 10 old shops in the same place. After reconstruction, the extent of each shop in the front row is 210 sq.ft and the extent of each shop in the rear portion is 100 sq.ft. Pending disposal of the above said Special Leave Petitions, the 3rd respondent Municipality issued a notification dated 23.06.2014 fixing the date for public auction of four shops in the front row, four shops in the rear portion and as per the notification, the security deposit, to be paid by the intending bidders, was fixed at Rs. 25 lakhs for each shop in the front row and at Rs.15 lakhs for each shop in the rear portion. Aggrieved over that, one N. Manivannan challenged the demand of security deposit by the 3rd respondent Municipality in W.P. No. 1271 of 2014 and subsequent to the interim order passed by this Court, the 3rd respondent himself, by way of a resolution, reduced and refixed the auction deposit amount as Rs.10 lakhs for each shop in the front row and as Rs.5 lakhs for each shop in the rear portion and thereafter, the said writ petition was disposed of. Subsequently, the Honourable Apex Court, considering the public auction and new rent for new shops, by a common order dated 16.02.2015, disposed of the Special Leave Petitions as hereunder:

"The auction has fetched a rental of Rs.21,000/- per shop each measuring nearly 2010 sq.ft. We are also informed that when the matter last came up before another Bench on 05.12.2014 the Court appears to have suggested that a round figure of Rs.25,000/- per month towards rent for each one of the shops to be allotted on the front side in favour of the appellants should be acceptable to the parties.

Learned counsel for the parties today submit on instructions that the suggestion made by the learned counsel is agreeable to them. In that view all that needs to be done is to direct allotment of one shop in favour of each one of the appellants on a monthly rent of Rs.25,000/- w.e.f the date they are put in possession. Needless to say that all other terms and conditions as are applicable to other auction lessees shall be applicable to the appellants also. It is further clarified that among the appellants

the allotment of shops may be by draw of lots so that no one has any grievance as to the locatino of the shop allotted to him.

The appeals are disposed of in the above terms."

Pursuant to the orders passed by the Honourable Supreme Court on 16.02.2015, the petitioners sent detailed representations on 13.03.2015 for allotment of shops in their favour. In the said representations, the petitioners had requested the 3rd respondent to furnish draft lease deed and also to retain their earlier advance amount of Rs.1,05,000/- paid by the respective petitioners as advance amount in respect of their new shops. However, the 3rd respondent, in spite of required particulars and clarifications furnished by the petitioners, the 3rd respondent, by the impugned notices dated 06.05.2015, without considering the petitioners' requests, directed the respective petitioners to deposit a sum of Rs. 10 lakhs as advance amount in respect of the shops allotted in their favour. Challenging the same, the present writ petitions have been filed.

2. Heard Mr. V. Raghupathi, learned counsel for the petitioners and Mr.V. Jayaprakash Narayanan, learned Special Government Pleader for respondents 1 and 2 and Mr.A.S. Thambusamy, learned counsel for the 3rd respondent.

3. It is an admitted fact that that the petitioners were lessees in respect of old shops. As per the direction of the Honourable Apex Court, the petitioners vacated and handed over possession subject to the condition that they should be given preferential right at the time of allotment. After reconstruction, the shops were to be allotted based on the auction. Though the other shops fetched Rs.21,000/-, the petitioners agreed before the Honourable Supreme Court in SLP(C) Nos. 32780 to 32788 of 2011 (later renumbered as Civil Appeal Nos. 1933 to 1941 of 2015), on 16.02.2015, to pay a sum of Rs.25,000/- as monthly rent. Eventhough the petitioners are ready to pay Rs.25,000/- as agreed before the Honourable Supreme Court, by virtue of the impugned orders, Rs.10 lakhs is sought to be collected as advance, which, according to the petitioners, is on the higher side and contrary to G.O.Ms. No. 92 Municipal Administration and Water Supply Department dated 03.07.2007 by which 12 months' rent alone has to be taken as advance amount. Out of 26 shops constructed, 8 shops were already auctioned and the successful bidders were directed to pay a sum of Rs.10 lakhs as advance amount and they also complied with that. As per the Honourable Supreme Court's direction, the petitioners were to be given preferential right at the time of allotment and they were allowed to take part in the auction and the monthly rent payable by them was fixed at Rs.25,000/-. When that is the concession given to the petitioners, the petitioners are duty bound to deposit Rs.10 lakhs, since, a different yardstick cannot be applied to the petitioners, when the said amount has been paid by similarly placed persons.

4. Moreover, the impugned notices are sought to be attacked on the ground that there is no resolution passed by the 3rd respondent Municipality for demanding a sum of Rs. 10 lakhs as advance amount. But, on 21.08.2015, by virtue of resolution No. 1102/2015, the 3rd respondent had passed a resolution to collect a sum of Rs.10 lakhs towards refundable security deposit, without interest, from the lessees and when similarly placed persons, like the petitioners, have already paid the said amount, the petitioners cannot be shown any concession or exemption. Therefore, the writ petitions are dismissed.

5. However, if the petitioners are ready to pay the advance amount of Rs.10 lakhs, the petitioners shall do so, within eight weeks from the date of receipt of a copy of this order. If any amount earlier paid by the petitioners towards advance is lying with the respondent Municipality, after deducting the same, the petitioners shall pay the balance amount towards advance within the aforesaid period. On receipt of payments by the respective petitioners, the respondents shall allot shops to the petitioners. No costs. Connected M.Ps are closed.

nv

s/d-
Assistant Registrar(LA)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Govt. Of Tamil Nadu,
Municipal Administration & Water
Supply Department,
St. George Fort, Chennai - 600 009.
2. The Commissioner of Municipal
Administration,
Chepauk, Chennai - 600 005.
3. The Commissioner,
Kallakkurichi Municipality,
Villupuram District.

+ 1 cc to the Government Pleader High Court, Madras SR 45403

+ 1 cc to M/s.A.S.Thambuswamy, Advocate SR 45292

+ 9 ccs to M/s.V.Raghupathi, Advocate SR 45853

mp(co)
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