

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.1.2016

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K.AGNIHOTRI  
AND  
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.Nos.1671 to 1673 of 2015

Urimam Petra Kaikari Vyaparigal  
Podu Nala Sangham  
rep. By its Secretary,  
S.R.M.Jayaraman

...Appellant/Petitioner  
in all the writ petition

versus

1.The Member Secretary and  
Chief Executive Officer i/c.  
Chennai Metropolitan Development Authority  
rep. By its Chairman,  
No.1, Gandhi Irwin Road,  
Egmore, Chennai 600 008

2.The Chief Administrative Officer,  
Market management Committee,  
Koyambedu Wholesale Market Complex,  
Koyambedu  
Chennai 92

...Respondent in  
W.A.Nos.1671, 1672 of 2015/  
Respondent

The District Registrar (Administration)  
Additional Registration Department Temporary,  
(Additional Post)  
Central Madras,  
Chennai 600 014.

...3<sup>rd</sup> respondent in W.A.No.1673  
of 2015/ Respondent

Appeals filed against the order passed by this Court dated 18 November 2015 passed in W.P.Nos.11054 & 25199 of 2014. Petitions filed under Article 226 of the constitution of India, praying for the issue of a writ of certiorarified Mandamus, calling for records of 1st respondents in his proceedings in (i) letter No. K2/9228/2003 dated 28.3.2014 9in WP.11054/14)(ii) letter No.10286/E2/2004 dated 18.08.2014 (in WP.25199/14)and quash the same and further direct the respondent to consider the representation of the petitioner dated 10.04.2014 and 7.8.2014 respectively.

W.P.14776 of 2015: This writ petitioner filed under Article 226 of the constitution of India, praying for the issue of a writ of certiorari, calling for the records of the 1st Respondent in his proceedings in letter No.K2/9228/2003 dated 13.05.2015.

For appellant : Mr.S.Parthasarathy, Senior Counsel,  
for Mr.K.Rajasekar

For Respondents : Mr.K.Raja Srinivas,  
for R-1 in W.A.Nos.1671, 1672 of 2015  
Mrs.A.Srijayanthi, Spl.G.P.,  
for R-2 in W.A.Nos.1671, 1672 of 2015

Mrs.A.Srijayanthi, Spl.G.P.,  
for W.A.No.1673 of 2015

#### J U D G M E N T

These three intra court appeals are directed against the common order dated 18 November 2015, whereby and whereunder the writ court rejected the request to quash the notice issued by the Chief Executive Officer, Chennai Metropolitan Development Authority (hereinafter referred to as CMDA), directing payment of rental arrears with interest and dismissed the Writ Petitions challenging the eviction notices and order declaring the appellant as a defunct society.

Facts in nutshell:-

2. The Market Management Committee, Koyambedu Wholesale Market Complex, Chennai by proceedings dated 3 November 1999, allotted a godown bearing No.G.88 in Koyambedu Wholesale Market Complex on rental basis. The appellant took possession of 4115 sq.ft. godown and without permission, converted it as shops and allotted them to third parties, stated to be the members of the sangam. When the CMDA initiated action to recover the rental arrears from the occupants under the threat of eviction, Writ Petitions were filed before the writ Court. The learned Single Judge in the Writ Petition filed by the appellant in W.P.No.11054 of 2014, directed them to deposit a sum of Rs.10 lakhs in two equal installments and pay a monthly rent of Rs.50,000/- pending disposal of the Writ Petition. The condition was not complied with by the appellant. The applications filed by the appellant for extension of time were allowed. Even then, the amount was not deposited.

3. The learned Single Judge having found that the appellant violated the terms of allotment and provisions of the Tamil Nadu Societies Registration Act, and defaulted in paying the monthly rent and failed to clear the arrears, dismissed the Writ Petitions. Feeling aggrieved, the Sangam is before this Court by way of these three intra court appeals.

4. When the appeals came up for admission on 27 November 2015, the learned Senior Counsel for the appellant submitted that the appellant would clear the entire rental arrears, less the amount paid already, in case time is given till 31 December 2015. This court on account of the said submission, granted time till 31 December 2015. When the appeals came up for hearing on 11 January 2016, 17 January 2016 and 21 January 2016, the learned Senior counsel for the appellant made a fervent request to extend the time till 21 January 2016 for clearing the arrears. The appeals were adjourned to be posted on 27 January 2016 to report compliance with regard to payment.

5. When the appeals were taken up today, the Senior counsel for the appellant submitted that it would not be possible for the appellant to pay the huge arrears. We have therefore heard the arguments on behalf of both the parties.

Discussion:-

W.A.No.1671 of 2015 and 1672 of 2015 :-

6. The writ appeal in W.A.No.1671 of 2015 is directed against the order in W.P.No.11054 of 2014, dismissing the Writ Petition filed against the notice dated 28 March 2014 directing the appellant to pay the rental arrears. The CMDA in the notice dated 28 March 2014 made it clear that in case of failure to clear the rental arrears, the appellant would be evicted.

7. Since the appellant failed to pay the arrears in spite of the interim order in W.P.No.11054 of 2014, the CMDA by letter dated 13 May 2015, requested the Assistant Commissioner of Police, K-11 Koyambedu Police Station, to provide police protection to carry out the eviction. The letter dated 13 May 2015 was challenged in W.P.No.14476 of 2015. The order dismissing the said Writ Petition is challenged in W.A.No.1672 of 2015.

8. Through the notice dated 28 March 2014, CMDA called upon the appellant to pay the arrears of Rs.84,90,786/- with interest. When the notice was challenged in W.P.No.11054 of 2014, the writ court granted time for payment. Subsequently, the time was extended. Even then, the appellant failed to clear the arrears. As on 27 May 2015, the arrears was Rs.93,83,064/-.

9. The non payment of rent is a violation of the condition of allotment. Even though the appellant was liable to be evicted on account of wilful default, the writ court protected its interest by granting sufficient time. Even then, arrears was not paid. It was only under the said circumstances, the writ court arrived at a conclusion that there was no equity in favour of the appellant. The Writ Petition in W.P.No.11054 of 2014 was therefore rightly dismissed.

10. The letter for police protection challenged in W.P.No.14476 of 2014 was consequent to the eviction proceedings. The CMDA wanted the local police to give them protection. The appellant has no legal right to challenge the petition for police protection. The Writ Petition in W.P.No.14476 of 2014 was therefore rightly dismissed by the learned single Judge.

11. The appellant, in violation of the terms of allotment, partitioned the godown into several stores and third parties were put in possession. The appellant collected rent from sub lessees and appropriated it without making payment to CMDA. Sufficient time was given by CMDA and thereafter by the writ court to clear the outstanding. However, the appellant continued as a chronic defaulter.

12. Even this Bench granted time to pay the rental arrears on three occasions. According to CMDA, the appellant is liable to pay huge amount. The defaulters like the appellant are not entitled to the invoke the equity jurisdiction.

13. The transaction is in the realm of contract. The appellant knowing fully the terms and conditions of allotment, agreed to the terms. Thereafter, the appellant by violating the conditions, granted sub lease to third parties and kept the rent in arrears. It is not open to the Courts to entertain Writ Petitions like this to avoid contractual obligations.

14. We therefore do not find any merit in the contentions taken by the appellant to assail the common order in intra court appeals in W.A.Nos.1671 and 1672 of 2015.

W.A.No.1673 of 2015:-

15. The appellant failed to submit the statutory returns before the Registrar under the provisions of Tamil Nadu Societies Registration Act, 1975. The name of the society was struck off and the order was published in Government Gazette on 23 April 2014. The challenge in W.P.No.25199 of 2014 at the instance of appellant was only to the reply sent to the District Registrar on 18 October 2014 informing that the registration has already been cancelled.

16. The appellant has not challenged the order dated 23 April 2014, cancelling the registration of the society.

17. The learned Single Judge was therefore justified in dismissing the Writ Petition.

18. The appellant was given allotment of a public property. The appellant in spite of using the property by giving sub lease to third parties, failed to remit the rent. The learned single

Judge therefore arrived at a right decision. We do not find any reason to take a different view in the matter.

19. The premises is stated to be under lock and key. We have, by order dated 27 November 2015, directed CMDA to notify the shops for allotment by resorting to a transparent procedure. However, we directed the CMDA not to issue allotment orders, without specific orders from this Court. We are now informed by the learned Standing counsel for CMDA that the shops are yet to be notified for auction. There is no point in keeping the shops under lock and seal without fetching income to CMDA. We therefore direct CMDA to notify the shops in question for allotment. The notification for public auction shall be published in newspapers. The lease/ license should be given to the highest bidders, by following a fair and transparent procedure.

20. In the upshot, we dismiss the intra Court appeals, without any liability to pay costs. Consequently, M.P.1/2015 (3 nos.) are closed.

Sd/-  
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

tar  
To

1.The Chairman, Member Secretary and  
Chief Executive Officer i/c.  
Chennai Metropolitan Development Authority  
No.1, Gandhi Irwin Road,  
Egmore, Chennai 600 008

2.The Chief Administrative Officer,  
Market management Committee,  
Koyambedu Wholesale Market Complex,  
Koyambedu Chennai 92

3. The District Registrar (Administration)  
Additional Registration Department Temporary,  
(Additional Post),  
Central Madras, Chennai 600 014.

+ 3 ccs to M/s. M. Raja Sekhar, Advocate Sr.4890 to 4892  
+ 1 cc to Mr.K. Rajan, Shrinivas, Advocate Sr.4597

W.A.Nos.1671 to 1673 of 2015

RSI (CO)  
EU 30.03.16