

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.12.2016

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No.4925 of 2011
and M.P.No.1 of 2011

A.Saravanan

.. Petitioner

Vs

1. The Member Secretary,
Chennai Metropolitan Development
Authority, No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

2. The Chief Executive Officer,
Chennai Metropolitan Development
Authority No.1, Gandhi Irwin
Egmore, Chennai 600 008.

3. R.Loganathan.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to conduct a fresh auction after publication permitting the petitioner to take part in the proposed auction after setting aside the earlier auction held on 31.01.2011 or in the alternate allot some other shop premises in the same fruit market which is vacant collecting the market value of the property from the petitioner.

For Petitioner : No appearance

For Respondents : Mr.K.Raja Srinivas (CMDA) for R1 & R2
R3 dismissed vide order dated 24.02.2012

ORDER

The prayer in the writ petition is for issuance of writ of mandamus directing the respondents to re-allot the shop premise No.G-41, situated in Phase - II Periyar Fruit Market, Koyambedu, Chennai 600 092, after collecting the arrears as well as the other expenses, conduct fresh auction after publication, permitting the petitioner to take part in the proposed auction, after setting aside the auction dated 31.01.2011 or in the alternative, allot some other shop premises in the same fruit market which is vacant collecting the market value of the property

2. The learned counsel appearing for the first and second respondents contended that the petitioner/allottee was issued Show Cause Notice on 13.05.2004, vide this Office letter No.K5/11852/2002 as to why the allotment should not be cancelled for the non-payment of the quarterly instalments for Rs.49,950/- The allottee had not responded to the Show Cause Notice. Hence, the allotment of Shop No.T/G-41 was cancelled, vide Office letter No.K5/2603/2003 dated 23.09.2005 for non-payment of the quarterly instalments for Rs.1,64,822/-. The allottee had not responded for the cancellation order. Hence, the allottee was issued Eviction Notice, vide Office letter No.K5/2603/2003 dated 19.12.2005. Even after the issuance of eviction notice, the allottee had not responded to pay the quarterly instalments. Hence, the allottee was evicted from the shop No.T/G-41 on 22.02.2006. After the eviction of the shop No.T/G-41, the allottee had not approached CMDA to clear the pending dues. So, the shop became vacant.

3. It is further submitted by the learned counsel for the first and second respondents that the petitioner's application was included in this drawal of lot conducted on 31.01.2011. But the shop was allotted by drawal of lot, to one Thiru.Loganathan, one of the applicants for the shop No.T/G-41, out of the applicants who applied for the said shop.

4. It is seen from the affidavit filed in support of writ petition that notice has been issued by the second respondent directing the petitioner to pay a sum of Rs.1,97,574/- towards arrears of instalments and the value of the property has been increased to Rs.3,01,420/-, instead of Rs.3,00,000/- and therefore, the second respondent seemed to have enhanced the cost at Rs.2,750/- per Sq.ft instead of Rs.2000/- per Sq.ft and the said notice is contrary to the allotment order of the second respondent and therefore, the action of the second respondent is highly vitiated and in contravention of all cannons of law.

5. It is further, stated by the petitioner in the affidavit that for the petitioner's shop bearing No.G-41 in phase-II, no notice has been issued and that no Show Cause Notice had been issued to show cause as to why the order of allotment should not be cancelled. The petitioner has challenged the advertisement in Tamil Dailies with regard to the pro-forma relating to the properties and pamphlets issued and circulated in respect of the proposed auction of the shops to be held on 31.01.2011 at 11:00 a.m. Challenging the said auction notification, writ petition no:1477 of 2011 was filed before this Court and this Court has passed the order as follows:-

"If the petitioner is able to convince the authorities to get a copy of the application, the petitioner is entitled to participate in the auction.

If the Rules did not permit, the authorities are not bound to issue any application. This writ petition filed for a mandamus without any vested right does not have any merit and therefore the same is dismissed".

6. The learned counsel appearing for the respondents 1 & 2 would also submit that a detailed counter affidavit has been filed and the facts have been stated that the allotment of the shop was cancelled by letter dated 23.09.2005 for non-payment of the quarterly instalments at Rs.1,64,822/-. The petitioner had not responded for the cancellation order. Hence, the allotment of shop No.T/G-41 was cancelled vide this Office letter No.K5/2603/2003 dated 19.12.2005 was passed after the issue of eviction notice. The petitioner was evicted from the shop on 22.02.2006 and CMDA called for applications for the allotment of the vacant shops in Koyambedu Wholesale Market Complex on 14.12.2010. Applications were called for the shop No.T/G-41 and the same was allotted to one Thiru.Loganathan in the draw of lot conducted on 31.01.2011 and allotment order was issued on 25.02.2011 to Thiru.Loganathan. The petitioner without disclosing the facts, has filed a writ petition with a prayer of writ of mandamus which cannot be granted and the same is liable to be dismissed. Therefore, it is clear from the counter affidavit that since the petitioner has not responded to the cancellation of the allotment order, subsequently, eviction order was passed. Hence, in view of the facts and circumstances, this writ petition is liable to be dismissed.

7. Accordingly writ petition is dismissed. No costs. Connected miscellaneous petition is also closed.

s/d-
Assistant Registrar (CS-VI)

//True Copy//

Sub-Assistant Registrar

dpq

To

1. The Member Secretary,
Chennai Metropolitan Development
Authority, No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

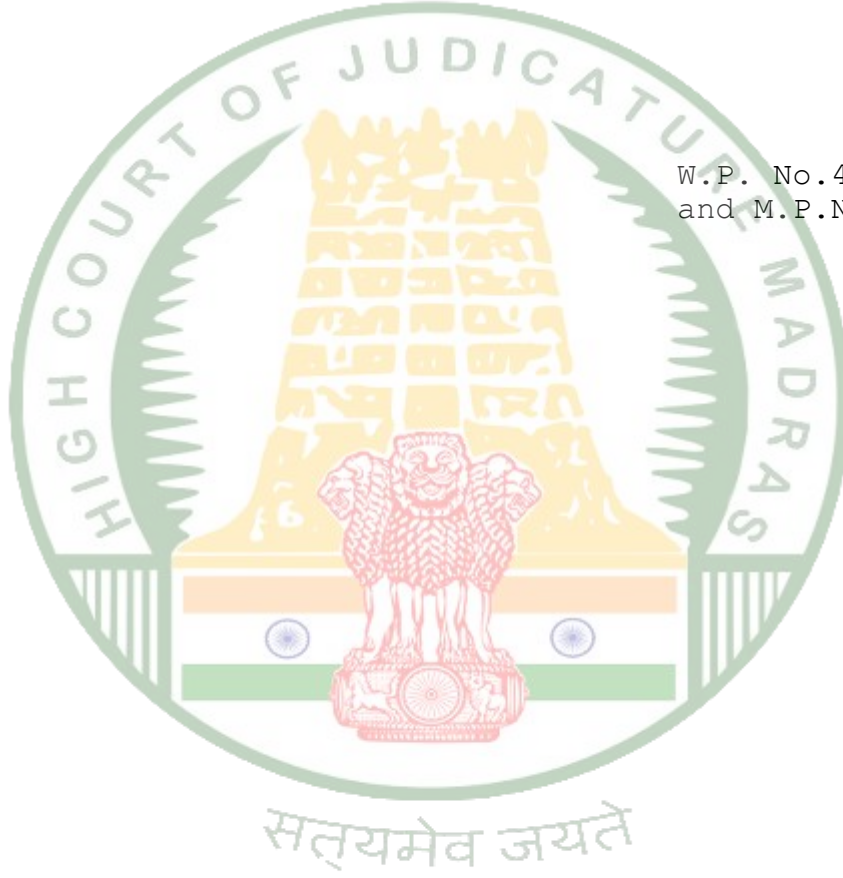
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2. The Chief Executive Officer,
Chennai Metropolitan Development
Authority No.1, Gandhi Irwin
Egmore, Chennai 600 008.

+1 CC to Mr. K. Rajasrinivas, Advocate sr 73888

KSJ (CO)
sp/30/1

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