

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.A Nos.761 and 762 of 2014,
M.P.Nos.1,1 and 2 of 2014

J.Vincent ... Appellant in W.A.No.761/2014

P.S.Balan ... Appellant in W.A.No.762/2014

Vs

1.The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road, Egmore,
Chennai - 600 008.

2.The Chief Executive Officer,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road, Egmore,
Chennai - 600 008.

3.P.S.Balan

4.V.Srinivasan

5.S.Manju Prakash

6.B.Kathiravan

...Respondents in
W.P.No.761/2014

1.The Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
Thalaimuthu Natarajan Building,
No.1, Gandhi Irwin Road, Egmore, Chennai -8.

2.J.Vincent

3.B.Kathiravan

...Respondents in W.A.No.762 of 2014

Prayer:- Writ Appeals filed under clause 15 of the Letter Patent
against the order dated 3.12.2013 made in W.P.No.1632 of 2010
and W.P.No.26867 of 2009 respectively.

WP.1632 OF 2010:

Writ Petition filed under Article 226 of the Constitution of India, Praying for the issue of a writ of Mandamus, directing the respondents 1 & 2 to conduct a fresh draw of lots as per the Notification announced in November 2009, at any future date permitting the petitioners herein and other eligible applicants, who have participated in the draw of lots.

WP.26867 OF 2009:

Writ petition filed under Article 226 of the Constitution of India, praying for the issue of a writ of Certiorarified Mandamus, calling for the records in pursuant to the paper publication dated 02.11.2009 in Sa.Ma.Thou.e/1289 Varaikalai/2009 and quash the same and direct the first respondent to allot the shop No.Fc-18 situated in Kamaraja Flower Market at Koyambedu Wholesale Market Complex, Koyambedu, Chennai-600 092 to the petitioner as per the representation dated 10.09.2009

W.A.No.761 of 2014

For Appellant : Mr.Natarajan for
Mr.M.Kemp raj

For Respondents : Mr.Rajasrinivas for R1 and R2
Mr.R.Nalliyappan for R3
Mr.M.V.Seshachari for R6
No appearance for R4 and R5

W.A.No.762 of 2014

For Appellant : Mr.R.Nalliyappan
For Respondents : Mr.Rajasrinivas for R1
Mr.Natarajan for
Mr.M.Kemp raj for R2
Mr.M.V.Seshachari for R3

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COMMON JUDGMENT

K.K. SASIDHARAN, J.

These two intra court appeals are directed against the common order dated 3 December 2013 in W.P.Nos.1632 of 2010 and 26867 of 2009, directing the Chennai Metropolitan Development Authority (hereinafter referred to as "CMDA") to adopt a transparent policy for disposal of the ground floor shop in

Koyambedu Market Complex, by rejecting the request made by the appellant in W.A.No.1632 of 2010 to conduct a fresh auction by draw of lots, as per the notification issued in the year 2009.

Brief Facts:

2. The CMDA issued a Notification auction notice on 2 November, 2009, for the allotment of a ground floor shop bearing No.FC-18 in the Koyambedu Market Complex. The appellant in both the writ appeals submitted their bids. Since the appellant in W.A.No.762 of 2014 filed a writ petition, drawal of lots was postponed. The appellant in W.A.No.761 of 2014 filed a writ petition for issuance of a writ of Mandamus, directing the CMDA to conduct fresh auction by draw of lots as per the original notification. The learned single Judge took up the writ petition in W.P.No.1632 of 2010 along with the writ petition filed by the appellant in W.A.No.761 of 2014 to allot the shop to him on the strength of his representation. The learned single Judge opined that it is not possible to direct the CMDA to conduct fresh drawal of lots on the basis of original notification, in view of the expiry of four years from the date of notification.

3. The learned Judge directed the CMDA to conduct a public auction. The CMDA was further directed to refund the amount to the appellant in W.A.No.762 of 2014 along with interest. The common order is under challenge at the instance of the appellant in W.A.No.761 of 2014, primarily on the ground that the learned single Judge was not correct in directing fresh auction without proceeding to conduct drawal of lots pursuant to the original notification. The very same order is under challenge at the instance of the appellant in W.A.No.762 of 2014 on the ground that he should have been given allotment pursuant to his representation.

Submissions:

4. The learned counsel for the appellant in W.A.No.761 of 2014 contended that the appellant deposited the amount pursuant to the notification. The drawal of lots was postponed on account of the writ petition filed by the appellant in W.A.No.762 of 2014 and that too after submitting his bid. The learned counsel contended that the learned single Judge was not correct in directing public auction ignoring the fact that the notification was only for drawal of lots. According to the learned counsel, the learned single Judge proceeded as if the notification was for granting lease. According to the learned counsel, it is not within the province of the Court to substitute the terms of the contract. The order is therefore bad in law.

5. The learned counsel for the appellant in W.A.No.762 of 2014, who is also the third respondent in W.A.No.761 of 2014 contended that the High Court directed the CMDA to consider the representation of the appellant for allotment. There was also an interim order not to give allotment till the disposal of the representation. According to the learned counsel, the appellant is entitled to get the allotment in his name pursuant to his representation.

6. The learned Standing Counsel for CMDA contended that the drawal of lots was postponed pursuant to the interim order granted in W.P.No.23513 of 2009. According to the learned counsel, the appellant in W.A.No.762 of 2014 was not eligible to take part in the auction as he was holding another shop in the very same complex. According to the learned counsel, the CMDA has taken a decision subsequently to conduct public auction instead of drawal of lots. The learned single Judge was therefore correct in directing public auction instead of drawal of lots to part with valuable public property.

Discussion:

7. The CMDA issued a notification dated 2 November 2009 for allotment various shops constructed at the Koyambedu Market Complex, Chennai, by drawal of lots. We are now concerned only about the shop bearing No.FC-18. The notification proceeds as if allotment would be made on hire purchase basis by the method of drawal of lots. It is a matter of record that the appellant in W.A.No.762 of 2014 filed a writ petition in W.P.No.23513 of 2009 before this Court to restrain the CMDA from allotting shop No.FC-18 pending disposal of his representation. The learned single Judge directed the CMDA to dispose of the representation within four weeks by order dated 30.11.2009. The CMDA was restrained from making allotment till the disposal of the representation. The drawal of lots was postponed by the CMDA on account of the interim order granted by the Writ Court in W.P.No.23513 of 2009.

8. The appellant in W.A.No.762 of 2014 submitted his bid pursuant to the notification dated 2 November 2009. Thereafter, he filed a writ petition in W.P.No.26867 of 2009 challenging the notification. He wanted allotment on the strength of his representation dated 10.09.2009. The writ petitions came up for final hearing before the learned single Judge on 3.12.2013. The single Judge found that the notification was issued on 2 November 2009. By the time the writ petitions were taken up for hearing, four years have elapsed from the date prescribed for drawal of lots. The learned single Judge therefore opined that it would not be in the public interest to direct drawal of lots

after a period of four years. The CMDA also took a decision to conduct public auction instead of drawal of lots. The learned single Judge therefore negatived the prayer made by the appellants and directed CMDA to issue a fresh notification.

9. The appellant in W.A.No.762 of 2014 is stated to be an existing allottee. The said appellant alone contributed for the delay in concluding the process. He has no justifiable claim to direct CMDA for allotment of the shop in question to him. The CMDA lost the revenue from the concerned shop all these years on account of the unreasonable attitude taken by the appellant in W.A.No.762 of 2014.

10. The core question is as to whether the learned single Judge was correct in directing public auction instead of drawal of lots to part with a state largesse.

11. The learned counsel for the appellant in W.A.No.761 of 2014 by placing reliance on the judgment of the Hon'ble Supreme Court in Nagar Nigam, Meerut v. Al Faheem Meat Exports (P) Ltd., and others [(2006) 13 SCC 382 contended that the High Court had no jurisdiction in such contractual transactions. It was the contention of the learned counsel that in view of the decision taken by the CMDA for drawal of lots, it was not within the province of the High Court to direct public auction.

12. The learned single Judge directed public auction only on account of the delay in finalising the allotment pursuant to the notification dated 2 November 2009. Even CMDA wanted only public auction. The shop in question is situated in the Wholesale Market Complex at Koyambedu. The property should not be given to the applicants, without there being public auction and giving opportunity to all the applicants to submit their bids.

13. In Nagar Nigam (cited supra), the Hon'ble Supreme Court indicated that the public auction is the best method for allotment of public property. The Supreme Court said:

"18. The law is, thus, clear that ordinarily all contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well-known newspapers having wide circulation, so that all eligible persons will have an opportunity to bid in the bid (sic auction), and there is total transparency. In our opinion this is an essential requirement in a democracy, where the people are supreme, and all official acts must be actuated by the public interest, and should inspire public

confidence."

14. The CMDA was deprived of revenue for a considerable period on account of the unwanted litigations. The market was constructed by using public money. The learned single Judge was therefore perfectly correct in directing the CMDA to adopt a transparent method for disposal of state largesse. We do not find any reason to interfere with the order passed by the learned single Judge directing public auction, instead of drawal of lots for allotting the shop.

Disposal:

15. We direct the CMDA to take immediate action for allotment of shop by publication in three newspapers viz., Daily Thanthi, Dinamalar and Indian Express. There should be a minimum period of 30 days from the date of publication of the notification in the newspapers for submission of bids. The allotment should be made to the highest bidder. The CMDA has already agreed to delete the offending conditions from the notification like the one mentioned in Paragraph 12 of the impugned order.

16. The intra court appeals are dismissed with the above direction to the CMDA. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

svki/msvm

To

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

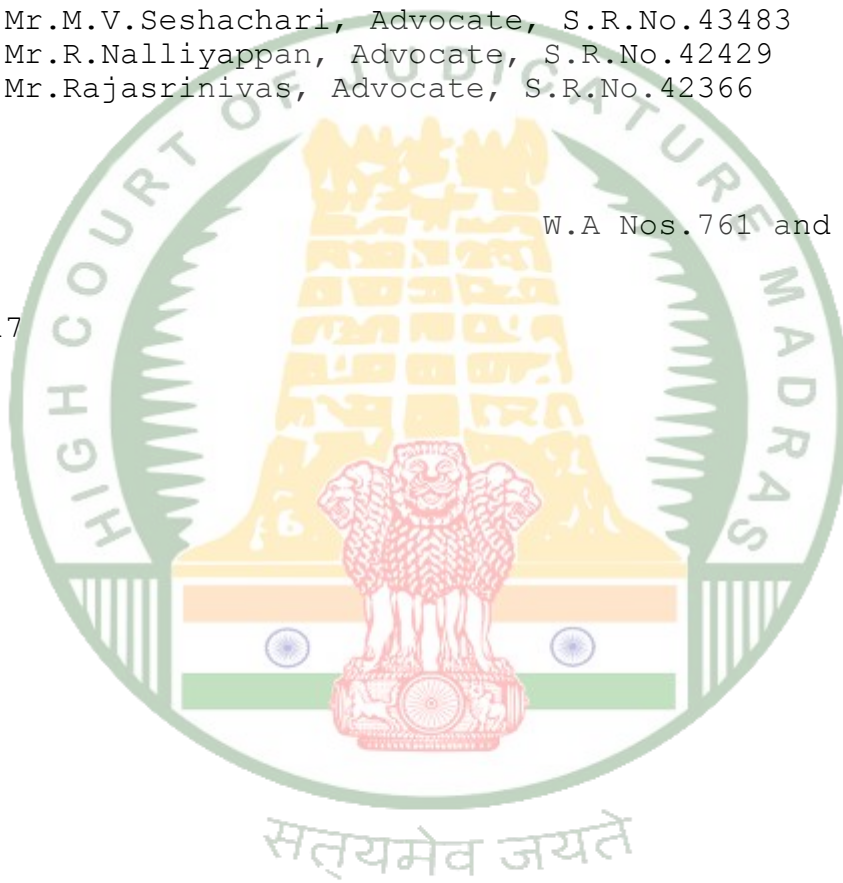
2.The Chief Executive Officer,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road, Egmore,
Chennai - 600 008.

3.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Nagarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai-8

+4ccs to Mr.M.Kempraj , Advocate, S.R.No.42400 & 42401
+1cc to Mr.M.V.Seshachari, Advocate, S.R.No.43483
+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.42429
+1cc to Mr.Rajasrinivas, Advocate, S.R.No.42366

W.A Nos.761 and 762 of 2014

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