

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.05.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.15929 of 2012

and

M.P.Nos 1 of 2013 and 2&3 of 2012

S.R.M.Jayaraman

... Petitioner

Versus

1.The Chief Administrative Officer,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

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

3.Annai Sathya Vegetable Stores,
Godown No.E-88, Periyar Market,
Koyambedu Wholesale Market Complex,
Koyembedu,
Chennai - 600 092.

4.Malaisamy,
Senior Finance Accountant,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus, to call for the records of the second respondent in his letter No.k2/13688/2003 dated 30.03.2012 and consequential communication in letter No.k2/13688/2003 dated 30.04.2012 to quash the same and further direct the respondents 1 and 2 to receive the rents from the respective occupants as per the communication of the petitioner dated 09.05.2012.

For Petitioner : Mr.M.Raja Sekhar

For Respondents 1 & 2 : Mr.P.Tamizhmani

For Respondent 3 : Mr.Su.Srinivasan

For Respondent 4 : No Appearance

O R D E R

The Writ Petition is filed questioning the validity of the order issued by the second respondent in proceedings dated 30.03.2012 and 30.04.2012 and for a consequential direction to the respondents 1&2 to receive the rents from the respective occupants, as per the communication of the petitioner dated 09.05.2012. The affidavit filed in support of the writ petition states that the writ petitioner is an allottee of a Godown bearing No.E-88, at Periyar Market, Koyambedu Wholesale Market Complex, Koyambedu, Chennai - 600 092, measuring about 4080 Sq.ft. The allotment was made in the year 2002 for a sum of Rs.10.80p per Sq.ft. and the period of lease is between 06.02.2002 and 05.01.2003.

2. The writ petitioner pleaded that he sustained heavy loss in the business and was unable to pay the rent. At that point of time, he sent communication to the respondents on 09.05.2012 stating that he sublet the godown to the third respondent, viz., Annai Sathya Vegetable Stores, and further requested that the rent will be paid by the third respondent to the Chennai Metropolitan Development Authority, directly. There was a huge arrears of rent not paid either by the writ petitioner or by the third respondent and earlier writ petitioner filed a suit and the same was dismissed, subsequently. The writ petitioner has filed number of litigations one way or the other, in order to prevent the authorities from collecting the rent. Even in his affidavit the writ petitioner has categorically admitted that he sublet the godown to the third respondent and he is not in occupation of the premises.

3. The second respondent filed an additional counter affidavit stating that the writ petitioner is a habitual defaulter and violated the conditions of the allotment of agreement dated 06.02.2002 and deliberately sub-letted the Godown to various persons, as per his own admission in his letter dated 09.05.2012. As per the conditions of the allotment, the lease was granted only for the personal occupation of the writ petitioner and he is not authorized to sublet the premises to any other third party. Hence, the conduct of the writ petitioner in subletting the allotted premises to the third respondent is in violation of the conditions stipulated in the lease agreement. As per the additional counter, the suit filed by the writ petitioner in O.S.No.119 of 2003 was also dismissed. That apart, the total arrears of rent was Rs.60,91,815/- as on 31.03.2017. When there were some discrepancies in the counter affidavit, this Court directed the learned counsel appearing for the respondents to find out the clear facts and file a better affidavit.

4. Pursuant to the order of this Court, another additional counter affidavit was filed on 09.05.2017, in which the Member Secretary, Chennai Metropolitan Development

Authority, has stated that the third respondent- M/s. Annai Sathya Vegetable Traders Association have remitted a sum of Rs.51,19,919/- as on 25.10.2016 and it was kept in a separate account and thereafter, the remittance made by M/s. Annai Sathya Vegetable Traders Association from 21.12.2016 to 05.04.2017 amounting to Rs.2,91,618/- was returned to the third respondent on 03.05.2017. But the learned counsel appearing for the respondents 1 and 2, is unable to substantiate the reason for such a returning of the rental arrears by the officials of the Chennai Metropolitan Development Authority.

5. Thus, this Court is of the view, that there were some irregularities even committed by the officials of the Chennai Metropolitan Development Authority and the Member Secretary is directed to look into the matter and initiate appropriate action against the officers who committed the mistake of returning the rental arrears to the third respondent - M/s. Annai Sathya Vegetable Traders Association.

6. As per the said additional counter affidavit, the arrears due as on 30.04.2017 by the writ petitioner is Rs.61,40,418/-. The amount remitted by the third respondent as on 25.10.2016 which is kept in a separate account is Rs.51,19,919/-. According to Chennai Metropolitan Development Authority, balance of arrears due along with the service tax as on 30.04.2017 is Rs.10,20,499/-.

7. The learned counsel appearing for the writ petitioner submitted that the writ petitioner has authorized the third respondent to pay the rental arrears to the Chennai Metropolitan Development Authority. Further, it is not disputed that the writ petitioner has sub-letted the godown to the third respondent without any permission from the competent authority, viz., the Chennai Metropolitan Development Authority. Thus, the writ petitioner has violated the conditions stipulated in the lease agreement.

8. The learned counsel appearing for the third respondent contended that he is in occupation of the godown and running the business. He was continuously paying the rent to the Chennai Metropolitan Development Authority in accordance with the conditions of the lease agreement, which was entered between the writ petitioner and the Chennai Metropolitan Development Authority.

9. It is painful to understand that the public officials, who are duty bound to maintain utmost integrity and uprightness in dealing with the public properties have committed, so much of irregularities including of allowing the writ petitioner to sublet the allotted premises in favour of the third person. Further, this Court has taken note of the fact that the Chennai Metropolitan Development Authority officials have received the rental arrears from a third party,

who are not authorized to occupy nor any agreement was entered into between the Chennai Metropolitan Development Authority and the third respondent. As far as the third respondent is concerned, he is an alien to the allotment and agreement entered into with the writ petitioner. How a public office can receive the rental arrears from a third party and issue receipt in favour of 3rd Respondent, knowing the fact that the third respondent is in illegal occupation of the premises and the writ petitioner is also not in a position to comply with the conditions of the lease agreement? The Member Secretary is directed to look into the entire files and if necessary, refer the matter to the Vigilance Department of the Chennai Metropolitan Development Authority, to conduct a detailed enquiry into the facts and circumstances of the case, and suitable action may be initiated against all the erring officials of the Chennai Metropolitan Development Authority, who had involved in such a big racket.

10. So much of public money is misutilised in this manner by the officials concerned by allowing the persons like writ petitioner to sublet the premises in violation of the lease agreement, and causing huge loss to the State.

11. The prayer as such sought for by the writ petitioner is for a direction to the respondents 1&2 to receive the rents from the respective occupant. The prayer itself is self-explanatory that the writ petitioner has sublet the premises in favour of some third parties, who all are the occupants. When the writ petitioner himself has prayed before this Court that the rent should be received from the unauthorized persons, the conduct of the writ petitioner is deprecated.

12. For all these reasons, the prayer sought for in this writ petition is totally misconceived and cannot be considered by this Court at the outset. Accordingly, the following directions are issued to the respondents 1 & 2.

(i) The respondents 1&2 are directed to vacate the premises occupied by the third respondent, within a period of four weeks from the date of receipt of a copy of this order and thereafter conduct an open auction in accordance with the rules.

(ii) The rental arrears due from the writ petitioner to be recovered by the respondents 1&2 by initiating appropriate action under law.

(iii) The Third respondent also shall be permitted to participate in the open an auction, along with other bidders, after vacating the premises.

(iv) The arrears of rent paid by the third respondent to the Chennai Metropolitan Development Authority, shall be duly appropriated and the separate account opened for this purpose shall stand closed.

(v) The writ petitioner is directed to pay Rs.20,000/- (Rupees Twenty Thousand Only) towards costs to the Tamilnadu Legal Aid Services Authority, High Court, Madras, within a period of four weeks from the date of receipt of a copy of this order.

13. Accordingly, this writ petition stands disposed off with costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

msm/ars

To

- 1.The Chief Administrative Officer,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 3.The Secretary,
Tamilnadu Legal Aid Services Authority,
High Court, Madras.

+lcc to M/s.R.Rajasekhar, Advocate, S.R.No.37047

+lcc to Mr.P.Tamilmani, Advocate, S.R.No.37045

+lcc to Mr.Su.Srinivasan, Advocate, S.R.No.37068

W.P.No.15929 of 2012

MP(CO)
CA(25/05/2017)