



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD) No.21697 of 2017

and

W.M.P.(MD) No.17996 of 2017

Tamil Selvi

... Petitioner

-vs-

1. The Commissioner,
Madurai City Municipal Corporation,
Arignar Anna Maligai, Tallakulam,
Madurai-2.

2. The Assistant Commissioner (Revenue),
Madurai City Municipal Corporation,
Arignar Anna Maligai, Tallakulam,
Madurai-2.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order made in Masal/Mava3/012861/17 dated 31.10.2017 passed by the 1st respondent, quash the same and consequently direct the respondents to allot Shop No.13 to the petitioner situated at the Arapalayam Bus Stand, Madurai forthwith by receiving a sum of Rs.4,761/- towards rent for the said shop as fixed by the 1st respondent.

For Petitioner	: Mr.D.Sadiqraja
For R1	: Mr.R.Murali, Standing Counsel
For R2	: Mr.J.Gunaseelan Muthiah Govt. Advocate

O R D E R

This writ petition has been filed, seeking to quash the impugned order dated 31.10.2017 passed by the 1st respondent in Masal/Mava3/012861/17, by which, the petitioner was directed to pay a sum of Rs.2,00,000/- towards earnest money deposit and also to pay a sum of Rs.2,44,260/- towards arrears of rent. The petitioner also sought a direction to the respondents to allot Shop No.13 to the petitioner situated at the Arapalayam Bus Stand,



Madurai forthwith by receiving a sum of Rs.4,761/- towards rent for the said shop as fixed by the 1st respondent.

2. The case of the petitioner is as follows:

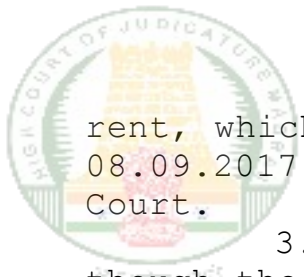
i) She was allotted one shop out of 67 shops by the 1st respondent to run an idly shop and subsequently, the 1st respondent decided to demolish all the shops for expansion of the bus stand and also to construct new shops; that she was given assurance that preference would be granted to her while allotting new shops and she was also directed to pay Rs.50,000/- and subsequently, she was again asked to pay another Rs.50,000/-, totalling Rs.1,00,000/-, which was duly deposited by her; that she was permitted by the 1st respondent to run a temporary shop in the year 2010;

ii) While so, as per the undertaking given by the 1st respondent, no shop was allotted to her on the southern side of the Arapalayam Bus Stand, whereas on the northern side of the Bus Stand, 24 shops, which were constructed were allotted to the then existing licensees; that later, an auction was called for with respect to 24 shops constructed on the southern side in contra to the undertaking, challenging which, the petitioner filed W.P.(MD) No.13029 of 2012 before this Court, which was disposed of by this Court as having become infructuous;

iii) To the shock and surprise, vide order dated 26.09.2012, the license was cancelled on the ground stated supra and the said order was challenged by filing W.P.(MD) No.3209 of 20123, which was disposed of by this Court on 08.09.2017, setting aside the order dated 26.09.2012, by holding as under:

"9. For the foregoing discussions and reasons, this Court is of the view that the impugned order dated 26.09.2012 has no legs to stand the same is liable to be set aside. Accordingly, this petition is allowed and the impugned order is hereby set aside. The 1st respondent is directed to allot Shop No.13 to the petitioner forthwith and the petitioner shall have to comply with the conditions imposed by the authority concerned with regard to payment of rent. It is made clear that in the event of the petitioner not willing to pay the rent as directed by the respondents on par with other lease holders of adjacent shops, it is open to the respondents to go for public auction in respect of the said shop. No costs. Consequently, connected miscellaneous petitions are closed."

iv) It is the grievance of the petitioner that the 1st respondent has now issued an order impugned herein directing the petitioner to pay a sum of Rs.2,00,000/- towards earnest money deposit and also to pay a sum of Rs.2,44,260/- towards arrears of



rent, which is utter contrary to the order passed by this Court on 08.09.2017. Aggrieved by the same, the petitioner is before this Court.

3. Learned counsel for the petitioner would submit that though the petitioner is ready to pay the monthly rent as fixed by the 1st respondent, the demand of additional remittance of the amount towards earnest money deposit and arrears of rent is highly un-sustainable and the same was demanded without proper application of mind and without appreciating the earlier of this Court.

4. Per contra, the learned Standing Counsel for R1 and the learned Government Advocate appearing for R2 submitted that the petitioner is in arrears of rent and there is an increase in deposit of earnest money. Since the petitioner has not paid any monies due to the respondent Corporation, the petitioner was asked to remit the same without any further delay and therefore, no interference is warranted in the impugned order and the writ petition is liable to be dismissed.

5. Heard the learned counsel for the parties.

6. At the outset, this Court finds much force in the contention raised by the learned counsel for the petitioner. A circumspection of the fact would unravel that the petitioner was a permitted lease holder under the 1st respondent and the petitioner and other similarly persons were directed to vacate the premises with an assurance that they would be allotted new shops after the construction activities are completed and also collected some amount from her. Failure on the part of the 1st respondent in allotment of shops and cancellation of licence granted to the petitioner had, on earlier occasion, resulted in filing a writ petition in W.P.(MD) No.3209 of 2013, in which, this Court was pleased to set aside the order, directing the 1st respondent to allot Shop No.13 to her immediately, subject to acceptance of payment of rent by the petitioner to be fixed by the 1st respondent. But to the contrary, the 1st respondent, without properly understanding the directions issued by this Court on 08.09.2017, has once again made the petitioner to run from pillar to post in respect of allotment of shops to the petitioner, thereby she was deprived of her livelihood and finally, a huge sum was demanded from the petitioner. The demand made by the 1st respondent is not acceptable, because having not allowed the petitioner to run the shop for a long period on one hand and demanding such a bulky amount on the other hand, the 1st respondent cannot expect her to pay the voluminous amount and therefore, the impugned order dated 31.10.2017 is not sustainable.

7. For the foregoing discussions and reasons, this Court is of the opinion that the impugned order dated 31.10.2017 is liable to be set aside. Accordingly, this petition is allowed and the impugned order is set aside. The respondents are directed to allot



Shop No.13 situated at the Arapalayam Bus Stand, Madurai to the petitioner forthwith, who shall pay the rent for the said shop as fixed by the 1st respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

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/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
Madurai City Municipal Corporation,
Arignar Anna Maligai, Tallakulam,
Madurai-2.
2. The Assistant Commissioner (Revenue),
Madurai City Municipal Corporation,
Arignar Anna Maligai, Tallakulam,
Madurai-2.

+1cc to Mr.R.Murali, Advocate Sr.No.94446

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VB/JC/SAR1/22/01/2018/4P/4C

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21.12.2017