



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD) No.3209 of 2013 and
M.P.(MD) Nos.2 & 3 of 2013

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 Ma.Va.5/06077/2010 dated 26.09.2012 passed by the 1st respondent and quash the same and consequently direct the respondents to allot one shop for the petitioner on the southern side of the Arapalayam Bus Stand, Madurai on the basis of the proceedings made in Ma.Va.No.4/14766/06 dated 03.08.2006 of the 1st respondent.

For Petitioner : Mr.D.Sadiq Raja
For Respondents : Mr.R.Murali

O R D E R

This writ petition has been filed, seeking to quash the impugned order of the 1st respondent made in Ma.Va.5/06077/2010 dated 26.09.2012, in and by which, the license granted to the petitioner was cancelled on the ground that the newly built shops coming under the limits of Corporation have to be allotted only by way of auction. The petitioner also sought a direction to the respondents to allot one shop for the petitioner on the southern side of the Arapalayam Bus Stand, Madurai on the basis of the proceedings made in Ma.Va.No.4/14766/06 dated 03.08.2006 of the 1st respondent.



2. The case of the petitioner in nutshell 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 impugned order dated 26.09.2012, the license was cancelled on the ground stated supra and in the impugned order, though there is a reference with regard to issuance of notice to the petitioner, no notice was issued to the petitioner prior to cancellation of the license. Aggrieved by the action of the 1st respondent, the petitioner is before this Court.

3. Learned counsel for the petitioner would submit that when the petitioner was under bona fide expectation that the shop would be allotted to her to eke out her livelihood, all of a sudden, the 1st respondent cancelled the license and deprived her livelihood. Having received Rs.1,00,000/- towards deposit from the petitioner and made her wait for quite number of years with an assurance of allotment of shops, the subsequent action of the 1st respondent in cancelling the license of the petitioner is utter violative of natural justice and therefore, the interference of this Court is required for setting aside the impugned order.

4. Per contra, the learned counsel for the respondents would repudiate the above contention raised by the learned counsel for the petitioner, stating that there is no *mala fide* intention on the part of the respondents in opting for auction in respect of the newly constructed shops and the respondents have acted only in accordance with law, as the shops are situated under the Corporation limit and the due method of allotment of shops is only by way of auction under the law. He has further contended that ultimate object of the Corporation is to augment more income to the Corporation to cater to the needs / welfare of the public at large and therefore, the impugned order is perfectly valid in the eye of law and there is no need for interference by this Court.



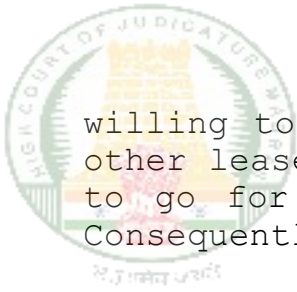
5. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

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. To that effect, the 1st respondent initially collected Rs.50,000/- and subsequently, once again collected another Rs.50,000/-, totalling Rs.1,00,000/- as caution deposit from the petitioner. It is also not in dispute that after remittance of the said amount to the 1st respondent, the petitioner was permitted to put up a temporary shop to continue her business. The 1st respondent, having utilized the amount paid by the petitioner and made her wait for several years like a poor stork for its prey, which subsequently died of starvation, deviated from the undertaking.

7. It is pertinent to mention here that the impugned order of cancellation was passed on 26.09.2012 and the same was served on the petitioner only on 05.10.2012, whereas auction notice was issued on 29.09.2012 and therefore, it is clear that though the petitioner was informed by the impugned order dated 26.09.2012 that she can participate in the public auction to be conducted, the said communication reached the petitioner only after the auction notice was issued, which is nothing, but travesty of justice. Moreover, the petitioner waited for her turn with the fond hope that the 1st respondent would keep abreast his words as per the assurance given to her at the initial stage, while collecting the caution deposit of Rs.1,00,000/-.

8. On perusal of the docket orders, this Court could be able to see that when the case was posted for admission on 28.02.2013, an interim order directing the respondents to keep Shop No.13 vacant at the Arappalayam Bus Stand, Madurai was passed by this Court. It is saddened to note here that from the year 2013 onwards, the Shop No.13 is kept closed without any use and therefore, the contention of the respondents that the main purpose of auction is to generate more income to the Corporation does not hold good.

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.

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Sd/-
Assistant Registrar (CS-II)

/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.

AR

TE/MR-KKR : 21/09/2017 : 4P/3C

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