

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT APPEAL No.764 of 2017

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

vs.

1. S.R.M.Jayaraman
2. The Chief Administrative Officer,
Chennai Metropolitan Development Authority,
1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
3. The Member Secretary,
Chennai Metropolitan Development Authority,
1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
4. Malaisamy,
Senior Finance Accountant,
Chennai Metropolitan Development Authority,
1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
5. The Chief Executive Officer,
Chennai Metropolitan Development Authority,
1, Gandhi Irwin Road,
Egmore, Chennai 600 008. ... Respondents

(R5 impleaded vide order of this Court dated 12.12.2017 made in
C.M.P.No.20407 of 2017 in W.A.No.764 of 2017)

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 09.05.2017 passed by this Court in
W.P.No.15929 of 2012.

WP.No.15929 of 2012:Petition under Article 226 of the Constitution of India to Call for the records of the 2nd respondent in his letter No. K2/13688/2003 dt 30.3.2012 and consequential communication in letter No. K2/13688/2003 dt 30.4.2012 to quash the same and further direct the respondent 1 and 2 to receive the rents from the respective occupants as per the communication of the petitioner dt 9.5.2012

For Appellant : Mr.Su.Srinivasan,
for M/s.Vanathi Srinivasan
For Respondents 2 to 5 : Mr.N.Sampath, CMDA

J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

Aggrieved by the order dated 09.05.2017 passed by the Learned Single Judge in W.P.No.15929 of 2012, the 3rd Respondent in the Writ Petition, has come up with the present Writ Appeal.

2. The Writ Petitioner viz. S.R.M.Jayaraman, who is an allottee of a Godown, bearing No.E-88, Periyar Market, Koyambedu Wholesale Market Complex, Koyambedu, Chennai, measuring an extent of 4080 sq. ft., has challenged the validity of the proceedings dated 30.03.2012 and 30.04.2012 issued by the Member Secretary, Chennai Metropolitan Development Authority (CMDA), Chennai, in W.P.No.15929 of 2012 and had sought for a consequential direction to the Respondents 1 and 2 therein/CMDA, to receive the rents from the respective occupants, as per his Letter dated 09.05.2012.

3. According to the Writ Petitioner/S.R.M.Jayaraman, an allotment was made by the CMDA in the year 2002 in respect of the said Godown for a sum of Rs.10.80 per sq. ft. for the lease period between 06.02.2002 and 05.01.2003. Since he sustained heavy loss in his business and as he was unable to pay the rent for the Godown, he had sublet the same to the 3rd Respondent in the Writ Petition, i.e. the Appellant herein and requested that the rent would be payable by the Appellant herein to the CMDA directly. As huge arrears of rent was not paid either by the Writ Petitioner or by the Appellant herein, the impugned Writ Petition stood dismissed.

4. The Chennai Metropolitan Development Authority has filed a counter affidavit stating that the Writ Petitioner/S.R.M.Jayaraman is a habitual defaulter and had violated the conditions of allotment Agreement, dated 06.02.2002 and had deliberately sublet the Godown to various persons, as per his own admission in his Letter, dated 09.05.2012.

5. As per the Lease Agreement, there cannot be any sub-lease. As the arrears of rent runs to several lakhs, this Court, while considering the pleadings of the Writ Petitioner and the 3rd Respondent in the Writ Petition, categorically held that the Writ petition itself is misconceived and it cannot be considered by this Court at the outset and that the 3rd Respondent therein has no locus to continue in the Godown that has been allotted to the Writ Petitioner. This Court, while disposing of the said Writ Petition in W.P.No.15929 of 2012, by an order dated 09.05.2017, has held as under:

"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.

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."

6. As the arrears are huge, some of the allottees have approached this Court in W.A.No.1779 of 2013 and the First Bench of this Court, by a judgment dated 15.12.2014, disposed of the said Appeal with a direction to carry out the fresh exercise of auction of the shops, as per the norms to be circulated and further observed that the needful should be done on or before 31.03.2015. However, according to the Appellant, no auction has taken place so far.

7. Learned counsel for the Appellant submitted that the occupants of the Godown in question are paying rent regularly

and that they are solely dependent on the income derived from the shops in the Godown, for their livelihood.

8. The Writ Petitioner, who is the 1st Respondent herein as also Respondents 2 and 3/CMDA, have filed Status Report, separately. In the Status Report filed by the 3rd Respondent/CMDA, it is stated that the tender notice vide Proceedings dated 12.01.2018 in respect of the Tender-cum-public auction to be conducted for Godown No.E-88 has been published in 'Daily Thanthi' newspaper on 23.01.2018. Learned counsel appearing for the CMDA pleaded that a direction may be issued to the Appellant to vacate and hand over vacant possession of the Godown to CMDA, as averred by the Appellant in their affidavit of Undertaking, dated 08.12.2017 filed before this Court.

9. As the auction is scheduled today, it is open to the Respondent/CMDA to proceed with the auction, as scheduled and allot the shops in accordance with the norms stipulated and the Appellant shall vacate the Godown in question within a period of seven days from the date of receipt of a copy of this order. This Court makes it clear that if the members of the Appellant are otherwise eligible, it is open to them to participate in the auction after payment of arrears or rent, if any. But, the issue as to whether they are eligible to participate in the auction is not the subject matter of this Writ Appeal.

10. Since it is represented that the members of the Appellant are paying rent regularly, the same shall be taken into account by the Respondents/CMDA, while proceeding against the defaulters in payment of rent.

11. This Court further makes it clear that the Chennai Metropolitan Development Authority shall identify the officials, who are responsible for the slackness in this issue and the loss caused to the Government, take appropriate disciplinary action for major misconduct and impose major punishment, on the ground that the Officer has failed to maintain absolute integrity, devotion to duty and that he has done the work of unbecoming of a member of his service, which shall be recorded in their Service Records.

With the above above direction(s) and observation(s), this Writ Appeal stands dismissed. No costs. Consequently, connected C.M.P.No.10525 of 2017 and C.M.P.No.2391 of 2018 are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Chief Administrative Officer,
Chennai Metropolitan Development Authority,
1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
1, Gandhi Irwin Road,
Egmore, Chennai 600 008.
3. The Chief Executive Officer,
Chennai Metropolitan Development Authority,
1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

+1 cc to Ms.Vanathi Srinivasan Advocate sr 9300

+1 cc to Mr.N.Sampath Advocate sr 9249

W.A.No.764 of 2017

vgI (co)
aa22/03/2018



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