

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/07/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. Nos.12690 to 12704 of 2018 &

W.M.P.Nos.14835 to 14867 of 2018 &

W.M.P.Nos.18176 to 18190 of 2018

KANNAPPAN ... PETITIONER in WP No.12690 of 2018
S.JEBASINGH ... PETITIONER in WP No.12691 of 2018
CHANDRASEKARAN ... PETITIONER in WP No.12692 of 2018
CHANDRASEKARAN ... PETITIONER in WP No.12693 of 2018
RAJASEKAR ... PETITIONER in WP No.12694 of 2018
SAMPATHKUMAR ... PETITIONER in WP No.12695 of 2018
SUGUMAR ... PETITIONER in WP No.12696 of 2018
T.MOHAN ... PETITIONER in WP No.12697 of 2018
T.RAJENDRAN ... PETITIONER in WP No.12698 of 2018
S.K.PANNERSELVAM ... PETITIONER in WP No.12699 of 2018
K.PUNITHA ... PETITIONER in WP No.12700 of 2018
A.K.GANESAN ... PETITIONER in WP No.12701 of 2018
AJANTHA ... PETITIONER in WP No.12702 of 2018
AJANTHA ... PETITIONER in WP No.12703 of 2018
G. MANIYAN ... PETITIONER in WP No.12704 of 2018

VS

1 THE ASSISTANT DIRECTOR FOR
TOWN PANCHAYAT O/O OF THE DIRECTORATE OF
TOWN PANCHAYATS COIMBATORE

2 THE EXECUTIVE OFFICER
SULUR TOWN PANCHAYAT SULUR COIMBATORE DIST

... RESPONDENT in all WP's

WP No.12690 to 12694 of 2018

Writ Petitions filed Under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to calling for the records of the impugned order passed by the 2nd respondent in ref.No.Na.Ka.No. 150/2018/E dated 10.04.2018 and quash the same as illegal and suffers from non application of mind and consequently to permit the petitioner to run the shop bearing Shop No. 1 to 5 (facing South) at Sulur Bus Stand Commercial Complex, Coimbatore till the expiry of the lease period 31.03.2020

WP No.12695 of 2018

calling for the records of the impugned order passed by the 2nd respondent in ref.No.Na.Ka.No. 150/2018/E dated 10.04.2018 and quash the same as illegal and suffers from non application of mind and consequently direct the respondents to permit the petitioner to run the shop bearing Shop No. 6 (facing South) at Sulur Bus Stand Commercial Complex, Coimbatore till the expiry of the lease period 31.03.2020

WP No.12696 of 2018

calling for the records of the impugned order passed by the 2nd respondent in ref.No.Na.Ka.No. 150/2018/E dated 10.04.2018 and quash the same as illegal and suffers from non application of mind and consequently direct the respondents to permit the petitioner to run the shop bearing Shop No. 9 (facing South) at Sulur Bus Stand Commercial Complex, Coimbatore till the expiry of the lease period 31.03.2020

WP No.12697 of 2018

calling for the records of the impugned order passed by the 2nd respondent in ref.No.Na.Ka.No. 150/2018/E dated 10.04.2018 and quash the same as illegal and suffers from non application of mind and consequently direct the respondents to permit the petitioner to run the shop bearing Shop No.16 (facing North) at Sulur Bus Stand Commercial Complex, Coimbatore till the expiry of the lease period 31.03.2020

WP No.12698 of 2018

calling for the records of the impugned order passed by the 2nd respondent in ref.No.Na.Ka.No. 150/2018/E dated 16.04.2018 and quash the same as illegal and suffers from non application of mind and consequently direct the respondents to permit the petitioner to run the shop at Sulur Bus Stand Commercial Complex Inner side South-North Street, Eastern part building and the shop is facing north, Coimbatore till the expiry of the lease period 31.03.2020

WP No.12699 of 2018

calling for the records of the impugned order passed by the 2nd respondent in ref.No.Na.Ka.No. 150/2018/E dated 10.04.2018 and quash the same as illegal and suffers from non application of mind and consequently direct the respondents to permit the petitioner to run the shop at vacant portion at the western side of Sulur Bus Stand, Coimbatore till the expiry of the lease period 31.03.2020

WP No.12700 of 2018
calling for the records of the impugned order passed by the 2nd respondent in ref.No.Na.Ka.No. 150/2018/E dated 10.04.2018 and quash the same as illegal and suffers from non application of mind and consequently direct the respondents to permit the petitioner to run the shop bearing Shop No.11 (facing South) at Sulur Bus Stand, Commercial Complex, Coimbatore till the expiry of the lease period 31.03.2019

WP No.12701 of 2018
calling for the records of the impugned order passed by the 2nd respondent in ref.No.Na.Ka.No. 150/2018/E dated 10.04.2018 and quash the same as illegal and suffers from non application of mind and consequently direct the respondents to permit the petitioner to run the shop bearing Shop No. 12 (facing North) at Sulur Bus Stand Commercial Complex, Coimbatore till the expiry of the lease period 31.03.2019

WP No.12702 of 2018
calling for the records of the impugned order passed by the 2nd respondent in ref.No.Na.Ka.No. 150/2018/E dated 10.04.2018 and quash the same as illegal and suffers from non application of mind and consequently direct the respondents to permit the petitioner to run the shop bearing Shop No. 19 (facing North) at Sulur Bus Stand Commercial Complex, Coimbatore till the expiry of the lease period 31.03.2019

WP No.12703 of 2018
calling for the records of the impugned order passed by the 2nd respondent in ref.No.Na.Ka.No. 150/2018/E dated 10.04.2018 and quash the same as the same is illegal and suffers from non application of mind and consequently direct the respondents to permit the petitioner to run the shop bearing Shop No. 20 (facing North) at Sulur Bus Stand Commercial Complex, Coimbatore till the expiry of the lease period 31.03.2019

WP No.12704 of 2018
calling for the records of the impugned order passed by the 2nd respondent in ref.No.Na.Ka.No. 150/2018/E dated 10.04.2018 and quash the same as the same is illegal and suffers from non application of mind and consequently direct the respondents to permit the petitioner to run the Staircase Shop at Sulur Bus Stand Commercial Complex, Coimbatore till the expiry of the lease period 31.03.2019

For Petitioners in
all Writ Petitions : Mr.V.Subramanian

For Respondents in
all Writ Petitions : Mr.V.Shanmuga Sundar
Special Government Pleader for R1

Mr.V.Vijay Shankar for R2

C O M M O N O R D E R

Heard Mr.V.Subramanian, learned counsel for the petitioners; Mr.V.Shanmuga Sundar, learned Special Government Pleader for the first respondent and Mr.V.Vijay Shankar, learned counsel for the second respondent and perused the materials available on record.

2. The existing lessees of Sulur Town Panchayat have filed these Writ Petitions challenging the order of the second respondent dated 10.04.2018, whereby, they were directed to vacate and hand over possession on or before 31.05.2018.

3. Facts in nutshell:

The Public Works Department constructed 22 shops in Sulur Bus Stand in 1991 and handed them over to the second respondent. Some of the petitioners became lessees of the shops in the auction held in the year 2016 and the rest were declared as successful bidders in the public auction conducted in 2017. The license period is three years. After the unfortunate accident in September 2017, in which bus shelter in Somanur collapsed, resulting in death of 7 persons, the Government decided to ascertain the structural stability of the buildings constructed by the Government and the Local Bodies. In pursuance of the decision, all the District Collectors directed the Local Bodies to have an inspection made of buildings belonged to them and submit structural stability so as to prevent recurrence of such accident.

4. It seems that the second respondent had approached Government College of Technology, Coimbatore to carry out the inspection on the building in question. A team of Officials from the Government College of Technology after conducting visual inspection and non destructing testing, submitted a report stating that the building is not fit for occupancy and the structure is not in a stable condition. Based on the report, the impugned notices have been issued, directing the petitioners to vacate the shops.

5. Mr.V.Subramanian, learned counsel for the petitioners would urge that the second respondent having satisfied with the stability of Sulur Bus Stand, auctioned all the shops only in the year 2017 and granted license for the period of three years.

However, during the subsistence of lease, the second respondent without even providing an opportunity to the petitioners to peruse the inspection reports said to have been submitted by the Government College of Technology, Coimbatore and in a hurried manner passed the impugned orders. It is the contention of the learned counsel that the non-furnishing of the report would vitiate the entire proceedings. It is also contended that when there is no material to show that the building is in ruinous state, no direction can be issued to vacate the shop.

6. In the counter filed by the second respondent, it has been stated that the bus shelter constructed in Sular Bus Stand in the year 2000 got collapsed in September 2017, whereas the shops in Sular Bus Stand were constructed in the year 1991. The Team of Officials from the Government College of Technology made detailed structural assessment and inspection of the building owned by the Town Panchayat and the report would reveal that there were major cracks in the columns and dampness was visible. Further, the RCC beams were found to have been damaged by horizontal and diagonal cracks and the roof slab and sun shade was found to be weak and damp with cracks. Since the condition of the building was unstable and unfit for occupancy, the impugned notices have been issued. It is further stated that out of 22 lessees in the bus stand complex, 7 lessees have agreed to hand over possession and the impugned notices have been issued taking note of the interest of the general public.

7. The learned counsel for the second respondent by referring the inspection report dated 20.11.2017 and the proceedings of the District Collector, Coimbatore, dated 13.02.2018 submitted that the report of Experts cannot be challenged by the petitioners, unless they establish mala fides against the members of the team and they are not entitled to be furnished with the report. The sum and substance of the submission of the learned counsel for the second respondent is that the impugned orders have been passed in the larger interest of the public and hence, no interference is required in these cases.

8. In the case on hand, it is an admitted fact that the lease period for some of the petitioners expires in 2019 and for the rest in the year 2020. A perusal of the inspection report would reveal that the building is in a dilapidated condition and the report would run thus:-

"(iii) Conclusions:-

(1) The portico slab, supporting beams, columns and beam column joints are severely damaged. Hence the strength and serviceability requirements are not satisfied.

(2) The distress in the ground floor both in structural and non structural members in the restaurant region indicates that the renovation is not feasible.

(3) The columns, beams and beam column joints of the bus stand are severely cracked and reinforcements are exposed and deteriorated.

(4) In the terrace region, beams, columns and joints are severely damaged as shown in the first photo of Annexure 1. This clearly shows that the columns and beams in terrace region is beyond rehabilitation.

5. From the observations, in some portion of the building, the functional requirement is not satisfied.

(v) Recommendations:-

This RCC structure with a life period of more than 20 years suffered from durability distress. The external symptom ranges from cracking to spalling of concrete, which involved severe corrosion of reinforcement of dampness also. The portico supporting beams and beam column joints are severely damaged and deteriorated the entire portico slab towards bus stand side is not in stable condition. Since most of the structural elements shows distress and beyond rehabilitation, the building is not fit for occupancy."

9. It is settled law that the Courts should be slow in interfering with the opinion expressed by the Experts in the absence of mala fides alleged against the members. In (2008) 4 SCC 306 [B.C.Mylarappa Vs. Dr.R.Venkatasubbaiah] the Hon'ble Supreme Court has observed that the High Court was not justified in interfering with the decision taken by the Experts unless mala-fide is attributed to the members of the Expert Body.

10. It is also relevant to note that subsequent to Somanur Bus Stand accident, another fatal accident had occurred in the depot of the Transport Corporation in Thanjavur District. From the Inspection Report, it is evident that the condition of the building is unsafe and in the event of any accident, the ultimate sufferers would be the innocent general public. It is pertinent to note that no allegations or materials have been produced to reject the report of the Experts.

11. Taking note of the above facts, I do not find any reason to quash the orders impugned in these Writ Petitions. In that view of the matter, Writ Petitions fail and they are dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

r n s

To

1.The Assistant Director for Town Panchayat,
O/o. of the Directorate of Town Panchayats,
Coimbatore.

2.The Executive Officer,
Sulur Town Panchayat,
Sulur, Coimbatore District.

+3cc to Mr.V.VIJAY SHHANKAR, Advocate, S.R.No.44155

+1cc to Mr.V.SUBRAMANIAN, Advocate, S.R.No.43117

+1cc to the Government Pleader, S.R.No.44576 TO 44578 &
44582 TO 44584

Order in
W.P. Nos.12690 to 12704 of 2018 &
W.M.P.Nos.14835 to 14867 of 2018 &
W.M.P.Nos.18176 to 18190 of 2018

JP (CO)
TR(13/07/2018)

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