IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	06/03/2018
Delivered on	19/03/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.37961 of 2016 &

W.M.P.No.32556 of 2016

M.G.Nagaraj .. Petitioner

Vs.

1.The District Collector,
Erode District,
Erode - 638 011.

2.The Chairman,
Bhavani Sagar Town Panchayat,
Bhavani Sagar - 638 451.
Sathyamangalam Taluk,
Erode District.

3.The Executive Officer,
Bhavani Sagar Town Panchayat,
Bhavani Sagar - 638 451.
Sathyamangalam Taluk,
Erode District.

4.Balasubramaniam
5.Lakshmi .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents 1 to 3 to cancel the allotment of Shop Nos.11/6 and 11/7 made in the name of the respondents 4 and 5, and to give re-allotment to the petitioner subject to the payment of enhanced rent at the rate of 15% by considering his representations dated 20.06.2016 and 28.06.2016.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.N.Inbanathan
Additional Government Pleader for R1 and R2

Mr.R.Rajeswaran for R3

Mr.I.C.Vasudevan for R4 and R5

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O R D E R

Heard Mr.N.Manohar, learned counsel for the petitioner; Mr.N.Inbanathan, learned Additional Government Pleader for the respondents 1 and 2; Mr.R.Rajeswaran, learned counsel for the third respondent and Mr.I.C.Vasudevan, learned counsel for the respondents 4 and 5 and perused the records.

2. The prayer in the Writ Petition is for issuance of Writ of Mandamus directing the respondents 1 to 3 to cancel the allotment of shop Nos.11/6 and 11/7 made in the name of the respondents 4 and 5 and allot the same to the petitioner on the basis of his representations dated 20.06.2016 and 28.06.2016.

3. The third respondent pursuant to the notification issued in the year 2009, granted license to the petitioner for Shop Nos.11/6 and 11/7 for a period of three years commencing from 01.07.2009.

4. The case of the petitioner is that a vacant site was allotted by the third respondent and after he was issued a license, he had put up constructions and was carrying on business. He also paid rent between 01.07.2009 to 31.03.2010 for a period of nine month and he was issued receipts, but for the subsequent period from 01.04.2010 to 31.03.2012, the third respondent had agreed to issue receipts.

5. The petitioner would further state that he underwent a surgery and thereafter, he was not able to carry on his business. While so, without any prior notice to the petitioner, the respondents 2 and 3 have allotted the shops to the respondents 4 and 5, whose daughter-Mrs.Devi, is working as a water purifier in the third respondent.

6. The petitioner would further allege that though the third respondent had promised to re-allot the shop in favour of the petitioner, when he met him on many occasions, but, later he came to know pursuant to the paper publication in Makkal Kural dated 31.03.2016, the shops were allotted the respondents 4 and 5. Thereafter, he gave representations dated dated 20.06.2016 and 28.06.2016, but all ended in vain. According to the petitioner, he is entitled for extension of lease under G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007.

7. The third respondent has filed a counter, denying the entire allegations made by the petitioner and also stated that three years license period commenced on 01.07.2009, but the petitioner paid the license fees only for nine months and thereafter, he defaulted in paying the fee. It is further stated that the petitioner had not carried out any business activity from 01.07.2009. After the license period, the respondent resolved on 27.07.2015 to lease out the property to the third parties by way of open auction. The proposal for lease was published on 31.12.2015 in the Office Notice Board and it was also announced in the Town

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Panchayat area by "tom tom" and in Makkal Kural on 12.01.2016 and in Erode District Tender Bulletin on 14.01.2016. It is further stated that the respondents 4 and 5 were declared as successful bidders in the auction held on 18.01.2016, but long after, the petitioner sent representations dated 20.06.2016 and 28.06.2016 and therefore, they were not considered. As the petitioner is a defaulter, the G.O.Ms.92 and the clarificatory letter dated 12.03.2009 are not applicable to the petitioner and prayed for dismissal of the Writ Petition.

8. The respondents 4 and 5 have filed a common counter stating that in the public auction conducted on 18.01.2016, they have been declared as successful bidders for the period from 01.04.2016 to 31.03.2019. As such, they have been doing business and they have been paying rent regularly. They have further stated that their daughter Devi is no way connected with the license granted to them.

9. The learned counsel for the petitioner submitted that the petitioner was declared as a successful bidder for two shops in the year 2009 for the license fee of Rs.1,800/- and Rs.1,950/-. However, the third respondent with an mala fide intention to allot the shops in favour of private respondents did not issue proper notification and also not followed the provisions in the Tender Transparency Act, which resulted in reduction of license fee almost 50% after a period of nine years viz., Rs.950/- and Rs.925/- respectively. It is further contended that as per G.O.Ms.No.92, the lease is to be extended in favour of the petitioner.

10. The learned counsel for the respondents submitted that the petitioner is a defaulter and admittedly, he is not running the business from 2010 and this Writ Petition has been filed with false allegations and suppression of material facts and on the sole ground, the Writ Petition is liable to be dismissed.

11. This Writ Petition has been filed as if, the petitioner paid the license fee from 01.07.2009 to 31.03.2012, but he was given receipts for a period of nine months. It is also alleged that the third respondent has not issued receipt in favour of the petitioner for the rent received. However, during the course of the arguments, the learned counsel for the petitioner has admitted that the petitioner has paid rent only for a period of nine months and thereafter, he did not conduct any business.

12. The materials produced by the respondents would establish that the third respondent has scrupulously followed the procedure before bring the shops for auction. But, the petitioner, who is the resident of the same locality, without ascertaining the facts, has filed this Writ Petition alleging proper procedures were not followed. Perusal of the records further reveals that in the auction conducted on 18.01.2016, 29 persons, including the respondents 4 and 5 had participated and eventually they became the successful bidders and they were started business from 01.04.2016. Long thereafter, the petitioner gave representations in the month of June 2016 and filed this Writ Petition with false and frivolous

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allegations.

13. It is settled law that any one approaches the High Court invoking Article 226 of the Constitution of India with unclean hands and false pleas, on that score, the Writ Petition is liable to be dismissed.

14. Admittedly, the petitioner is not running the business since 2010, but after lapse of six years, he has filed this Writ Petition seeking extension of lease based on the G.O.Ms.No.92. This Court has already taken a view that the licensees of the shops of the local authority are not entitled for extension of the lease as a matter of right on the basis of G.O.Ms.No.92, dated 03.07.2007.

15. For the reasons stated above, the Writ Petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

r n s

To

1.The District Collector,
Erode District, Erode - 638 011.

2.The Chairman,
Bhavani Sagar Town Panchayat,
Bhavani Sagar - 638 451.
Sathyamangalam Taluk, Erode District.

3.The Executive Officer,
Bhavani Sagar Town Panchayat,
Bhavani Sagar - 638 451.
Sathyamangalam Taluk, Erode District.

+1 cc to Mr.N.Manokaran, Advocate SR.NO. 20710

+1 cc to Mr.I.C.Vasudevan, Advocate SR.NO. 20738

+1 cc to the Government Pleader, High Court, Chennai SR.NO. 21394

Pre-Delivery Order made in
W.P.No.37961 of 2016 &
W.M.P.No.32556 of 2016

VG-II(CO)
JK 04/04/18

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