

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. No. 892 of 2019

E. Mohana Kumar

... Petitioner

-vs-

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.
2. The Managing Director,
Tamil Nadu Slum Clearance Board,
No. 5, Kamarajar Salai,
Chennai - 600 005.
3. The Estate Officer - 3,
Tamil Nadu Slum Clearance Board,
J.J. Shopping Complex,
Thirumangalam,
Anna Nagar,
Chennai - 600 040.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Respondents to sell the Shop No. 51 in the First Floor of the Shopping Complex at Thirumangalam, Chennai - 600 040 on outright sale basis as requested by the Petitioner in his letter dated 31.03.2018 as it was effected to other Allottees in the Ground and First Floor of the above said Complex.

For Petitioner : Mr. K.V. Subramanian, Senior Counsel
for Mr. M.A. Abdul Wahab

For Respondents: Mr. J. Purushothaman,
Government Advocate (for R1)

Mrs. D. Latha,
Standing Counsel (for R2 & R3)

O R D E R

The Second Respondent, viz., Tamil Nadu Slum Clearance Board, owns a shopping complex at Thirumangalam (Chennai) comprising of Basement, Ground and Three Floors. The 60 shops in the Ground and First Floors had been allotted on rental basis, in which during the year 2004-2005, 38 shops had been occupied and 22 shops were vacant. At that time, it had been decided by the First Respondent, viz., the Government of Tamil Nadu, to permit the Second Respondent to sell the said 60 shops in the Ground and First Floor by way of public auction through advertisement through dailies. In response to the aforesaid advertisement, none had quoted over and above the upset price of Rs. 2,300/- per square feet that had been fixed in the advertisement and the highest rate quoted in the tender cum auction was 30% lower than the upset price. In those circumstances, the then existing tenants of the 38 shops came out with a representation requesting to permit them to purchase their respective shops from the Second Respondent. Accordingly, the First Respondent by G.O. Ms. No. 147, Housing and Urban Development Department dated 03.05.2005 accepting the proposal of the Second Respondent to effect outright sale of the shops to the tenants who were then in occupation of the same at upset price of Rs.2,300/- per square feet. It was further mentioned that if any such tenant failed to remit that upset price, those shops may be brought to sale through tender/auction along with other vacant shops. In pursuance of the same, most of the shops in their occupation were purchased by the tenants by paying the said upset price.

2. Long thereafter, the Petitioner, who is an Advocate, for the purpose of having his office, had made a request for allotment of Shop No. 51 in the First Floor of the aforesaid shopping complex on rental basis, which was granted to him by proceedings Na. Ka. No. B2/3477/07 dated 31.01.2008 of the Second Respondent. According to the Petitioner, he was paying monthly rent of Rs.26/- per square feet for the extent of 265 square feet occupied by him, which working out to Rs.6,630/- per month and that the lease has been periodically extended every year with enhancement of 5% per year and that he has paid a rental advance of Rs.79,560/-. The Petitioner claims to have made representations to the Second Respondent to permanently allot the said Shop No. 51 to him on outright basis by sale and there has not been any reply for the same. He had finally made a representation dated 31.03.2018 requesting for allotment of Shop No. 51 by extending the same benefits granted to the then existing tenants in G.O. Ms. No. 147, Housing and Urban Development Department dated 03.05.2005. Complaining that no action has been taken on the said representation, the present

Writ Petition has been filed for direction to the Respondents to dispose the same.

3. Heard Mr. K.V. Subramanian, Learned Senior Counsel assisted by Mr. M.A. Abdul Wahab, Learned Counsel for the Petitioner, Mr. J. Purushothaman, Learned Government Advocate appearing for the First Respondent and Mrs. D. Latha, Learned Standing Counsel appearing for the Second and Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

4. Learned Senior Counsel appearing for the Second and Third Respondents strenuously urged that when the First Respondent has already permitted all the 60 shops in the ground and first floors to be sold on the outright basis, there cannot be any impediment for the Second Respondent to extend same benefit to the Petitioner. It is further contended that the Petitioner finds it difficult to meet the expenditure of periodical increase of the rent and it would mutually benefit the Petitioner as well as the Second Respondent if the said shop is immediately sold to the Petitioner at the price that may be fixed for the same.

5. The Learned Government Advocate appearing for the First Respondent as well as the Learned Standing Counsel Counsel appearing for the Second and Third Respondents contended that the earlier permission granted by the First Respondent to the Second Respondent by G.O. Ms. No. 147, Housing and Urban Development Department dated 03.05.2005 to sell shops on outright basis was a one time measure to then existing tenants and such benefit would not enure to the Petitioner, who has come to occupy the shop on rental basis subsequently. It is represented that in any event, the Respondents cannot be compelled to sell the shop to the Petitioner. It is also brought to the notice of this Court that the Petitioner is in arrears of rent of Rs.1,40,832/- in February 2019, and he cannot claim any equity from this Court.

6. The short question that arises for consideration from the rival submissions made is whether the Respondents could be compelled to sell the Shop No. 51 in the shopping complex that is now occupied by him as tenant on outright basis relying on G.O. Ms. No. 147, Housing and Urban Development Department dated 03.05.2005, which is claimed in the Writ Petition?

7. The legal position is well settled that unlike a private owner of property, the Welfare State, which exists for larger good of the largest number, cannot act in a manner which would benefit a private party at the cost of the State as that would

run contrary to the public interest. The circumstance that during an earlier point of time, the Respondents had intended to sell the property, on outright basis by fixing upset price, cannot be considered as a perpetual decision available to a person at a later point of time to compel the sale of the remaining portion in the same property. In view of the cogent reasons explained by the Respondents refusing to accede to the claim made by the Petitioner in his representation, there does not appear to be any justification for this Court to direct the Respondents to sell that shop to the Petitioner.

8. In this context, it would be useful to refer to the dictum laid down by the Hon'ble Supreme Court of India in Director of Settlements, A.P. -vs- M.R. Apparao [(2002) 4 SCC 638], in which it has been held as follows:-

"17.One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalyan Singhv. State of U.P. [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."

Applying the aforesaid principles to the facts of this case, in the absence of any materials to show that there is any unreasonableness, unfairness, perversity, illegality or irrationality in the refusal of the Respondents to sell the shop

in the occupation of the Petitioner at this distant point of time, this Court does not find any justifiable reason to grant the relief sought in the Writ Petition relying on G.O. Ms. No. 147, Housing and Urban Development Department dated 03.05.2005. However, it is hastened to clarify here that in the event, it is decided by the Respondents to sell the said shop in the public auction, it would be open to the Petitioner to participate in the same, if he is otherwise eligible and satisfies the conditions that are prescribed for the same.

9. In the result, the Writ Petitions is dismissed with the aforesaid observations. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to the Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.
2. The Managing Director,
Tamil Nadu Slum Clearance Board,
No. 5, Kamarajar Salai,
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3. The Estate Officer - 3,
Tamil Nadu Slum Clearance Board,
J.J. Shopping Complex,
Thirumangalam,
Anna Nagar,
Chennai - 600 040.

+1cc to Mr.K.V.Subramanian, Advocate Sr.47423
+1cc to Mr.D.Latha, Advocate Sr.73961

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