

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	21.02.2019
Orders pronounced on	13.3.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.1926 of 2019 and 2838 of 2019
W.M.P.No.2142 of 2019 in W.P.No.1926 of 2019
and W.M.P.No.3101 of 2019 in W.P.No.2838 of 2019

Chennai Koyambedu Market
Bhadikapatta L.M.N.Vyabarigal Nala Sangam
Traders' Welfare Association
Rep. by its President
No.28 L-1, M-44, Vegetable Complex,
Koyambedu, Chennai-600 092. Petitioner in W.P.No.1926/2019

Koyambedu Wholesale Market Complex
Periyar Kaikari Angadi Anaithu Sangankalin
Kootamaipu Represented by its President,
No.E-114, Periyar Vegetable Complex,
Koyambedu Chennai. Petitioner in W.P.No.2838/2019

Vs.

- 1 The Government of Tamil Nadu
Rep by its Secretary,
Housing and Urban Development Department,
Fort.St George, Chennai-9
- 2 The Chennai Metropolitan Development
Authority rep by its Chairman,
No.1 Gandhi Irwin Road, Egmore Chennai-8
- 3 The Chennai Metropolitan Development
Authority Rep by its Member Secretary,
No 1, Gandhi Irwin Road,
Egmore, Chennai-8
- 4 The Superitending Enginner- I
Construction Wing Tower II 9th floor,
No 1-A Gandhi Irwin Road,
Egmore, Chennai-8 ... Respondents in both W.Ps.

Prayer in both W.Ps.: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the fourth respondent in the impugned website Auction/Tender for the allotment of shops in the Vegetable market in Phase I only in Application No.18/CMDA/KOY/APP. No.100044, dated 21.12.2018 and quash the same and further direct the respondents 2 to 4 to consider the representation of the petitioner, dated 27.12.2018 to follow the policy of the second respondent in A.R.No.113 of 2009, dated 22.09.2009 for the allotment of shops in KMMC.

For Petitioners : Mr.Rajasekhar

For Respondents 2 and 3 : Mr.Aravind Pandiyan, A.A.G.
Assisted by Mrs.P.Veena Suresh

COMMON ORDER

Petitioners' Association registered under the Tamil Nadu Societies Registration Act, 1975 on 8.11.2012 and 6.9.2018 respectively. The members of the petitioners Association were allotted shops by draw of lots. The aforesaid method was adopted by the respondents for the past 22 years. Three categories of shops viz., Type I, Type II and Type III. In Type I, the extent of shop is 368 sq.ft., Type II, the extent of shop is 735 sq.ft. and Type III, the extent of shop is 1356. Totally, there are 492 shops constructed under the aforesaid Koyambedu wholesale Food Grain Market Complex. The respondent brought for allotment of draw of lots only 23 shops are vacant and the remaining 369 shops were sold to various traders. Suddenly, the respondent published paper publication on 21.12.2018 brought shop Nos.V/M-11, V/L-17, V/N-68, V/L-19, V/N-101, V/L-18, V/I-17, V/N-52, V/I-4, V/M-23, V/M-23, V/M-22, V/K-34, V/B-90 and V/N-96 thereabouts different rate has been fixed for different shop inspite of the same extent and shop No.V/H-83 to an extent of 1,200 sq.ft. at the rate of 18,750 per sq.ft. without any basis for such price which were built in the year 1989 which were handed over to the earlier allottees in the year 1996. After the allotments were cancelled due to various reasons and subsequently, there were shops vacant from 2012 onwards. Furthermore, as per the said advertisement the allotment of shops would be made through Auction/Tender for Vegetable Market Phase-I only through advertisement in newspaper. The Auction/Tender is against the policy of the respondents mode of allotment. The petitioner made representation on 21.12.2018, but no order has been passed. Hence, the petitioner has filed the present writ petition before this Court.

2. According to the learned counsel for the petitioner, policy of the allotment of shops in Koyambedu Wholesale Market Complex can be done only by the method of draw of lots, fixing the rate per sq.ft. is exorbitant without any justification. The petitioner challenged the auction notification mainly on the aforesaid ground. Further, it is submitted by the learned counsel for the petitioner that the respondents have not taken any policy decision before giving notification to sell the shops through tender cum auction. Therefore, the impugned tender cum auction notification issued by the respondent is liable to be quashed.

3. Counter affidavit has been filed by the respondents 2 and 3 herein. In the counter affidavit, it is contended that originally shops in Koyambedu Wholesale Market Complex were allotted through draw of lots. Earlier, similar issue raised before this Court, challenging the decision of the respondent. The Division Bench of this Court, by order, dated 15.6.2017 in W.A.No.761 and 762 of 2014, directed the respondent to allot shops through tender cum auction notification in a total transparent manner. Pursuant to the direction issued by the Division Bench of this Court, a resolution was passed by the authority in A.R.No.74/2018, dated 16.11.2018, wherein rate per sq.ft. for the aforesaid shops was fixed depending on the basis of the recommendation made by the high level Committee constituted and headed by the Additional Secretary to the Government. On the basis of the report submitted by the Committee, the cost of each shop per square feet is fixed depending upon certain parameters, proximity, access to road, accessibility, etc. Therefore, upset price was fixed for the shops based on the decision, resolution passed in the authority meeting in A.R.No.103/2018, dated 14.11.2018, wherein it was decided to sell the vacant shops in the Vegetable Market Phase I. On the basis of the decision taken in the meeting, tender cum auction notification was issued to sell the vacant shops through auction. Therefore, in the light of the order passed by the Division Bench of this Court in W.A.No.761 and 762 of 2014, the contention of the petitioner is totally incorrect. The auction was conducted only by adopting the procedure as contemplated under the provisions of law. Hence, the contention of the petitioner that the respondent has not taken policy decision to conduct auction is baseless and the same is liable to be rejected.

4. Further, the learned Additional Advocate General submitted that pursuant to the notification, there is good response from the public for the purchase of shops. Further, it is brought to the notice of this Court that the time for receiving tenders from the public was extended for another one month i.e. from 21.2.2019. The petitioner can also participate

in the tender cum auction process, if he desirous to do so. Therefore, the contention of the petitioner is liable to be rejected.

5. Heard the learned counsel for the petitioner, learned Additional Advocate General appearing for the respondents and perused the materials available on record.

6. The petitioner challenged the auction notification mainly on the ground that the respondent issued tender cum auction notification by inviting tenders from the open market without taking any policy decision by the respondent Board. By order, dated 15.6.2017, the Division Bench of this Court in an identical subject in W.A.No.761 and 762 of 2014, referring to the judgment of the Hon'ble Supreme Court in Nagar Nigam, Meerut vs. Al Faheem Meat Exports (P) Ltd. and others [(2006) 13 SCC 382] held as under:

"11. The learned counsel for the appellant in W.A.No.761 of 2014 by placing reliance on the judgment of the Hon'ble Supreme Court in Nagar Nigam, Meerut vs. Al Faheem Meat Exports (P) Ltd. and others [(2006) 13 SCC 382] contended that the High Court had no jurisdiction in such contractual transactions. It was the contention of the learned counsel that in view of the decision taken by the CMDA for draw of lots, it was not within the province of the High Court to direct public auction.

12. The learned Single Judge directed public auction only on account of the delay in finalising the allotment pursuant to the notification dated 2, November, 2009. Even CMDA wanted only public auction. The shop in question is situated in the Wholesale Market Complex at Koyambedu. The property should not be given to the applicants, without there being public auction and giving opportunity to all the applicants to submit their bids.

13. In Nagar Nigam (cited supra), the Hon'ble Supreme Court indicated that the public auction is the best method for allotment of public property. The Supreme Court said:

"18. The law is, thus, clear that ordinarily all contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well-known newspapers having wide circulation, so that all eligible persons will have an opportunity to bid in the bid (sic auction), and there is total transparency. In our opinion, this is an essential requirement in a democracy, where the people are supreme, and all official acts must be actuated by the public interest, and should inspire public confidence."

14. The CMDA was deprived of revenue for a considerable period on account of the unwanted litigations. The market was constructed by using public money. The learned Single Judge was therefore, perfectly correct in directing the CMDA to adopt a transparent method for disposal of State largesse. We do not find any reason to interfere with the order passed by the learned Single Judge directing public auction, instead of draw of lots for allotting the shop."

7. Pursuant to the said order passed by this Court, the respondent placed the said judgment before the authority for approval and the resolution was passed on 11.12.2018, resolving to sell vacant shops in Koyambedu Wholesale Vegetable Market Complex, based on the recommendations of the high level Committee. Further, tender notification was duly published in one tamil and english dailies, all editions of Tamilnadu and the same was approved by the respondent authority. It is useful to extract the relevant portion of the resolution in Agenda Item No.3.7 as under:

"5. The Second High Level Committee Meeting was held on 24.09.2018. The report prepared by M/s.Knight Frank India Private Limited for fixing of Market Value for the vacant shops etc. in the Koyambedu Wholesale Market Complex (KWMC) was discussed in detail and the Committee also

discussed the interest rate offered by Tamil Nadu Power Finance and Infrastructure Corporation Limited and State Bank of India.

6. Finally, the High Level Committee has accepted the consultant's report and decided to fix the upset price for the vacant shops, etc. at KWMC based on the Market Value furnished by the consultant, M/s.Knight Frank India Private Ltd. in the report (Annexure - I). Therefore, Superintending Engineer - I, CW and Senior Estate Officer - K (i/c) have been requested to proceed further on issuing of Advertisement for disposing of vacant shops, etc. in KWMC by Tender cum Auction on outright purchase basis.

7..... 8. Para-6 above is placed before the Authority for approval on action taken by the High Level Committee for the disposal of vacant shops, etc. at KWMC and Para-7 above is placed before the Authority for accepting the upset price fixed by the consultant for letting out the vacant shops, etc. (on Lease Rent) given above through Tender cum Auction basis. On approval of the Authority, the rates fixed by the consultant on rental basis may be placed before the High Level Committee for perusal and modification of rent if necessary for the vacant shops, etc. in the above mentioned schemes at Para- 7 above."

8. On the basis of the recommendation made by the high level Committee, the respondent authorities have decided to dispose of the vacant shops through tender cum auction for outright purchase and by directing the Superintending Engineer for disposal of the vacant shops to the public by publishing the notification in any one of the tamil and english daily. According to the respondents, about 1029 applications were downloaded from the official website of CMDA and good response from the public to participate in the tender cum auction process. The price for the vacant shops would be more competitive then the sale through draw of lots.

9. While weighing the private interest with public interest, the public interest only prevail over the private interest. Therefore, considering at any angle, in the light of Tamil Nadu Transparency in Tenders Act and Rules as well as the decision rendered by the Hon'ble Supreme Court and the Division Bench of this Court cited supra, there is no force in the

contention of the learned counsel for the petitioner that the vacant shops are to be disposed of only through draw of lots instead of tender cum auction process.

10. In the facts and circumstances of the case and in the light of the judgment of the Hon'ble Supreme Court and the Division Bench of this Court cited supra, the writ petition deserves to be dismissed and accordingly, dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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- 1 The Secretary,
Government of Tamil Nadu
Housing and Urban Development Department,
Fort.St George, Chennai-9
- 2 The Chairman,
Chennai Metropolitan Development Authority,
No.1 Gandhi Irwin Road, Egmore Chennai-8
- 3 The Member Secretary,
Chennai Metropolitan Development Authority,
No 1, Gandhi Irwin Road,
Egmore, Chennai-8
- 4 The Superitending Enginner- I
Construction Wing Tower II 9th floor,
No 1-A Gandhi Irwin Road,
Egmore, Chennai-8.

+3cc to Mrs.P.Veena Suresh, Advocate sr.no.23952, 23964, 23963
+1cc to M/s.M.Raja Sekhar, Advocate sr.no.24059
+1cc to Government Pleader sr.no.24200

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nr 03/05/2019