

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.4877 of 2019

and

W.M.P.No.5565 and 5566 of 2019

- 1 Anna Maruthuvamanai Sirukadai
Vyabarigal Sangam Regn. No.39/ 2017
Rep.by its Treasury A.Govindasamy,
Anna Nagar 3rd Main Road,
Chennai Corporation Commercial Complex,
Arumbakkam, Chennai. Petitioner
- Vs.
- 1 The Commissioner
Greater Corporation of Chennai,
Rippon Building, Chennai - 600003
- 2 The Greater Corporation of Chennai,
Zonal Officer - VIII, Revenue Dept.,
Chennai. Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the second respondent in his proceedings M.A.8/Na.Ka.No.R1/339/2019 dated 30.01.2019 and quash the same.

For Petitioner : Mr.M.R.Jothimanian for
Mr.K.Balu

For Respondents : Mr.Karthika Ashok

O R D E R

According to the petitioner, petitioner is a registered Association consisting of 80 members of Burma Repatriates (now Myanmar) and they were allotted shops in V.O.C.Nagar, Tondiarpet, Chennai. On the earlier occasion, writ petition has been filed in W.P.No.18162 of 1993. This Court by order, dated

24.1.1995 passed the order directing the petitioner to make fresh application for allotment of shops at available sites to the members of the petitioner Association, within a period of four weeks. Pursuant to the said order, petitioners were allotted the aforesaid place for putting up shops on payment of licence fees to the respondent Corporation and the lease deed was also executed for a period of 11 months. Subsequently, no lease deed has been executed by the Corporation. Members of the petitioner Association have continuously paid licence fees to the respondent Corporation. Suddenly, the respondent Corporation has affixed a notice, by directing the members of the petitioner Association to vacate the premises within a period of 15 days from the date of receipt of a copy of the said notice. According to the petitioner, action of the respondent Corporation is illegal, without jurisdiction and the same is liable to be set aside.

2 The learned Standing Counsel appearing for the respondent would submit that the petitioners were allotted aforesaid shops pursuant to the order passed by this Court in W.P.No.18162 of 1993. There were 76 shops allotted to the members of the Nethaji Shopping Complex Sangam with an extent of $5 \times 8 = 40$ sq.ft. and fixed a rent of Rs.5/- per sq.ft. and also permission to construct shops on their own in the year 1992 and as on date, the rent for the shops varies from Rs.325/- to Rs.389/- per month. When the shop sites were handed over to their members, certain terms and conditions were imposed for allotment of shops. It is specifically mentioned that if the allottees violate any of the terms and conditions in the allotment order, the allotment of shop site will be cancelled and on the expiry of the licence period, the Corporation of Chennai may renew it failing which he/she shall be removed from the site. It is further stated that the allottees did not renew the licence till date and 29 shops were transferred their allotment to some other third parties in violation to the order of allotment. According to the respondent, due to 76 shops which have been constructed on the storm water drain, the drain could not be desilted properly, causing water stagnation and poses hindrance to the vehicular movement. The Chennai Corporation has now prepared an approximate estimate of Rs.1,13,00,000/- for reconstruction of storm water drain for free flow of rain water. In order to avoid traffic congestion of this road, i.e. 3rd Avenue, Anna Nagar, at the junction of Anna Arch, Poonamallee High Road, a flyover was constructed with a service road of a width measuring about 10 meters which needed to be widened to a width of about 13 meters including platform for movement of pedestrians. Further, it is submitted that the allottees in the Nethaji Shopping Complex Sangam has not paid the rent payable to the Chennai Corporation regularly and the arrears of rent payable by the allottees in the Nethaji Shopping Complex Sangam amounts to

Rs.8,59,255/- till date. The allottees in the Nethaji Shopping Complex Sangam have also encroached the footpath adjacent to their shops by extending their shops. Further, it is contended by the respondent Corporation, there is specific condition in the allotment order that if it is required by the respondent Corporation, the members of the petitioner Association shall hand over the said land to the respondent Corporation immediately by serving notice to the members of the Association. In view of the public interest, the said land is required for the respondent Corporation. Therefore, prayed for dismissal of the writ petition.

3. Heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for the respondent Corporation and perused the materials available on record.

4. According to the learned Standing Counsel appearing for the respondent Corporation, for the reasons stated in the counter affidavit, the aforesaid land is required for widening of the road as well as maintaining storm water drainage and the aforesaid shops were causing hindrance to free flow of traffic on the aforesaid road. On perusal of the impugned order passed by the respondent Corporation, the respondent has not adduced any reason for vacating the shops. Further, on reading of the impugned order, it is final order by giving 15 days time to vacate the premises. Further, the respondent has not issued any notice to the petitioner for violation of terms and conditions of the allotment order and also the impugned order has been passed not on the ground that the petitioner has been treated as unauthorised occupant or encroacher, subsequent to the lease agreement renewed by the respondent Corporation.

5. According to the respondent Corporation, the public interest is involved, but at the same time, petitioners being constructed shops pursuant to the order passed by this Court and paid licence amount upto date. Therefore, if any violation of the said terms and conditions, the respondent can issue notice to the concerned licensee and pass appropriate orders. In so far as the licence fee already paid by the licensee, the respondent Corporation has not taken any decision for making any alternative site for the aforesaid members of the association or treat them as encroachers or any other right on the members of the petitioner association to be decided by the respondent Corporation and the same shall be communicated to the petitioner. Till such time, possession of the members of the petitioner Association shall not be disturbed by the respondent Corporation.

6. Therefore, in the absence of any reason stated in the impugned order and the same has been passed without issuing showing cause notice or providing an opportunity to the petitioner, the aforesaid impugned order passed by the respondent Corporation, dated 27.8.2018 is quashed and consequently, writ petition stands allowed with liberty to the respondent Corporation as stated above. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Commissioner
Greater Corporation of Chennai,
Rippon Building, Chennai - 600003
 - 2 The Greater Corporation of Chennai,
Zonal Officer - VIII, Revenue Dept., Chennai.
- +1 cc to M/s.Karthikaa Ashok, Advocate, S.R.No.28361
+1 cc to Mr.K.Balu, Advocate, S.R.No.28633

PPA (CO)
SSM(08/05/2019) .

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