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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2019

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition Nos.8558 and 8559 of 2019

S.Revathy

.. Petitioner in
W.P.No.8558 of 2019

S.Janani

.. Petitioner in
W.P.No.8559 of 2019

/versus/

1.The Executive Officer,
Chengam Town Panchayat,
Chengam 606 701,
Tiruvannamalai District.

2.The Assistant Director of Town Panchayat,
District Collector Office,
Sathuvachari Vellore,
Vellore District.

3.The District Collector,
Tiruvannamalai District,
District Collector Office,
Tiruvannamalai.

.. Respondents in
both Writ Petitions

Prayer in W.P.No.8558 of 2019: Writ Petitioner is filed under Article 226 of the Constitution of India praying to direct the Writ of Mandamus directing the 1st respondent to handover the vacant possession of one shop as per proceedings in No.Na.Ka.No.262/2017/A2 dated 09.11.2017 passed by the 1st respondent.

Prayer in W.P.No.8559 of 2019: Writ Petitioner is filed under Article 226 of the Constitution of India praying to direct the Writ of Mandamus directing the 1st respondent to handover the vacant possession of one shop as per proceedings in No.Na.Ka.No.262/2017/A2 dated 09.11.2017 passed by the 1st respondent.

For Petitioner :Mr.A.Srinivasan(in both cases)



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For Respondents :Mr.V.Elango for R1(in both cases)
Mr.R.Govindasamy, Spl.G.P.
for R2 and R3(in both cases)

COMMON ORDER

Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the first respondent and the learned Special Government Pleader appearing for respondents 2 and 3.

2.Perused the affidavits of the petitioners and the counter affidavits filed by the respondents 1 and 3.

3.The contention of the writ petitioners is that the unauthorised bus shelter at Chengam near bus stand was used by the antisocial elements and due to the persisting representations and efforts, the unused bus shelter was converted into shops after obtaining no objection from the Transport Department. The first respondent/Panchayat vide its resolution dated 09.11.2017 allotted a shop to the petitioners on condition that they should deposit a sum of Rs.10,000/- as caution deposit and pay the lease amount regularly. The period of lease was one year with a condition clause of renewal with enhanced 5% of lease amount. Even after depositing Rs.10,000/- as caution deposit, the shop was not allotted to the petitioners. Therefore, they approached this Court seeking Writ of Mandamus to handover the vacant possession of the shop as per the proceedings dated 09.11.2017. In the meanwhile, impugned order has been passed by the first respondent cancelling the allotment and requesting the petitioners to get the refund of the caution deposit. The order of cancelling the allotment and refund of caution deposit have been communicated to the writ petitioners vide proceedings dated 15.03.2019 after filing the writ petitions.

4. It is contended by the learned counsel appearing for the writ petitioners that inspite of taking all efforts of converting unused bus shelter into shops to sell daily newspaper, the shops were not allotted to them, even after resolution passed by the panchayat. Now after filing the writ petitions, the first respondent has communicated the cancellation of allotment and refund of caution deposit which clearly indicates the malafide intention of the respondents to deprive the lawful rights of the petitioners having the shops being leased out to them.

5. The first respondent has filed a detailed counter wherein, the facts contended by the writ petitioners are fully



admitted and conceded.

6. It is submitted by the learned Special Government Pleader appearing for the second and third respondents that no doubt, the unused bus shelter was proposed to be converted into commercial premises. However, Chengam Town Panchayat has unilaterally allotted the shops to the petitioners herein without following the proceedings laid down in G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007. Hence, he has cancelled the allotment and directed the writ petitioners to get back the caution deposit made by them.

7. Perusal of the pleadings and records filed in the typed set of papers would show that the petitioners herein had been communicated about the Town panchayat resolution vide, proceedings in Na.Ka.No.262/2017/A2, dated 09.11.2017. Pursuant to this communication, dated 09.11.2017, they have deposited Rs.10,000/-. However, they were not allotted any shops inspite of their representations, which have prompted them to file the present writ petitions. As per the G.O.Ms.No.92, passed by the Municipal Administration and Water Supply Department dated 03.07.2007 the writ petitioners have legitimate expectation to get the shop allotted as per the communication dated 09.11.2017. But the Government Order referred above clearly states under Clause 4 that whenever a shop is let out for the first time, it must be made by a public auction and the renewal of it is subjected to terms of the contract.

8. Admittedly, the unused bus shelter was converted into shops and let out for lease. No privilege can be claimed by the petitioners for the reason that the petitioners were the persons responsible to convert the unused bus shelter into the shops. They have to participate in the public auction. If they are successful bidders they can run the business in the shops. Though the cancellation of the allotment was not properly communicated to them and without notice to them, the very same allotment of the shops itself is violation of the Government Order. Hence, one illegality cannot make other illegality legal.

9. Therefore, these writ petitions are bound to be dismissed. While dismissing the writ petitions it is necessary to record that the first respondent herein shall not delay the process of conducting auction of shops thereby deprive the rights of the petitioners who like to make use of the premises profitably. Therefore, within a period of one month from the date of receipt of a copy of this order, the first respondent shall take necessary steps to make a public notice for auction of the shop premises with necessary conditions and the petitioners shall participate in the public auction. Since the



first respondent has received Rs.10,000/- as caution deposit from the writ petitioners which is per se improper and contrary to G.O.No.92 dated 03.07.2007, the first respondent Panchayat is liable to return the caution deposit of Rs.10,000/- with simple interest at the rate of 7.5% p.a from the date of deposit till the date of refund.

10. With the above observations, these Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1.The Executive Officer,
Chengam Town Panchayat,
Chengam 606 701,
Tiruvannamalai District.

2.The Assistant Director of Town Panchayat,
District Collector Office,
Sathuvachari Vellore,
Vellore District.

3.The District Collector,
Tiruvannamalai District,
District Collector Office,
Tiruvannamalai.

+1 cc to M/s.A.Srinivasan, Advocate, Sr.No. 47644

+1 cc to M/s.V.Jaisankar, Advocate, Sr.No. 46758

+1 cc to The Government Pleader, Sr.No. 47515

W.P.Nos.8558 and 8559 of 2019

BP(CO)
CSL/01.08.2019