

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.07.2019

PRONOUNCED ON : 15.07.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.13401 of 2019 and
W.M.P.No.13504 of 2019

N.Abbas

...Petitioner

Vs

The Commissioner,
Erode Municipal Corporation,
Erode - 638 001.

...Respondent

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorari call for the entire records pertaining to impugned notification in Na.Ka.No.A1/5131/2018 dated 27.02.2019 from the file of the respondent and quash the same as illegal and unlawful and unconstitutional.

For petitioner :Mr.R.Krishnamurthy

For Respondent :Mr.M.Rajamathivanan,
Standing Counsel

ORDER

The averments in the affidavit filed in the writ petition reads as follows:-

The petitioner is running a small metal box shop at E.K.M.Abdul Gani Market, Erode for past several years. Without default, he is regularly paying the rent to the respondent Corporation. While so, the respondent has caused notice to the petitioner to vacate the shop without affording reasonable time for making alternate arrangement. The respondent threatened him that they will cause nuisance if the petitioner refuse to vacate the shop.

2.The intention of the respondent to evict the petitioner bristles with malafide, ultra vires to constitution and violation of natural justice principle. The alternate arrangement in Tex Valley premises is illegal and unlawful. Hence, according to the petitioner, the notification of the respondent dated 27.02.2019 being unconstitutional to be quashed.

3.The respondent has filed counter affidavit. In the said counter affidavit, the respondent has stated that the petitioner was a lessee under the respondent. The lease terms expired on 31.03.2019. If the petitioner is aggrieved by any act of the respondent, his right is under the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 which has come into effect from 22.02.2019. In order to construct a modernised Textile Hub at E.K.M.Abdul Gani Market, termination notice dated 27.02.2019 to the occupants terminating the lease was issued by the respondent. The occupants were requested to surrender the vacant possession and to occupy the alternate site kept ready for temporary occupation in the premises of Tex valley. Nearby land, with an extent of 2 acres is available for the occupants of E.K.M.Abdul Gani Market, who were asked to vacate in view of the 'smart city scheme', implementation. Under this scheme, a modernised Textile hub at 24471 sq.mtr with 288 shops, 144 car parking and 250 two wheeler parkings are likely to be constructed at the project costs of Rs.51.59 crores. If the petitioner refuse to vacate the place, it will stall the proceedings in constructing the Textile hub in E.K.M.Abdul Gani Market.

4.The scrutiny of the pleadings in the light of the impugned notification of the respondent reveals that the petitioner's lease period was expired as early as on 31.03.2019. In the impugned notice dated 27.02.2019, the petitioner is informed about the Government proposal to construct modernised multi storied commercial complex at E.K.M.Abdul Gani Market, Erode. The petitioner also informed about the availability of alternate site at Tex valley and if any occupants wants alternate site, they may apply for it.

5.The respondent wants to implement 'smart city scheme' for which, the place in occupation is required. The right of the petitioner as lessee got ceased on 31.03.2019. The legal and constitutional protection to continue in the place is subject to restrictions and terms. From the notice impugned in this writ petition, this Court finds that the respondent has explained the reasons for causing eviction notice on the petitioner on expiry of lease period. The intention for not renewing the lease any further is made out in the notice. No mala fide or colourable exercise of power or discrimination is found in the notice. The petitioner is not deprived of his right. Alternate site also provided and the petitioner is asked to apply for the same. Modernisation and change are inevitable. The respondent before taking decision not to renew the lease, has also taken care of its tenants to provide alternate site. The assets under the public authorities should be put to maximum use by maximum public. The request of individual is always subject to right of general public at large.

6. Here is a case where the State has decided to modernise the market at the costs of Rs.51.59 crores. The project is approved and it is part of smart city scheme. It is not deprivation of the petitioner livelihood as alleged in the writ petition. The petitioner is given option to apply for alternate site ready for occupation. The petitioner cannot insist the respondent that he must be given the same place and refuse to vacate. If such request is entertained, there will be no modernization and public will be deprived for better facility, which they deserve. To accommodate the wishes of few individuals, public at large cannot be put to inconvenience. Hence, the writ petition is to be dismissed.

7. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

jbm

To

The Commissioner,
Erode Municipal Corporation,
Erode - 638 001.

+1cc to Mr.M.Rajamathivanan, Advocate, S.R.No.59662

W.P.No.13401 of 2019

RSV(CO)

RRS (20/08/2019)

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