



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
AND

THE HONOURABLE Mrs. JUSTICE R.THARANI

Writ Petition (MD).No.20323 of 2019
and
W.M.P.(MD)Nos.16940 and 16941 of 2019

Abdul Khadar

... Petitioner

Vs.

The Commissioner,
Thanjavur Corporation,
Thanjavur.

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records pertaining to the order passed by the respondent in his proceedings in Na.Ka.No.9286/2019/MCA5 dated 14.08.2019 and quash the same as illegal.

For Petitioner : Mr.T.A.Ebenezer

For Respondent : Mr.N.Dilip Kumar, Senior Counsel

ORDER

(Order of the Court was made by **T.S.SIVAGNANAM, J**)

Heard Mr.T.Ebenezer, learned counsel appearing for the petitioner and Mr.N.Dilip Kumar, learned Senior Counsel appearing for the respondent.

2.The writ petition is filed for quashing the order passed by the respondent in his proceedings in Na.Ka.No.9286/2019/MCA5 dated 14.08.2019.

3.Recently, the Division Bench in the case of **S.Sellapandi v. The Commissioner cum Special Officer and others in W.P(MD)No.20247 of 2019 etc, batch**, has dismissed the writ petitions filed by some other persons on similar issue. The operative portion of the order reads as follows:

"2.For the sake of convenience, we take W.P(MD) No.20247 of 2019 filed by Mr.S.Sellapandi, as the sample case, to note down the facts.

3.Mr.S.Sellapandi was allotted shop in

<https://hcservices.ecourts.gov.in/hcservices> Thiruvaiyaru Bus stand in Shop No.1. It is stated



that the nature of grant is lease. The lease is said to have been periodically extended by complying with the norms of G.O.Ms.No.92, MAWS Department, dated 3.7.2007 and after expiry of period of nine years, the Petitioner claims that the lease of the shop should be extended by revising the rent by market value in favour of the existing lessees. Accordingly, the lease is extended to the Petitioner and by proceedings of the Commissioner of the Thanjavur Municipal Corporation, dated 1.8.2017, the revision of rent was fixed with effect from 1.4.2016. The Petitioner would state that he is paying the revised rent without any default. However, the Petitioner would state that Thanjavur City has been selected as one of the city under Smart City Scheme of Central Government. Accordingly, the Municipal Bus Stand and other areas are sought to be renovated, for which, the respondent/Corporation has taken a decision to demolish the existing shops for reconstruction. The Petitioner would state that the shop where he is carrying on business is the only source of his livelihood as well as for the sustenance, apart from that, his employees also depends solely upon the Petitioner's business. It is further stated that in the event of any reconstruction under Smart City Scheme, the interest of the existing lessees like that of the Petitioner should be protected by providing alternative shops until the completion of Smart City Project as per the existing procedure followed in various Districts. It is contended that if this procedure is not followed, it will disturb the rights of the existing lessees and they will be put great hardship. Further it is submitted that the respondent/Corporation cannot all of a sudden decide and throw the Petitioner out of the premises and demolish the buildings without following the procedure. It is further submitted that there is no indication about the procedure to be complied with relating to the allotment of alternative shops and further restoration of shops to the Petitioner, after the completion of construction. Therefore, the Petitioner would state that the action of the respondents/Corporation in issuing the impugned notice is ex-facie arbitrary illegal and against law.

4.Mr.Veerakathiravan, learned Senior Counsel appearing on behalf of Mr.C.Santhosh Kumar, learned



counsel for the Petitioners would vehemently contend that lease has been granted in favour of the Petitioners based upon G.O.Ms.No.92, dated 3.7.2007 and it has been periodically extended and there is no default in payment of the revised rent and unilaterally, a decision was taken to demolish the shops for the purpose of implementing the Smart City Scheme, is arbitrary and illegal, referring to the decision of this Court in the case of shops constructed by Madurai Municipal Corporation, a batch of cases before this Court in **W.P (MD) No. 24266 of 2018 and batch**, were disposed of by a common order on 13.3.2019 by directing the respondents to provide shops in the concerned buildings after completion of the construction without any fresh auction by trying all lease and other methods to let the shops. Therefore, it is submitted that such procedure should be followed in the instant case also and that the respondents shall be directed to do so. Further, it is submitted that similarly placed persons have approached the learned Single Bench of this Court and there was an order of interim stay granted and the matters are also pending. Thus, it is submitted that the livelihood of the Petitioners is jeo-paradized on account of the action of the respondents/Corporation.

5.On the above grounds, the learned Senior Counsel seeks for setting aside the impugned notice and directing the Petitioners to continue in possession of the shops which was granted on lease to them and also to adopt the directions issued by this Court in the case of shops constructed by the City Municipal Corporation, Madurai.

6.Mr.N.Dilip Kumar, learned Standing Counsel appearing for the respondents/Corporation submitted that most of the Petitioners are not genuine lessees. They have been in possession of the shops well beyond the period and several other persons have somehow obtained licence for more than five shops. These shops are in their respective names and this will clearly show that the objections raised by the Petitioners that the shops are the only source of livelihood are false. Further, it is submitted that it is an prestigious aspect to note that Thanjavur has been chosen as one of the cities to implement the Smart City Scheme and the Central Government has sanctioned funds and the public



has welcomed the project and extended their full co-operation and considering all these factors and taking note of the earlier decision of this Court in the case relating to Tirunelveli Municipal Corporation and Madurai Municipal Corporation, action has been initiated by the respondents/Corporation and the impugned notice has been issued and there is no error in the impugned notice.

7.We have elaborately heard the learned counsel for the parties and carefully considered the materials placed on record.

8.Apart from testing the correctness of the issues raised by the learned counsels, we note that exercise of power under G.O.No.92, dated 3.7.2007 has given rise to arbitrariness and most of the time, power has been misused. In several decisions of this Court, it has been held that the condition prescribed in G.O.92 is not mandatory but only directory and the concerned Municipal Corporation or any other local body is well within its jurisdiction to initiate proceedings to bring the shops and other properties owned by the corporation/local bodies by public auction for the purpose of augmenting revenue. Earlier, this Court, dealt with similar issues in various cases pertaining to the Municipal Corporations which are situated in the Districts falling within the jurisdiction of the Madurai Bench of Madras High Court. Invariably, in all cases, it is found that there is cartel and the same set of persons are in possession of the shops and paying meagre rent to the Corporation and simultaneously sub-letting the shops to various third parties without the permission of the Corporation. It is to be noted that the exercise of power under G.O.Ms.No.92, dated 3.7.2007 is not only arbitrary but there is favoritism and nepotism and the very object of lease has been defeated. Though several decisions of this Court which have consistently taken a view that G.O.Ms.No.92 has been misused, the Government has been sitting tight over the matter as a mute spectator and has not issued any clarification or guidelines to the local bodies. However, certain local bodies have taken the responsibility upon themselves and proceeded to conduct public auction and refusing to follow G.O.Ms.No.92 on the ground that it is not



mandatory. The erstwhile shop owners challenged those orders by filing Writ Petitions which were dismissed. In any event, the Petitioners who have been granted extension of lease for a period of nine years i.e., block period of three years each, cannot now contend that they would be entitled to continue to remain in possession of the shops in question. The Petitioners should bear in mind that at no point of time, they can become the owner of the shops which have been licensed or leased out to them. In certain cases, the Court held the expression "lease" used by the local bodies while confirming the auction is a misnomer as the grant is in the nature of a licence. With regard to the submission of the learned Senior Counsel that the Court should adopt the directions issued in W.P(MD) Nos.24268 of 2018 and batch of cases, we find that all the matters pertain to the shops falling within the jurisdiction of Madurai Corporation and it appears that the Writ Petitions were pending from the year 2018 and interim orders were granted and ultimately, the case was disposed of by issuing certain directions, which were part of the interim order. Therefore, we find that the said order passed in W.P(MD)No.24268 of 2018 and batch of cases, dated 13.3.209 cannot be treated to be a precedent and at best, can be treated to be a one based on the concession that has been given by the Madurai Corporation. For the reasons stated above, we are of the considered view that the Petitioners had not made any case to set aside the impugned notice.

9.However, we find that the impugned notice has granted only seven days time to the Petitioners to vacate and hand-over vacant possession of the shops in question. We find that the said time limit is inadequate and reasonable time should be granted to the Petitioners to vacate and hand-over vacant possession of the premises in question.

10.For such reasons, we are of the view that there is no error in the impugned order and accordingly, all these Writ Petitions are dismissed and the Petitioners are granted three months time from the date of receipt of a copy of this order to vacate and hand-over the vacant possession of the premises in question and in the event, the Petitioners not doing so within the time permitted, it is open to the respondents/Corporation to



initiate action for eviction, in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed."

4.Following the aforesaid decision, this Writ Petition is dismissed and the Petitioner is granted three months time from the date of receipt of a copy of this order to vacate and hand-over the vacant possession of the premises in question and in the event, the Petitioner not doing so within the time permitted, it is open to the respondent/Corporation to initiate action for eviction, in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The Commissioner,
Thanjavur Corporation,
Thanjavur.

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-88165[F] dated 20/09/2019)

Writ Petition (MD).No.20323 of 2019
20.09.2019

Mrn/sji
MK (25.10.2019) 6P 3C