**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED :28.11.2019**

| Order Reserved on: 12.11.2019 | Order delivered on: 28.11.2019 |
|---|---|

**CORAM:**

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM**
**and**
**THE HONOURABLE MRS.JUSTICE R.THARANI**

**W.P.(MD) No.21880 of 2018**
**and W.M.P.(MD) No.19817, 19818 and 22256 of 2018**

Abuthahir ... Petitioner

-vs-

1.The Secretary to Government,
Tamil Nadu City Municipal Corporation,
Secretariat, Fort St. George,
Chennai.

2.The Superintendent of Police,
Southern Range,
Vigilance and Anti-Corruption,
No.293, MKN Road, Alandur,
Chennai – 600 016.

3.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
No.165/G, Alagarkoil Main Road,
Madurai – 625 002.

4.The Commissioner,
Madurai Corporation, Anna Maligai,
Madurai.

5.The Secretary,
Simmakkal Palakadaikal Motha Viyabarikal Sangam,
No.175, North Veli Street,
Madurai.

6.The Secretary,
Madurai Palacommission Vanigarkal Sangam,
No.131, North Marat Street,
Madurai.

7.Mr.Rangarajan,
Assistant Commissioner,
Madurai Corporation, Anna Maligai,
Madurai.



8.S.Raja Marthandan

9.Selvapandi

10.R.Shanmugavel

11.S.P.Chakravarthi Pandiyan

12.G.Kannan

13.N.Prabha

14.M.Ganeshan

15.R.Vinothkuma

16.N.Raghu

17.S.Marisamy

18.P.S.Mohan

19.K.M.Kannan

29.V.Kumar ... Respondents
(R8 to R20 are impleaded vide order dated 12.11.2019, made in W.M.P.(MD) No.10618 of 2019 in W.P.(MD).No.21880 of 2018 by TSSJ & RTJ)

**PRAYER:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the Respondent No.4 to allot excess shops beyond the scope of Memorandum of Understanding dated 17.04.2015, to the third parties and consequently direct the Respondent No.4 to allot the excess shops to the fit persons through public auction.

| | | |
|---|---|---|
| For Petitioner | : | Mr.S.M.A.Jinnah |
| For Respondents 1 to 3 | : | Mr.A.K.Baskarapandian<br>Special Government Pleader |
| For 4th Respondent | : | Mr.R.Murali, Standing Counsel |
| For Respondents 5&6,8 to 20 | : | Mr.N.Tamil Mani |

**O R D E R**

[Order of the Court was made by T.S.SIVAGNANAM, J.]

This Writ Petition styled as Public Interest Litigation has been filed to forbear the Commissioner, Madurai Corporation from allotting excess shops beyond the scope of memorandum of understanding dated 17.04.2015, to the third parties and consequently to direct the Commissioner to allot the excess shops to the eligible persons by conducting public auction.

2.The petitioner is a wholesaler in fruits and stated to be carrying on business for the past 20 years. The petitioner would state that on account of traffic congestion in Yanaikal and Simmakal, the fourth respondent Corporation took a decision to construct a new fruit market at Mattuthavani. The majority of the traders in fruits were carrying on business in Simmakal and Yanaikal area and unless and until they were relocated to a new premises, the project cannot be successfully implemented and therefore, the Corporation of Madurai entered into a Memorandum of Understanding with the respondent Nos.5 and 6 viz., Simmakkal Palakadaikal Motha Viyabarikal Sangam and Madurai Palacommission Vanigarkal Sangam. In terms of the said Memorandum 240 shops have to be constructed in Mattuthavani at a total cost of Rs.11,84,00,000/- and allotted to the members of the respondent associations and the cost to be met by the associations. The petitioner alleges that the respondent Corporation instead of constructing 240 shops constructed 265 shops and the excess 25 shops were allotted to persons, who were closely associated and known to the elected council and in this regard an allegation is being made against the 7th respondent, who was the Assistant Commissioner of the respondent Corporation. Therefore, the petitioner would state that his representation should be considered and the excess shops, which have been constructed over and above 240 shops have to be allotted to the eligible applicants by public auction only.

3.Mr.S.M.A.Jinnah, the learned counsel appearing for the petitioner after elaborately setting out the factual position with regard to the terms and conditions of the memorandum of understanding, the list of the beneficiaries to whom the 240 shops are to be allotted and all other related matters and submitted that the officials of the respondent Corporation in collusion with the politicians and others have illegally allotted the 25 shops to persons known to them without following any procedure and without conducting a public auction. The learned counsel also referred to the information furnished under the Right to Information Act by the respondent Corporation to one Mr.K.Hakhim and submitted that it is evidently clear that no public auction was conducted and allotments were made on the whims and fancies of the politicians and the people who were at the helm of affairs in the respondent Corporation at the relevant time. Therefore, this Court should exercise the jurisdiction and set aside all allotments and direct public auction to be conducted.

4.Mr.R.Murali, learned Standing Counsel appearing for the Madurai Corporation would submit that the Writ Petition lacks bonafides. It is not a genuine public interest litigation as the petitioner is none other than the brother of one Sahul Hameed, who sought for allotment of shop in Mattuthavani fruit market, he has filed a Writ Petition in W.P.(MD) No.2726 of 2017 and the same is pending. It is submitted that 240 shops have been constructed pursuant to the memorandum of understanding entered into and based on the same the respondent associations have paid contributions of Rs.11.84 Crores out of Rs.16 Crores towards the total cost of construction of the shops. These shops have been allotted in terms of the Memorandum of Understanding. The Corporation taking note of the vacant area, which was available, passed a resolution on 24.04.2015 to construct 15 shops under Zero Budget Scheme and another resolution dated 04.11.2015, by which a decision was taken to construct additional 10 shops under the same Zero Budget Scheme. It is submitted that these 25 shops has nothing to do with the shops which were constructed pursuant to the Memorandum of Understanding and the contention of the petitioner that these 25 shops are excess shops apart from the 240 shops constructed is factually incorrect. Further it is submitted that the Government has approved the procedure to be followed while adopting the Zero Budget Scheme by G.O.No.222 Municipal Administration and Water Supply Department dated 26.11.2007. Thereafter, public advertisement was issued and the auction was conducted on 27.04.2015, however, there were no bidders. Therefore, once again paper publication was given and auction was conducted on 19.05.2015. The Earnest Money Deposit was fixed at Rs.9,00,000/- and tentative rent was fixed at Rs.11,000/-. The successful bidders were intimated and allotment orders were issued on 19.05.2015. The names of the allotees have been mentioned and the learned Standing Counsel for the respondent had produced the original file as directed by this Court. Thus, it is submitted that appropriate procedure has been followed and there is no illegality. Further, the Corporation has decided to construct another 25 shops in the first floor of the building under the Zero Budget Scheme and inspite of several advertisements from 2015 to 2017 only 7 shops were able to be auctioned in the first floor and the remaining 8 shops will be brought for auction shortly. It is submitted that if the petitioner is willing to participate in the auction to be notified, it is well open for him to participate in the auction and the Earnest Money Deposit had been initially fixed as Rs.7,00,000/-.

5.The learned Standing Counsel appearing for the respondent Corporation has referred to the typed set of papers, containing copy of the Resolution No.887, dated 24.04.2015, copy of the Resolution No.888 dated 24.04.2015, Auction Notice published in Daily Thanthi on 19.05.2017 and the order passed by the Division Bench in W.P.(MD) No.16217 of 2016 etc., batch dated 02.02.2017. With the above submission, the learned Standing Counsel prays for dismissal of the Writ Petition.

6.Mr.N.Tamilmani, learned counsel appearing for the private respondents, who have sought for vacating the interim order granted in the writ petition, submitted that the shops were allotted by following tender process and there is no political interference in the allotment and all the persons so allotted each paid Rs.9,00,000/- and though the allotment was made in the year 2015, none of them have been put in possession of the shops on account of the interim order granted in this Writ Petition and their rights have been jeopardized.

7.We have heard the learned counsel for the parties and perused the materials placed on record.

8.The petitioner alleges that the 25 shops, which have been constructed by the respondent Corporation, is beyond the number of shops as agreed to in the Memorandum of Understanding dated 17.04.2015. The first question would be whether the petitioner has locus standi to question the same even assuming that what has been stated is correct.

9.The respondents would state that the present litigation is not a genuine public interest litigation, but has been filed by the petitioner, whose brother seeks for allotment in the fruit market and he has filed a Writ Petition before this Court. The Memorandum of Understanding was entered into between the 5th and 6th respondents and the 4th respondent Corporation. The petitioner is a third party and the signatories to the Memorandum of Understanding have not raised any objection as now raised by the petitioner in this Writ Petition. Therefore, the petitioner has no *locus standi* to allege that the terms and conditions of the Memorandum of Understanding dated 17.04.2015 have been violated.

10.The next question would be whether the 25 shops, which have been constructed are in excess than that of the 240 shops, which was agreed to be constructed as per the Memorandum of Understanding. To examine the correctness of the stand taken by the learned counsel for the petitioner, we perused the original files. We find that the elected council of the respondent Corporation has passed two resolutions Nos.887 and 888, in which a decision was taken to construct 10 and 15 shops respectively measuring 20 x 28 feet. What is relevant to note is that this construction is under Zero Budget Scheme. Under the said Scheme, the Corporation will notify for auction and auction will be conducted and bid amount will have to be deposited, after which, allotment order will be issued and from and out of the amount so collected from those 25 bidders, the construction will be put up. We find that the shops under the Zero Budget Scheme are entirely different from the 240 shops, which were constructed pursuant to the Memorandum of Understanding. Therefore, the basis on which the Writ Petition has been couched is factually incorrect. This will be the second ground on which the Writ Petition is liable to be dismissed.

11.There are other allegations made by the petitioner and arguments have been advanced by the learned counsel for the petitioner stating that large scale irregularities were committed in the allotments of the shops and officials of the respondent Corporation colluded with the politically influential people and several lakhs of rupees were collected and shops were allotted to the chosen bidders.



12.All these arguments ought to have been supported by necessary pleadings and materials. Mere oral submission cannot be taken cognizance by this Court while considering a Public Interest Litigation. None of the officials or politicians or others against whom allegations have been made are parties to this writ petition. The petitioner has no *locus standi* to maintain this Public Interest Litigation alleging violation of the Memorandum of Understanding dated 17.04.2015 as he is neither an office bearer of the respondent 5 and 6 associations nor has been authorised by the associations to file the present Writ Petition. Nothing in this regard has been pleaded by the petitioner nor any materials placed before this Court.

13.The second aspect is that the petitioner projected his case that the 25 shops were constructed in excess of 240 shops as agreed to in the Memorandum of Understanding. therefore, it cannot be allotted by the respondent Corporation. The records produced before this Court shows that the 25 shops have been constructed under the Zero Budget scheme and has nothing to do with the Memorandum of Understanding and the 240 shops constructed under the Memorandum of Understanding. This is the third ground on which the Writ Petition is liable to be dismissed.

14.For the above reasons, we find no ground to entertain this Writ Petition or issue any direction as sought for by the petitioner. Accordingly, the Writ Petition is dismissed and the interim order granted on 25.10.2018 shall stand vacated and the respondent Corporation is directed to hand over the shops to such of those successful bidders who have paid the entire amount and have been issued allotment orders. This direction shall be complied with within a period of 10 days from the date of receipt of a copy of this order. Consequently, the connected Writ Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
Tamil Nadu City Municipal Corporation,
Secretariat, Fort St. George,
Chennai.

2.The Superintendent of Police,
Southern Range,
Vigilance and Anti-Corruption,
No.293, MKN Road,
Alandur,
Chennai – 600 016.

3.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
No.165/G, Alagarkoil Main Road,
Madurai – 625 002.

+1 CC to M/s.R.MURALI, Advocate ( SR-102097[F] dated 28/11/2019 )

+3 CC to M/s.N. TAMILMANI, Advocate ( SR-102140[F] 28/11/2019 )

+1 CC to M/s.S.M.A.JINNAH, Advocate ( SR-102305[F] 28/11/2019 )

+1 CC to M/s.Special Govt.Pleader ( SR-102799[F] dated 29/11/2019 )

Order in
**W.P.(MD) No.21880 of 2018**
**and W.M.P.(MD) No.19817, 19818 and 22256 of 2018**
**Delivered on**
**28.11.2019**

sj
SDS (19.12.2019) 7P 10C