

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.8246 of 2020

C.Prakash,
S/o.Chinnasamy.

... Petitioner

Vs.

1.The District Collector,
Collector Office,
Erode District.

2.The Commissioner,
Erode City Municipal Corporation,
Erode 638 001.

3.The Executive Engineer cum Assistant Commissioner,
Division II,
Erode City Municipal Corporation,
Erode.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus, to quash the proceedings of the 3rd respondent made in Na.Ka.No.E1/19/2019 dated 21.01.2020 and consequentially direct the respondents to demarcate the leased out property i.e., 300 square feet situated in the land in ward No.27, Manikoondur Nethaji Road, Erode Town and hand over the physical possession of the leased out property to the petitioner.

For Petitioner : Mr.M.Guruprasad
For R1 : Mr.Annai Ezhil,
Government Advocate
For RR2 &3 : Mr.Raja Mathivanan
Standing Counsel

WEB COPY
O R D E R

This writ petition has been filed challenging the proceedings of the third respondent dated 21.01.2020 for seeking direction to the respondents to demarcate the leased out property and handover the physical possession of the leased out property to the petitioner.

2.The case of the petitioner is that he is running a bakery shop in the building which he has taken on rent from a third party. There is a vacant land to an extent of 300 square feet on the northern side of the existing shop of the petitioner. This vacant land belongs to the second respondent Corporation. The petitioner made a representation to the second respondent and offered to take this vacant land for lease. The second respondent conducted an auction and the petitioner was declared as successful bidder and the vacant land was leased out to the petitioner by proceedings dated 21.12.2018. According to the petitioner, he has already paid all the necessary charges and he has also paid the lease amount till date.

3.It is the further case of the petitioner that the petitioner is not able to take possession of the property leased to him since some other parties are creating problems to the petitioner in enjoying the property. The petitioner therefore made a representation to the second respondent to secure the property by erecting a compound wall. This representation made by the petitioner was rejected by the impugned proceedings of the third respondent dated 21.01.2020 on the ground that there is no duty cast upon the second respondent to put up any compound wall and therefore the respondent cannot act beyond the terms of the lease, which is specified in the proceedings dated 21.12.2018. Aggrieved by the same, the present writ petition has been filed before this Court.

4.The respondents have filed a counter affidavit, wherein a specific stand has been taken to the effect that the possession has been already handed over to the petitioner and the petitioner cannot insist the respondent Corporation for putting up any compound wall and the same is beyond the terms of lease granted to the petitioner.

5.The learned counsel for the petitioner submitted that the petitioner is not able to enjoy the property since there is no protection and some other parties are creating hindrance to the petitioner and not allowing him to make use of the property for running his business.

6.Per contra, learned counsel appearing on behalf of the respondent Corporation submitted that the possession has been handed over to the petitioner and it is the look out of the petitioner to secure his possession and the petitioner cannot expect the respondent Corporation to put up any compound wall. The learned counsel further submitted that the petitioner also cannot put up any permanent construction and thereby change the character of the property. The learned counsel in order to substantiate his submission brought to the notice of this Court Clause 8 of the proceedings dated 21.12.2018.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.It is an admitted case that the petitioner was declared as the highest bidder and the subject property was leased to the petitioner by proceedings dated 21.12.2018. The proceedings itself clearly stipulates the terms and conditions of the lease. As rightly observed by the third respondent in the impugned order dated 21.01.2020, there is no obligation on the part of the respondent Corporation to construct any compound wall. A specific stand has been taken both in the counter affidavit as well as through the submissions of the learned standing counsel, that the possession of the property has been handed over to the petitioner. In view of this categorical stand taken by the respondent Corporation, it is for the petitioner to secure his possession and he cannot expect the Corporation to come to his aid, if some third parties are creating problems and preventing the petitioner from enjoying the property.

9.In view of the above, it is left open to the petitioner to secure his possession over the property that has been leased out to him by the respondent Corporation. It will also be open to the petitioner to put up any temporary structure in order to run his business along with existing business. It is made clear that the petitioner cannot put up any permanent construction in the guise of securing his possession. Once the possession is secured and the petitioner enjoys the property, there can be no other grievance for the petitioner. To this extent the construction of the petitioner in enjoying the property leased out to him by the respondent Corporation is clarified. That apart, this Court does not find any other ground to interfere with the impugned order passed by the third respondent.

10.This writ petition is disposed of accordingly. No costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

rm

To

- 1.The District Collector,
Collector Office,
Erode District.
- 2.The Commissioner,
Erode City Municipal Corporation,
Erode 638 001.
- 3.The Executive Engineer cum Assistant Commissioner,
Division II, Erode City Municipal Corporation,
Erode.
- 4.The Government Pleader,
High Court, Madras.

W.P.No.8246 of 2020

VGII (CO)
SP(30/07/2020)



WEB COPY