

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.8315 of 2020 &

W.M.P.No.9971 of 2020

M.Arulprakash

... Petitioner

Vs.

1.The State of Tamil Nadu  
Rep. by its Secretary,  
Municipal Administration and  
Water Supply Department,  
Secretariat, St. George Fort,  
Chennai 9.

2.The Commissioner,  
Punjai Puliampatti Municipality,  
Punjai Puliampatti,  
Erode District 638 459.

3.Muthukumar  
The Commissioner,  
Punjai Puliampatti Municipality,  
Punjai Puliampatti,  
Erode District 638 459.

...  
Respondents.

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus calling for the records of order in Na.Ka.No.1135/15/A-1 dated 22.05.2020 so far as petitioner's shop bearing old No.23 and 24 is concerned on the file of the second respondent and quash the same and consequently direct the respondent to hand over possession of shops bearing old No.23 and 24 to the petitioner with good condition.

For Petitioner : Mr.M.Ponraj for  
Mr.S.Damodarasamy

For Respondents: Mr.Jayaprakash Narayanan  
Government Pleader for R1 & R2  
Mr.G.Sankaran for R3

O R D E R

This writ petition has been filed challenging the Tender Notification issued by the second respondent wherein two shops were sought to be brought on auction for the purpose of giving it on lease to the highest bidder and the petitioner has also made a consequential prayer for a direction to the respondents to hand over the possession of the shops.

2.The case of the petitioner is that the petitioner participated in the auction that was conducted in the year 2017 and he was a successful bidder for Shop Nos.23 and 24 and those shops were given on lease to the petitioner. The period of lease is from 01.04.2017 to 31.03.2020. According to the petitioner, he has deposited a sum of Rs.1 lakh for each shop and has also paid a sum of Rs.1,33,200/- for each shop towards advance rent for a period of one year. Thus the petitioner claims to have deposited a total sum of Rs.4,66,400/- for both the shops put together. The petitioner would further state that the possession of both the shops was not handed over to the petitioner since the shops required some repair works and there were some dues payable to the Electricity Department and therefore, there was no electricity connection. It is seen from the records that the petitioner had made a representation in this regard on 31.03.2017.

3.It is further alleged by the petitioner that the possession of the shops were not handed over to the petitioner and atleast two Commissioners had promised that the possession will be handed over. Believing their words, the petitioner was waiting for taking possession of the shops. However nothing happened, till the year 2020. The further case of the petitioner is that he gave a representation on the Grievance Day on 09.03.2020 to the District Collector in this regard. The petitioner claims to have approached the second respondent and he is said to have demanded bribe and the petitioner refused to give the same. Therefore, the second respondent has proceeded to bring the shops for auction.

4.The petitioner has made personal allegations against the Commissioner of the Municipality and therefore, the Commissioner

has also been arrayed in his individual capacity as the third respondent.

5.The petitioner has alleged that the third respondent had demanded bribe and it was not paid and therefore, there is malafides on the part of the third respondent to have misused his powers and has brought the shops for auction. Agreed by the same, the auction notification is put to challenge and consequential relief is also claimed by the petitioner.

6.The second respondent in his capacity as the Commissioner of the Municipality has filed a counter affidavit. The relevant portions in the counter affidavit is extracted here under:

"5.It is submitted that there are line of shops located in the Jawahar Main Road, outside the Bus Stand, belongs to the respondent Municipality being auctioned out to grant licence for running the shops periodically in terms of Government orders. When the respondent Municipality issued Auction-cum-Tender Notification in the year 2017 for various shops including old shops located at Jawahar Main Road, the writ petitioner has participated in the auction in respect of Old Shop Nos.23 & 24 at Jawahar Main Road. Since the petitioner was the highest bidder in respect of Shop Nos.23 & 24 at Jawahar Main Road, by quoting Rs.11,000/- for each shop, the same has confirmed in his favour and the petitioner was issued with Order of Allotment for Old Shop Nos. 23 & 24 vide order dated 17.03.2017 and 31.03.2017 respectively, with directions for payment of advance amount within seven days. Accordingly, the petitioner was allotted Shop Nos.23 & 24 through public auction in the year 2017 for the period from 01.04.2017 to 31.03.2020 and he has paid advance amount apart from Earnest Money Deposit (EMD) as per the condition of tender.

6.It is submitted that though the petitioner was allotted shop Nos.23 & 24 based on his own participation in the tender, he has also paid advance amount accepting the allotment, has failed to pay the lease rent for the shops allotted, thereafter. He remains to be a continuous defaulter in payment of lease rent. The other allottees on the same row of shops, continued to pay the lease rent except the petitioner and another allottee for Shop No.25 by name D.Murugesan.

7.It is submitted while so the petitioner, on

the eye of expiry of lease period, claiming to have submitted representation to the District Collector, Erode on 09.03.2020 by stating that the respondent Municipality officials informed him that they would carry out to repair the shops, but they have not carried out the repair works nor returned the money deposited by the petitioner, therefore requested the District Collector, Erode to direct the Respondent Municipality to refund the money deposited by him at the time of allotment. Any such representation is an afterthought to cover up the default in payment of lease rent.

12. With regard to the averments in Para-5 of the affidavit, it is submitted that after the appointment of the third respondent as Commissioner of Punjaipuliyampatti Municipality four months ago, the petitioner requested him to set right the defects and hand over the shops, for which the third respondent asked the petitioner to wait and thereafter the petitioner submitted representation to the District Collector, Erode on 09.03.2020 requesting his interference in the matter is false and misleading. The fact remains that the third respondent has joined as Commissioner of Punjaipuliyampatti Municipality only on 09.03.2020 and hence, there could be no occasion of the petitioner to represent the third respondent prior to 09.03.2020. Further, this respondent categorically denies the other averments in the affidavit that he demanded money from the petitioner for by-passing the law and it remains to be a false statement. The fact remains that this respondent after joining as Commissioner of Punjaipuliyampatti Municipality, taken steps to recover the arrears of lease rent and to bring the shops into public auction to grant licence commencing from April 2020. सत्यमेव जयते

13. It is submitted that the petitioner and one D. Murugesan failed to pay the rent right from the date of allotment causing serious loss of revenue to the Municipality, wherein resolution has been passed to forfeit the EMD and the deposit paid by the petitioner in respect of Shop Nos. 23 and 24 and 25 (D. Murugesan) at Jawahar Main Road. Accordingly, this respondent taken action in accordance with law for forfeiture of EMD and Deposit issued for non-payment of lease rent by the petitioner and another lessee by name D. Murugesan.

14.It is submitted that the averments in Para-6 of the affidavit that during March 2020, the respondent Municipality took steps for demolition and construction of new shops is denied. On the other hand, the wooden door of the shops have been replaced with metal shutters after re-arranging the roof and further patch works are carried out, whereas the default in payment of lease rent by the petitioner for Shop Nos.23 & 24 cannot be related to patch works and change of shutters taken place in June 2020. The petitioner was in possession of the shops throughout the lease period and there was no representation from the petitioner at any point of time and in order to cover up the lapses on payment of rent, the present writ petition has been filed with unjustified reasons.

16.With regard to the averments in Para-8 of the affidavit, it is submitted that the petitioner was allotted to Shop Nos.23 and 24, Jawahar Main Road, outside the Bus Stand in the heart of the town, through public auction in the year 2017 for the period from 01.04.2017 to 31.03.2020. Though the shops were allotted to him as per tender condition and he was in occupation of the same, he has defaulted in payment of rent. The contra averments that he represented for repairing the shops and he was not handed over possession are factually incorrect. There was no representation from the petitioner to the respondent Municipality at any point of time and the present Writ Petition is filed when the respondent Municipality has taken steps to forfeit the deposit and to recover the arrears of rent amount apart from bringing the shops into public auction. Hence, the writ petition is filed with oblique motive and it is liable to be dismissed.

17.It is further submitted that the petitioner is liable to pay a sum of Rs.1,66,400/- towards arrears of lease rent for each shop apart from 18% Service Tax to the tune of Rs.71,928/- for each shops payable to the Central Government. Therefore, the petitioner has not paid the huge arrears of lease rent causing loss of revenue to the Municipality. Further, in respect of two shops allotted to the petitioner, the Service Tax at the rate of 18% of lease rent ought to be paid by the respondent Municipality to the Central Government.

18.It is submitted that consequent to the auction-cum-tender conducted on 17.06.2020, one

Mr.Rangasamy quoted highest bid amount at Rs.13,601/- in respect of Shop No.23, whereas, within 24 hours another participant one Mr.M.Selvam has deposited 10% over and above the highest bid amount requesting for re-auction. Accordingly, as per tender condition, re-auction was conducted on 02.07.2020 based on which, the auction was confirmed in favour of Mr.M.Selvam at the lease rent of Rs.15,000/- per month. In respect of Shop No.24, re-auction is scheduled to be conducted on 21.07.2020 vide Re-Tender Notification dated 03.07.2020."

7.The Commissioner who was also arrayed in his individual capacity has also filed a separate counter. The averments in the counter affidavit is in line with the stand taken in the counter affidavit filed on behalf of the second respondent. Apart from the same, the third respondent has denied the allegations made against him. The relevant portions in the counter affidavit is extracted here under:

"9.I further submit that I have joined the post of Commissioner of Municipality, Punjaipuliyampatti Municipality only on 09.03.2020 F.N. Whereas, it is stated in the affidavit that the petitioner has represented me earlier to the date of 09.03.2020 and I was asking him to wait without giving any hope is false and incorrect. The falsity of the statement of the petitioner is writ large on the face of the record since I joined the post of Commissioner only on 09.03.2020 F.N. Further, the averment that I demanded money from the petitioner is absolutely false and motivated. On the other hand, after joining the post of Commissioner of Punjaipuliyampatti Municipality, I have taken steps for recovery of arrears of lease rent and to bring the shops into the public auction since the period of lease comes to an end on 31.03.2020. Further, in respect of Shop Nos.23 and 24 there were arrears of lease rent and therefore decision was taken for forfeiture the EMD and Deposit amount of the defaulter lessees. Hence, I only initiated steps to recover the arrears of lease rent and any allegation to the contrary by the petitioner is denied.

10.I further submit that the averment of the petitioner in Para-7 of the affidavit relates to my personal service matters and it is not connected to the writ petition and hence any such averment in this regard by the petitioner is unwarranted. In this regard, enquiry was conducted in the matter of my initial appointment and it was settled in the year

2011 itself and the same was again re-confirmed by the Order of Commissioner in the year 2019. Any such averments are unconnected to the petitioner and his averment in the affidavit is highly motivated."

8. The learned counsel for the petitioner submitted that the petitioner is a diploma holder in pharmacy and he wanted to run a medical shop and therefore had participated in the auction in the year 2017. The learned counsel further submitted that the petitioner did not come to court on the belief that the earlier Commissioner of the Municipality will stand by their words and hand over possession of the property. Unfortunately, the possession of the property was never handed over to the petitioner. The learned counsel further submitted that the very appointment of the third respondent as a Commissioner is under controversy and he is a person of questionable integrity. The learned counsel submitted that the entire amount was collected from the petitioner to the tune of Rs.4,66,400/- and the shop was not even handed over to the petitioner. The learned counsel further submitted that it is unbelievable that no steps were taken to recover the rent from the petitioner for merely three years and that itself will prove the fact that the possession of the property was not handed over to the petitioner. The learned counsel concluded his arguments by submitting that the notification issued for auctioning the shops is a malafide exercise of power by the third respondent and it is as a result of the petitioner refusing to pay the bribe to the third respondent.

9. Mr. Jayaprakash Narayanan, learned Government Pleader appearing on behalf of the respondents 1 and 2 submitted that there are absolutely no merits in the present writ petition. The learned counsel submitted that the petitioner had taken on lease two shops in the year 2017. It was further submitted that the possession was handed over to the petitioner and the petitioner failed to pay the rents. The period of lease came to be an end on 31.03.2020. It was further submitted that the third respondent had joined as a Commissioner of the Municipality only on 09.03.2020. Thereafter he found that the petitioner had not paid the rents and some of the officials belonging to the Municipality were acting hand-in-glove with the petitioner and no steps were taken to recover the rental dues. Therefore, departmental action has already been initiated against the Junior Engineer, Revenue Inspector, Former Manager and another Assistant. The learned counsel submitted that the petitioner not having paid the rents for merely two years cannot take advantage of the fact that no steps were taken to recover the rents and put it against the Municipality.

10. The learned Government Pleader further submitted that out

of the two shops, shop No.23 was brought for auction and it has been allotted in favour of one Selvam who was the highest bidder. Insofar as, Shop No.24 is concerned even though the auction was fixed yesterday, there were no bidders and therefore, the auction has been postponed and fresh auction will be conducted in the near future. The learned Government Pleader submitted that the petitioner is liable to pay a sum of Rs.1,66,400/- towards arrears of lease rent for each shop apart from 18% Service Tax which works out to a sum of Rs.71,928/- for each shop. The learned counsel submitted that without making this payment, the petitioner is not entitled to participate in the subsequent auction of the shops. It was further submitted that the second respondent has no ill-will against the petitioner and even now the petitioner can make the entire payment that is due and payable by him and he can participate during the auction when shop No.24 is brought for auction in future. The learned Government Pleader therefore prayed for dismissal of the writ petition.

11.Mr.G.Sankaran, learned counsel appearing on behalf of the third respondent adopted the arguments made by the learned Government Pleader. The learned counsel confined his arguments with regard to the personal allegations that were made by the third respondent. The learned counsel submitted that the third respondent immediately after taking office of the Commissioner, took steps to augment the Revenue of the Municipality. He found that the lease period is coming to an end on 31.03.2020. Therefore, steps were taken by him to issue a auction cum tender for both the shops. That apart steps were also taken, for forfeiture of the Earnest Money Deposit and for recovery of the arrears of rents from the petitioner. The learned counsel further submitted that the third respondent joined the post of Commissioner only on 09.03.2020. Therefore, the petitioner could not have met the third respondent before that date. The learned counsel submitted that an averment has been made in the affidavit filed in support of this writ petition as if the petitioner had met the third respondent four months before, he was appointed as a Commissioner. The learned counsel submitted that the said allegations on the face of it is unsustainable. It was further submitted that for the non recovery of rent, action has also been initiated against the concerned officials belonging to the Municipality. Therefore, the learned counsel concluded his arguments by submitting that there are absolutely no merits in the present writ petition.

12.This Court has carefully considered the submissions on either side and the materials available on records.

13.The prime allegation that has been made by the petitioner is that even though he was the successful bidder for two shops

in the auction held in the year 2017, the possession was not handed over to the petitioner since both the shops required repair works and there was no electricity connection. It was further alleged that the petitioner had paid a sum of Rs.4,66,400/- for both the shops as early as in the year 2017.

14.It is seen from the typed set of papers that there are two representations filed by the petitioner. One representation is dated 31.03.2017 and the other representation is dated 09.03.2020. During the interregnum period, there is no record to show that the petitioner had taken any effective steps to get the possession of the shops, if it has not already been handed over to him.

15.The petitioner has made very serious allegations against the third respondent to the effect that the third respondent demanded for bribe amount and since the petitioner did not pay, the third respondent took steps to issue the auction notification. It is clear from the counter affidavit that the third respondent took charge of the office of the Commissioner on 09.03.2020. The averment made in the affidavit at paragraph no.5 gives a meaning as if four months prior to the third respondent assuming office, a request was made to him to set right the defects and hand over the shops and the third respondent demanded bribe from the petitioner. This is further substantiated by the fact that the petitioner thereafter gave a representation on the Grievance Day on 09.03.2020 before the Collector.

16.The learned counsel for the petitioner wanted this Court to understand the said allegations made at paragraph No.5 of the affidavit to the effect that four months time referred is from June 2020, when the writ petition was filed before this Court. This Court can only go by what is stated in para 5 of the affidavit and understand its plain meaning. This is more so due to the fact that the representation given during Grievance Day comes subsequently on 09.03.2020 and even before that the petitioner has met the third respondent four months before.

17.Dehors the above fact, this Court has to see whether the attitude of the petitioner falls within a natural human conduct. A person who has participated in the auction in the year 2017 and paid a sum of Rs.4,66,400/- will not wait for three years if the possession has not been actually handed over to him. It is surprising that the petitioner has not even given a representation to the higher authority between the year 2017-2020. The easiest thing for the petitioner to do is to approach the competent court and seek for a direction to the Municipality to hand over the possession of the shops. This is the natural conduct that is expected from any person who has spent an amount

of merely Rs.4,66,400/- at the time when he took the shops on auction. The learned counsel for the petitioner sought to justify the conduct of the petitioner on the ground that the petitioner was making repeated attempts with the then Commissioners and believed their words. This explanation given by the learned counsel for the petitioner, in the considered view of this Court is a bit too far fetched.

18.The Third respondent had assumed the office of the Commissioner in the second respondent Municipality on 09.03.2020. He noticed that the lease period was coming to an end on 31.03.2020 and there is an arrears of rent payable by the petitioner. Therefore, he took steps to recover the arrears of the rent along with GST and also took steps to bring both the shops on auction. The petitioner woke up from his deep slumber only after the auction notification was issued on 22.05.2020. The petitioner cannot try to take advantage of the fact that no steps were taken against him for more than two years to recover the rents and he cannot put it against the second respondent Municipality. The learned Government Pleader has made a very categorical statement that the second respondent has already taken steps in this regard to initiate disciplinary proceedings against the Junior Engineer, Revenue Inspector, Former Manager and Assistant belonging to the Municipality.

19.This Court exercising its jurisdiction under Article 226 of Constitution of India is normally not expected to go into disputed questions of the facts. It is true that this Court will not shut its eyes and refuse to go into the facts of the case when some apparent illegality is brought to the notice of this Court. It is only a self imposed restriction when this Court exercises its jurisdiction. This Court is not able to fathom the attitude of the petitioner for keeping quiet for merely three years by not even raising his little finger against the Municipality when the possession was not handed over to him from the year 2017 onwards. When such is the attitude of the petitioner and there are no materials to show that the petitioner had taken effective steps to get the possession of the shops, the allegations made by him is unacceptable. There is no need for this Court to dig further and find out the truth or otherwise of the personal allegations made by the petitioner against the third respondent.

20.This Court does not find any ground to interfere with the impugned notification issued by the second respondent on 22.05.2020 and this Court does not find any merits in the present writ petition. Insofar as the recovery proceedings are concerned, this Court does not want to deal with the said issue since it is not put to challenge in the present writ petition. If the petitioner is aggrieved by the same, it is always left

open to the petitioner to work out his rights in accordance with law.

21.In the result, this Writ Petition is dismissed. No costs.

Sd/-  
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vkr

To

- 1.The Secretary,  
Municipal Administration and  
Water Supply Department,  
Secretariat, St. George Fort,  
Chennai 9.
- 2.The Commissioner,  
Punjai Puliampatti Municipality,  
Punjai Puliampatti,  
Erode District 638 459.

+1 cc to M/s.V.Jayaprakash Narayanan,Advocate Sr.No. 25111

W.P.No.8315 of 2020  
&W.M.P.No.9971 of 2020

NR(CO)  
RMP(06/08/2020)

सत्यमेव जयते  
WEB COPY