



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.19847 of 2021

Erode Gani Market Dinasari Anaithu
Siru Javuli Viyabarigal Sangam,
Regd. No.113/1996, Rep. by its President,
M.N.Noorsait @ Noor Mahammed

... Petitioner

Vs

1. The Secretary to Government,
Local Authority Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner,
Erode Municipal Corporation,
Brough Road, (M.S. Road),
Erode - 1.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents to allot shops in the newly construct commercial complex at Gani Market, Erode without insisting them to participate tender and allot the shops to the members of the petitioner sangam by fixing rent as per government guideline.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.K.Suresh
Government Advocate (for R1)

: Mr.M.Rajamathivanan
Standing Counsel (for R2)

O R D E R

The prayer sought for herein is for a writ of mandamus directing the respondents to allot shops in the newly constructed commercial complex at Gani Market, Erode without insisting them to participate tender and allot the shops to the members of the petitioner sangam by fixing rent as per Government guideline.



2. The case of the petitioner is that, the petitioner is a registered Association wherein the Small Textiles Traders who were doing business at a Market called EKM Abdul Gani Market, Erode Town are members.

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3. According to the petitioner, the members had been doing the said business for nearly about 40 years and more in 230 said shops in the EKM Abdul Gani Market of the 2nd respondent Corporation.

4. While that being so, during 2019 and 2020, as per the Smart City Scheme, Erode District also was given the Scheme under which they decided to construct the new shipping complex and the said construction almost has been completed and within a short period, it would be put to use.

5. In this context, it is the grievance of the petitioner that, at the time of proposal for constructing the new buildings, the members of the petitioner who are in occupation of the building by paying rent to the respondents regularly were asked to vacate by giving the impression that, they would be put back in possession without resorting any public auction process as they have been in that building, before it was demolished, for nearly about 40 years and therefore, on that pretext, the petitioner Association has given a representation on 28.06.2021 to the respondents requesting them to consider their plea to allot shops for the members of the petitioner in the said New Market Building i.e. 2nd and 3rd floor without resorting the public auction process for creating such third party right.

6. The said representation since has not been considered and no response has come from the respondents, the petitioner has filed the present writ petition with the aforesaid prayer.

7. Heard Mr.C.Prakasam, learned counsel for the petitioner, who having reiterated the aforesaid, would seek indulgence of this Court to issue a direction to the 2nd respondent to consider the request of the petitioner and pass orders thereon on merits and in accordance with law and in that case, the petitioner would be satisfied.

8. Heard Mr.K.Suresh, learned Government Advocate appearing for the 1st respondent and Mr.M.Rajamathivanan, learned Standing Counsel appearing for the 2nd respondent. The learned Standing



Counsel for the 2nd respondent, by relying upon the counter affidavit filed by the 2nd respondent, has stated that, as per the present procedure in vogue based on the Government Order i.e., G.O.Ms.No.92, Municipal Administration and Water Supply Department dated 03.07.2007, whenever properties of the Corporation is to be leased out, it should be leased out only by way of public auction and there cannot be any preemptive or special right, under which, such leasehold right cannot be given to any third parties or the earlier existing lessees, therefore, in this context, the plea raised by the petitioner may not be found feasible, he contended.

9. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

10. Since, the learned counsel appearing for the petitioner now confined with the prayer that, if the representation given by the petitioner is directed to be considered by the 2nd respondent Corporation on merits and in accordance with law by giving preference to the members of the petitioner Association for the reason stated in the said written representation and a time bound direction is given to consider the same, the petitioner would be satisfied, this Court is inclined to dispose of this writ petition with the following orders:

That there shall be a direction to the 2nd respondent to consider the representation of the petitioner dated 28.06.2021 and pass orders thereon on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

11. With this direction, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar



Sgl

To

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1. The Secretary to Government,
Local Authority Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner,
Erode Municipal Corporation,
Brough Road, (M.S. Road),
Erode - 1.

+1cc to Mr.M.Rajamathivanan, Advocate, S.R.No.67570
+1cc to the Government Pleader, S.R.No.67096

W.P. No.19847 of 2021

RK[co]
NSK 15/02/2022