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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.28097, 28101 & 28110 of 2019
and

W.M.P.Nos.27718, 27719, 27722 & 27738 of 2019

A.V.Ilavarasan ...Petitioner in W.P.No.28097 of 2019

K.Ravindran ...Petitioner in W.P.No.28101 of 2019

M/s.Ex Servicemen Enterprises,
Rep by its Proprietor

P.Uthrapathy

No.9/1, Honey Dew Apartments,
Kilpauk Garden, IInd Street,
Chennai - 10.

...Petitioner in W.P.No.28110 of 2019

Vs

1. The Traffic Manager,
Administrative Office, Chennai Port Trust,
Rajaji Salai, Chennai - 1.

2. The Deputy Traffic Manager (L & B),
Administrative Office, Chennai Port Trust,
Rajaji Salai, Chennai - 1.

3. The Estate Officer,
Chennai Port Trust,
Administrative Office, Rajaji Salai,
Chennai - 1.

...Respondents in all W.Ps

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records in impugned notices bearing Nos.F.No.C2(b)/066/2018/T, C3/207/2013/T and C5/791/2011/T respectively dated 05.08.2019 issued by the second respondent and quash the same.

In all W.Ps :

For Petitioners : Mr.P.Sridharthan

For R1 to R3 : Mr.Madhuri Donti Reddy



COMMON ORDER

* The petitioners were allotted various open spaces of different dimensions in the Chennai Port Trust area by the respondents for the purpose of running canteen for their repairing needs in the Chennai Port. All the petitioners are aggrieved by the impugned letters dated 05.08.2019 issued by the respondents informing that (a) the allotment will not be extended for further period beyond 30.09.2019; (b) they have to remove the canteen structures erected in the allotted area; (c) vacate and surrender the unpaved lands in the original condition on or before 30.09.2019 and on failure to do so, they will be treated as unauthorized occupants and penalty charges will be levied at three times the normal fee for first 3 months, five times upto 7 months and thereafter, ten times from 8th month onwards. Hence, these writ petitions.

2. Today, when the matters were taken up for consideration, the learned counsel appearing on both sides jointly submitted that the issue involved herein is covered by a common judgment of this Court dated 07.04.2021, passed in WP.Nos.27566, 27642, 27648, 27572, 27653, 27656, 27657 of 2019 and 7584 & 8051 of 2020, the relevant passage of which, are usefully extracted hereunder:

"40. Admittedly, the respective petitioners in all these writ petitions did not commit any default in the payment of monthly charges till the issuance of impugned letter dated 05.08.2019 and only thereafter some of them have defaulted due to the levy of huge penalty. The impugned letter dated 05.08.2019 requires the respective petitioners to remove the superstructure and surrender the land but stipulates that the continuance of occupation beyond the stipulated period in the letter can only be on payment of the penal charges depending upon the number of months. The respondent Port Trust has extended the license only upto 30.09.2019 for all the petitioners. All the petitioners have admittedly put up superstructures only after getting permission from the respondent Port Trust.

41. Under the earlier auction conducted by the Chennai Port Trust subsequent to the order dated 20.11.2019 passed by the Division Bench of this Court in W.A.Nos.3746, 3754, 3623 to 3628 of 2019, the upset base price included the built up area and admittedly, the auction fell through as there were



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no takers. Having framed, the Land Policy Guidelines 2014, under section 111 of the Major Port Trusts Act, 1963 and having given effect to the same by conducting an auction earlier, the Chennai Port Trust ought to have considered on merits and in accordance with law by a speaking order the petitioners- representations claiming that the said Land Policy Guidelines 2014 are applicable to them. Even without giving due consideration to the representation of the petitioners claiming protection under clause 11.3 (c) of the Land Policy Guidelines, the impugned letter has been issued by the second respondent calling upon the respective petitioners to vacate the premises by relying upon the scale of rates fixed by the Tariff Authority for Major Ports (TAMP) through a non-speaking order. The contentions of the respective petitioners that they are infact lessees and not licensees in view of their nature of occupation has also not been considered by the second respondent. As seen from the impugned letter, no hearing was afforded to the respective petitioners, that too, when the applicability of scale of rates fixed by Tariff Authority for Major Ports has been disputed by the respective petitioners. The second respondent ought to have afforded a fair hearing to the respective petitioners before passing the impugned order. Hence, this Court is of the considered view that principles of natural justice has been violated by the second respondent while passing the impugned order calling upon the respective petitioner to pay a huge penalty.

42. The second respondent has also not considered the representations of the respective petitioners that they are not liable to pay penalty in view of covid-19 pandemic lockdown in terms of the Government orders passed from time to time.

43. Since the second respondent has passed a non-speaking order without considering the contentions of the respective petitioners on merits and in accordance with law, the impugned order will have to be necessarily quashed and the matter remanded back to the second respondent for fresh consideration.

44. For the foregoing reasons, the impugned order dated 05.08.2019 passed against the



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respective petitioners in W.P.Nos.27566, 27642, 27648, 27572, 27653, 27656 27657 of 2019 and the impugned order dated ..04.2020 and 31.03.2020 passed against the respective petitioners in W.P.Nos.7584 & 8051 of 2020 are hereby quashed and the matter remanded back to the second respondent for fresh consideration. The respective petitioners are directed to give a fresh representation to the second respondent with regard to their respective contentions raised by them in their respective writ petitions within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the second respondent shall pass a speaking order on merits and in accordance with law after giving due consideration to the contentions raised by the respective petitioners and after affording a fair hearing to the respective petitioners including granting them the right of personal hearing within a period of four months thereafter. However, it is made clear that the petitioners should not have any arrears of monthly charges (excluding the penalty) as on the date of their fresh representation and in case there are arrears, the respondents shall summarily reject their representation.

45. With the aforesaid directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed. "

3.Following the aforesaid decision, which holds good to the case at hand, the orders impugned herein are liable to be set aside and are accordingly, set aside. The matters are remanded back to the second respondent for fresh consideration. The respective petitioners are directed to give a fresh representation to the second respondent with regard to their respective contentions raised by them in the writ petitions within a period a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the second respondent shall pass a speaking order, on merits and in accordance with law, after giving due consideration to the contentions raised by the respective petitioners and after affording a fair hearing to them including personal hearing, within a period of four months thereafter. However, it is made clear that the petitioners should not have any arrears of monthly charges (excluding the penalty) as on the date of their fresh representation and in case there are arrears, the respondents shall summarily reject their representations.



4. Accordingly, these writ petitions stand disposed of. No costs. Consequently, connected WMPs are closed.

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Sd/-

Assistant Registrar(CS IX)

Dated: 03/09/2021

*** Deleted and Substituted as per order
dated 14.09.2021 and made in W.P.Nos.28097,
28101 & 28110 of 2019.**

Sd/-

Assistant Registrar(CS IX)

Dated: 27/09/2021

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Traffic Manager,
Administrative Office, Chennai Port Trust,
Rajaji Salai, Chennai - 1.
2. The Deputy Traffic Manager (L & B),
Administrative Office, Chennai Port Trust,
Rajaji Salai, Chennai - 1.
3. The Estate Officer,
Chennai Port Trust,
Administrative Office, Rajaji Salai,
Chennai - 1.

**To be Substituted
to the order
already despatched
on 09/09/2021**

+2 Ccs to Mr.P.Sidharthan, Advocate, Sr.No. 29630,29632.

W.P.Nos.28097, 28101 & 28110 of 2019

GPL (CO)
LS (08/09/2021)
LS (27/09/2021)