

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.4.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.26974 of 2017

1 G.Dharini
W/o.Gokul 35A Vijayaragavachariar Road
Salem 636 007. ... Petitioner

vs.

1 The Commisioner
Salem Corporation, Suramangalam Ward Office,
Salem

2 R.Muthukrishnan
S/o.Ramasamy Reddiar, No.4E AVR Gokulam
Apartment Vasantha Nagar (Opp. to Vani
Mahal) Thiruvagoundanur,
Salem 636 005. ... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 1st respondent to immediately take action and evict the 2nd respondent from Shop No.1 New Bus Stand Salem as per the order of the Division Bench of the Honourable High Court made in W.A.No.1341 of 2016 etc. dated 2.11.2016 and consequently direct the 1st respondent to accept the balance payment of Rs.15 20 000/- and execute the lease deed for 3 years on Rs.20 Stamp Paper and hand over possession of the said shop to the petitioner immediately within a time frame that may be fixed by this Court.

For Petitioner : Mr.Silambannan, Sr. Counsel
For Respondent No.1 : Mrs.K.Bhuvaneswari, A.G.P.
For Respondent No.2 : Mr.R.N.Amarnath

O R D E R

According to the petitioner, auction notice was issued by the first respondent against the subject matter of the shop on 3.7.2016 and also issued paper publication, dated 27.11.2016

inviting participants to take on lease various shops belonging to the Salem Corporation in New Bus Stand and other places. As per the terms and conditions in the auction notification, the petitioner had deposited Rs.20,00,000/- towards E.M.D. for allotment of shop No.1 at new bus stand, Salem Corporation. The petitioner was declared as successful bidder and the auction was confirmed. However, the second respondent filed W.P.No.23715 of 2016 challenging the auction notice, dated 3.7.2016 in respect of hotel in shop No.1 of New bus stand. This Court passed interim order directing the Corporation to issue notice to lessees to hand over possession. Challenging the said order, the second respondent has preferred Writ Appeal in W.A.No.1341 of 2016 before the Division Bench of this Court. In a batch of writ appeals in W.A.No.1341 of 2016, the Division Bench of this Court directed the Corporation to allot shop to the highest bidder and give one month time to unsuccessful bidders to vacate the shop and they should give an undertaking to vacate the shop and hand over the premises. Based on the order passed by the Division Bench of this Court, the petitioner made representation to the Salem Corporation to execute lease deed in favour of the petitioner in respect of shop No.1, on payment of balance lease amount to the respondent Corporation. Despite several representations made by the petitioner, the respondent Corporation has not come forward to execute lease deed and hand over possession to the petitioner for the reason that the second respondent has filed Review application in the aforesaid writ appeal.

2. According to the petitioner, the lease period of three years has come to an end. Therefore, seeking refund of the E.M.D. amount to the petitioner. Despite several representations made to the respondent Corporation, they have not refunded the amount paid by the petitioner. Therefore, the petitioner seeks direction to the respondent Corporation to refund the E.M.D. Amount.

3. The learned counsel appearing for the second respondent Corporation has not disputed the factual position and the reason as stated in the affidavit that Review application filed by the second respondent in W.A.No.1341 of 2016 is pending before the Division Bench of this Court and therefore, the respondent Corporation is not in a position to refund the amount to the petitioner.

4. Heard the learned counsel appearing for the petitioner, learned counsel appearing for the respondent Corporation and perused the materials available on record.

5. It is brought to the notice of this Court that similarly placed persons filed writ petition before this Court

and this Court by order, dated 18.10.2019 in W.P.No.27092 of 2016 [GOKUL BAKTHAVATSALAM VS. STATE OF TAMILNADU REP. THE SECRETARY TO GOVT. MUNICIPAL ADMINISTRATION & WATER SUPPLY DEPT.] directed the respondent Corporation to refund the E.M.D. amount to the unsuccessful bidder.

6. In view of the order passed by this Court cited supra, considering the fact that it is not disputed by the respondent Corporation that the petitioner was successful bidder in the auction held for allotment of shop No.1 at new bus stand, Salam Corporation and he has paid Rs.20 lakhs towards Earnest Money Deposit and the said amount was not refunded to the petitioner due to pendency of Review application in the aforesaid Writ Appeal, the respondent Corporation is directed to return the amount of Rs.20 lakhs paid by the petitioner towards E.M.D. for allotment of shop No.1 at new bus stand, Salam Corporation, within a period of eight weeks from the date of receipt of copy of the order, along with interest at the rate of 6% p.a.

7. The writ petition is disposed of with the above directions. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Vaan

TO

1 The Commissioner
Salem Corporation,
Suramangalam Ward Office,
Salem.

+1cc to Mr.Kaavya Silambanan Associates, Advocate, S.R.No. 24598

+1cc to Mr.R.N.Amarnath, Advocate, S.R.No. 24730

W.P.No.26974 of 2017

LN(CO)
GN(07/07/2021)