



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2021

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .Nos.3548 of 2020 & 11162 of 2021

and

W.M.P. (MD) .Nos.8743 & 8745 of 2021

T.Manohararajan

... Petitioner in both WPs

Vs.

1. The Assistant Director,
Town Panchayats, Collectorate, Nagercoil,
Kanyakumari District - 629 001.

2. The Executive Officer,
Thingal Nagar Selection Grade Town Panchayat,
Thingal Nagar, Neiyoor (Post),
Kanyakumari District - 629 802.

... Respondents in both WPs

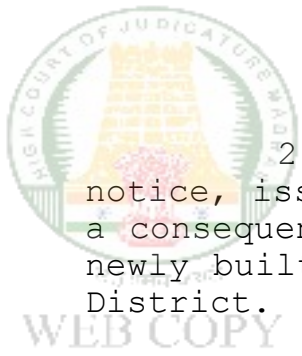
Prayer in W.P. (MD) No.3548 of 2020: Writ petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the Respondents to re-allot a shop in the newly built shopping complex in Thingal Nagar Bus Stand, Kanyakumari District, by considering the representation dated 30.01.2020 within the time stipulated by this Court.

Prayer in W.P. (MD) No.11162 of 2021: Writ petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned auction / tender notice in Na.Ka.No.142/2017/A2 dated 24.06.2021, on the file of the Respondent No.2 and quash the same as illegal to the extent of not re-allotting a shop to the petitioner and consequently to direct the Respondents to re-allot a shop (in an extent of 16x10) in the newly built shopping complex in Thingal Nagar Bus Stand, Kanyakumari District within the time stipulated by this Honble Court.

For Petitioner	: Mr.S.Louis
For R1	: Mr.R.Suresh Kumar Government Advocate
For R2	: Mr.B.Saravanan (in both WPs)

COMMON ORDER

The issue involved in both the writ petitions are common and hence, they are taken up together, heard and disposed of through this common order.



2. The petitioner has challenged the auction-cum-tender notice, issued by the respondent Panchayat, dated 24.06.2021 and for a consequential direction to the respondents to allot a shop in the newly built shopping complex at Thingalnagar Bus stand, Kanyakumari District.

3. The case of the petitioner is that he participated in the auction conducted by the second respondent in the year 2017 and he was the highest bidder and he was allotted shop No.34 for a period of three years from 10.05.2017 to 09.05.2020. The further case of the petitioner is that he had also deposited a sum of Rs.1,00,000/- (Rupees One Lakh only) as security deposit and the monthly rent was also fixed at the rate of Rs.10,000/-. (Rupees Ten Thousand only). It is stated that the shop itself was handed over to the petitioner after six months, after the completion of the maintenance work and thereafter, the petitioner started a Fancy Store. The second respondent approached the petitioner and requested the petitioner to vacate the shop on the ground that the building is in a dilapidated condition and hence, the respondents have decided to demolish the building and put up a new shopping complex. According to the petitioner, an assurance was also given to the effect that he will be allotted a shop in the newly built shopping complex. Based on the said assurance, the petitioner also vacated the shop and handed over the possession to the second respondent.

4. The existing structure was demolished and a new shopping complex was put up at Thingal Nagar Bus stand. Since no shop was allotted to the petitioner, he filed W.P.(MD).No.3548 of 2020, seeking for a direction to the respondents to allot a shop in the new shopping complex. While this Writ Petition was pending, the respondents proceeded to issue an auction-cum-tender notification and the same was made a subject matter of challenge in W.P.(MD).No.3592 of 2021. One of the conditions in the auction notice was also made a subject matter of challenge in W.P.(MD).No.3879 of 2021. The auction-cum-tender notification was subsequently withdrawn and both those Writ Petitions were disposed of as infructuous.

5. The grievance of the petitioner is that the new shopping complex, which is ready for occupation, is now sought to be brought for auction to allot all the shops. The petitioner, who was promised by the second respondent that he will be allotted a shop, is aggrieved by the second respondent, going back on that promise. Therefore, the petitioner has challenged the auction-cum-tender notification issued by the second respondent.

6. Heard Mr.S.Louis, learned counsel appearing for the petitioner, Mr.R.Suresh Kumar, learned Government Advocate appearing for the first respondent and Mr.B.Saravanan, learned counsel appearing for the second respondent.



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

8. The petitioner was allotted a shop in the year 2017. According to the petitioner, he was given possession of the shop only after a period of six months from the completion of the maintenance work. This means that the petitioner would have started the Fancy Store at the end of 2017 and in the beginning of the year 2018. Thereafter, a notice was issued to the petitioner on 15.03.2019, directing the petitioner to vacate the shop on the ground that the existing structure is in a dilapidated condition, by the time, the petitioner vacated and handed over the shop, he had hardly enjoyed it for a period of fifteen months.

9. The petitioner was expecting the respondents to allot a shop after the new complex is completed and the petitioner was under the fond belief that he will be allowed to occupy a shop atleast for the remaining period out of three years that was originally ensured at the time of the original allotment.

10. The petitioner has been knocking the doors of this Court from the year 2020 onwards and initially, the respondents came by with a stand that the new shopping complex is yet to get completed. Subsequently, they proceeded to issue a tender-cum-auction notification and it was reported to this Court that it has been withdrawn. Ultimately, the petitioner was not clear about the stand taken by the respondents.

11. While so, the respondents proceeded to issue the auction-cum-tender notification on 24.06.2021, to allot all the shops by calling for bids. Aggrieved by the same, the petitioner has once again knocked the doors of this Court.

12. It is seen from records that the auction-cum-tender notification has been issued wherein totally 65 shops are going to be brought for auction. The learned Government Advocate on instructions would submit that only 64 shops are going to be brought for auction.

13. The petitioner was initially promised three years lease period when it was allotted in his favour in the year 2017. Therefore, the petitioner must be able to get a shop atleast for that period, since the petitioner would have invested and he can recoup the expenditure, only, if he is allowed to run the shop for the entire period. In the considered view of this Court, the respondents can proceed to call for the bids for 63 shops and one shop can be allotted in favour of the petitioner for the remaining period. By doing so, the rights can be balanced. On the one hand, the petitioner will be able to run the shop for the entire lease period and on the other hand, the respondents will be able to collect the rent from the petitioner and there will be no revenue



14. In view of the above discussion, there shall be a direction to the respondents to allot a shop measuring an extent of 16X10 (approximately near this size) to the petitioner in the newly built shopping complex at Thingal Nagar Bus stand, Kanyakumari District. The rest of the shops can be brought for auction by virtue of the auction-cum-tender notification, dated 24.06.2021. The respondents while allotting the shop to the petitioner can specifically fix the period by taking into account the initial period during which the petitioner was running the shop in the old building. It is also left open to the respondents to fix and collect the rent from the petitioner every month and the respondents shall also collect the deposit amount from the petitioner, which is said to have been refunded to the petitioner.

15. These Writ Petitions stand disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

tsg

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Assistant Director,
Town Panchayats, Collectorate, Nagercoil,
Kanyakumari District - 629 001.
 2. The Executive Officer,
Thingal Nagar Selection Grade Town Panchayat,
Thingal Nagar, Neiyoor (Post),
Kanyakumari District - 629 802.
- +1 CC to M/s.S.LOUIS, Advocate (SR-22424[F] dated 14/07/2021)
- +1 CC to M/s.SPL GP (SR-22534[F] dated 14/07/2021)

W.P. (MD) .Nos. 3548 of 2020 & 11162 of 2021
13.07.2021

RC (26.07.2021) 4P-5C

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