



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2021

CORAM :

WEB COPY

**THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA**

W.P.(MD) Nos.14197 and 19767 of 2021

and

**W.M.P.(MD).Nos.11135 to 11137 and 15635 of 2021 in W.P(MD)No.14197
of 2021**

W.P.(MD) No.14197 2021:

- 1.C.Marimuthu
- 2.V.Varatharajan
- 3.K.Manjula
- 4.K.Gurumani
- 5.M.Arumugam
- 6.V.N.Y.Mohamed Ibrahim
- 7.S.Sharmila
- 8.R.Kulanthaisamy
- 9.K.Sekar
- 10.M.Sudha
- 11.S.Raju
- 12.A.Murugappan
- 13.R.Boopathy
- 14.M.Kolunthu
- 15.K.Stella Marry
- 16.K.E.K.Ismail
- 17.S.Rajendran
- 18.M.Babu
- 19.T.Sumithra
- 20.S.Arul Mani
- 21.S.Syed Ibrahim
- 22.R.Kasi Viswanathan
- 23.B.Manomozhi
- 24.R.Jegannathan
- 25.S.Sekar
- 26.M.Abdul Jabbar
- 27.R.Jeyaraj
- 28.Palanisamy
- 29.Valliyappan
- 30.N.P.Subramani
- 31.M.AbuBakar



32.M.Vennila
33.R.Mariammal
34.R.Santhosh
35.N.Senthil
36.P.Naryanasam
37.B.Mohamed Sathik
38.S.Arumugam
39.R.Senthil
40.R.Tamilarasn
41.P.Meenasundari
42.G.Gopinath
43.G.Vijayakumar
44.S.Muruganatham
45.P.Senthamilselvi
46.B.M.K.Govindaramiyer
47.S.Thageerbeevi
48.R.Venkateshan
49.P.Alaguthevan
50.K.Syedmohamed
51.R.Raju
52.G.Vijayakumari
53.R.Balraj
54.C.Balasubramaniyan
55.R.Naseera Banu
56.T.Ramamoorthy
57.AS.Sherifabee
58.M.Alagappan
59.M.Jeibharathi
60.K.Mohanram
61.A.Nagendran
62.A.Hajamaideen
63.AN.Aswinkumar
64.S.Chellpandi

.. Petitioners

Vs

- 1.The State of Tamil Nadu,
Rep. by the Secretary,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George,
Chennai -9.
- 2.The Tanjore Corporation,
Rep. by its Commissioner/Special Officer,
Aringar Anna Arangam,
RMH Road,
Tanjore District.



3.The Managing Director,
O/o. the Managing Director,
Tanore Smarty City Ltd.,
Corporation Building,
Aringar Anna Arangam,
RMH Road,
Tanore District.

4.The Director of Town and Country Planning,
O/o. the Director of Town and Country Planning,
807, Anna Salai,
Chennai - 02.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus, calling for the records pertaining to Impugned Order in Na.Ka.No.8904/2021/MCA5, Dated 27.07.2021 on the file of the respondent No.2 and quash the same and consequently, forbear the respondent No.2 from Auctioning the shops in Thanjavur Old Bus stand and Thiruvaiyaru Bus Stand, Thanjavur District without framing any scheme for rehabilitation and accommodation of the Shopkeepers who are affected under the smart city project.

For Petitioners	:	Mr.T.Lajapathi Roy
For Respondent Nos.1 & 4	:	Mr.R.Baskaran
		Additional Advocate General, Assisted by Mr.P.Thilakkumar Government Pleader
For Respondent Nos.2 & 3:	:	Mr.N.Dilipkumar
		Standing Counsel

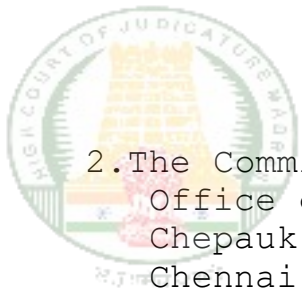
W.P. (MD) No.19767 2021:

Chamber of Traders,
No.816, Jeeva Complex,
East Rampart,
Thanjavur 613 001,
Rep. by its Secretary
M.Anandan,
S/o.Munusamy

.. Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George,
Chennai - 600 009.



2.The Commissioner of Municipal Administration,
Office of Commissionerate of Municipal Administration,
Chepauk,
Chennai - 600 005.

3.The Commissioner,
Thanjavur Corporation,
Thanjavur - 613 001.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus, directing the Respondents to frame a scheme for reallocation of shops in favour of the existing lessees including the Members of the Petitioner Association on priority basis in the shops reconstructed under Smart City Scheme in Thanjavur Old Bus Stand and Thiruvaiyaru Bus Stand, Thanjavur District by withdrawing the Tender Notification issued by the 3rd respondent in Na.Ka.No.8904/2021/MCA-5 dated 27.07.2021, in consideration of the representation submitted by the Petitioner Association, within a time frame to be fixed by this Hon'ble Court.

For Petitioner : Mr.F.Deepak

For Respondent No.1 : Mr.R.Baskaran
Additional Advocate General,
Assisted by Mr.P.Thilakkumar
Government Pleader

For Respondent No.3 : Mr.N.Dilipkumar
Standing Counsel

COMMON ORDER

**[Order of the Court was made by
The Hon'ble ACTING CHIEF JUSTICE]**

These writ petitions have been filed seeking a direction to the respondents to frame a scheme for reallocation of shops in favour of the existing lease holders, including the members of the Association. It should be to give priority to the shop holders in the shops so reconstructed under the Smart City Scheme.

2. The learned counsel for the petitioners submits that without framing a scheme, an auction notice was issued. It was in ignorance of the interim order passed by the Apex Court in a batch of Special Leave Petitions in SLP(C)Nos.28623-28641 of 2019

S. Sellapandi et al. v. The Commissioner cum Special Officer and



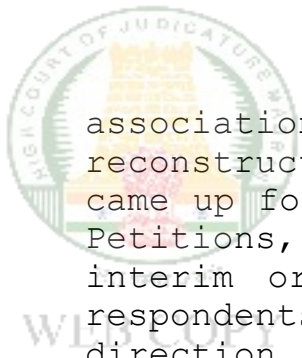
others]. The order therein was passed on 13.12.2019 asking the respondents to find out whether after reconstruction of the shops, any priority or any scheme can be framed for accommodating the petitioners for allotment of shops. Ignoring the aforesaid interim order, auction notice was caused giving no priority to the shop-holders after reconstruction under the Smart City Scheme. A further reference to the final order of the Apex Court in those petitions passed on 22.10.2021 has been made, wherein while dismissing the Special Leave Petitions, a direction was given that if the original writ petitioners participated in the auction along with other applicants as and when the shops were put to auction and they were found to be equal to other participants/applicants with respect to the newly constructed shops, which were reconstructed in the building occupied by them, they should be given priority.

3.The learned counsel for the petitioners further submits that the judgment of the Apex Court referred to above should be applied to this case also, but with only liberty to the petitioners, which would be to allow them to participate in the auction or to give liberty to offer the same amount as has been offered by the participants in the auction. It is for the reason that the petitioners could not participate in the auction because of the pendency of the matters before the Apex Court, to which, reference has been given. In view of the above, the prayer is now to direct the respondents to consider the case of the petitioners by permitting them to offer the equivalent amount offered by the highest bidder in the auction and if the petitioners make an offer of the equivalent amount, priority be given to them.

4.The writ petitions have been opposed by the learned Additional Advocate General appearing for the State and the learned Standing Counsel appearing for the Thanjavur Corporation. They submitted that after the reconstruction of the shops under the Smart City Scheme, it was put for auction to fix the fair price. The existing shop holders were also permitted to participate there. However, if the petitioners failed to participate in the auction, a direction of the nature sought now may not be given. It is not only for the reason that it would be against the direction given by the Apex Court, but otherwise it would unsettle the auction conducted in August, 2021. They prayed to dismiss the Writ Petitions.

5.We considered the rival submissions of the parties and perused the records.

6.The Writ Petitions have been filed to seek a direction on the respondents to frame a scheme or reallocate the shops in favour of the original lease holders, especially, the members of the



association and that too, on priority basis. The shops have been reconstructed under the Smart City Scheme. The very same issue came up for consideration before the Apex Court in a batch of Writ Petitions, to which, a reference has been made. Initially, an interim order was passed to find out the possibility from the respondents about the priority and also to frame a scheme. No direction was given therein to frame a scheme or to give priority to the existing shop holders. The Special Leave Petitions therein were concluded with the following directions and it is quoted hereunder:

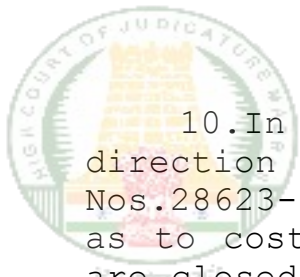
"We have heard learned counsel for the respective parties at length. As such, we see no reason to interfere with the impugned common judgment and order passed by the High Court. Hence, the present Special Leave Petitions stand dismissed. However, it is observed that in case the respective original writ petitioner(s) herein participate in the auction along with the other applicants as and when the shops are put to auction and they are found to be equal to the other participants/applicants with respect to the newly constructed building which has been constructed in the building occupied by the petitioners, they shall be given the priority.

With this, all these Special Leave Petitions are dismissed/disposed of."

7.The order quoted above shows the dismissal of the Special Leave Petitions before the Apex Court with reference to the shops reconstructed under the Smart City Scheme. The prayer therein was not considered and they were dismissed, however, with a direction to give priority to the existing shop holders if they participated in the auction and were found to be equal to the other participants.

8.In the instant case, the prayer of the petitioners is to allow them to give offer now while they did not participate in the auction proceedings. The prayer aforesaid goes against the judgment and direction of the Apex Court and thus, cannot be accepted. If any of them participated in the auction and his/her offer is found matching to the offer of the other highest bidder, then obviously, the judgment of the Apex Court would be applied for giving priority to such petitioners for allotment of shops, but it cannot give room to those, who failed to participate in the auction proceedings.

9.The direction to frame the scheme for allotment of shops cannot otherwise be given in the light of the judgment and direction issued by the Apex Court in the case cited supra.



10. In substance, we dispose of these Writ Petitions with direction to govern it by the judgment of the Apex Court in SLP(C) Nos.28623-28641 of 2019, dated 22.10.2019. There shall be no order as to costs. Consequently, connected writ miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

sj/pm

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 Principal Secretary to Government,
Municipal Administration and Water Supply Department,
State of Tamil Nadu,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Commissioner of Municipal Administration,
Office of Commissionerate of Municipal Administration,
Chepauk,
Chennai - 600 005.
3. The Director of Town and Country Planning,
O/o. the Director of Town and Country Planning,
807, Anna Salai,
Chennai - 02.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-39913[F] dated 22/12/2021)

+2 CC to M/s.N.DILIPKUMAR, Advocate (SR-40290,40291[F] dated 23/12/2021)

+1 CC to M/s.F.DEEPAK, Advocate (SR-39891[F] dated 22/12/2021)

W.P. (MD) Nos.14197 and 19767 of 2021

21.12.2021