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W.A.No.149 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.A.No.149 of 2023
and C.M.P.No.1384 of 2023**

K.Kutti @ Murugesan

.. Appellant

Versus

1. The State of Tamil Nadu
Rep. by its Secretary,
Municipal Administration and Water Supply
Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
 2. The District Collector,
Vellore District,
Vellore.
 3. The Commissioner,
Vellore City Municipal Corporation,
Vellore - 632 001.
- .. Respondents**

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 22.11.2022 in W.P.No.30751 of 2022.



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For Appellant : Mr.S.Thiruvengadam

For Respondents : Mr.J.Ravindran,
Additional Advocate General,
Assisted by Mr.P.Muthukumar,
State Government Pleader
for RR-1 and 2

JUDGMENT

(Made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

The petitioner was one of the lessees of the shops of the third respondent at old Bus stand in *Vellore* and since the possession of the said shops was demanded by the Corporation for the purpose of demolition and reconstruction, the petitioner was directed to surrender possession. Aggrieved by the same, the petitioner filed W.P.No.1039 of 2020 and by an order, dated 05.07.2022, the said Writ Petition was disposed off by directing the Corporation to give preferential allotment to the petitioner and to take steps to allot shops within a period of eight weeks therefrom by following the appropriate guidelines. Under these circumstances, by accepting to allot one shop on lot basis, the petitioner was directed to take part in the drawal of the lot which was to be conducted on 14.11.2022 and for the said purpose, as is required from the prospective bidders in respect of the other shops, the petitioner was requested to furnish solvency for Rs.15,00,000/- and to deposit Rs.10,00,000/- on or before participating in the drawal of the



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lot. Aggrieved by the same, the present Writ Petition in W.P.No.30751 of 2021 was filed.

2. By a judgment dated 22.11.2022, the learned Single Judge, by relying upon the judgment of the Hon'ble Supreme Court of India in ***Michigan Rubber (India) Limited Vs. State of Karnataka***¹, held that the third respondent Corporation is entitled to have a free hand in setting the terms of the tender and when no malafide or arbitrariness is shown, the Court cannot interfere with the same and dismissed the Writ Petition. Aggrieved by the same, the present Writ Appeal is laid before this Court.

3. *Mr.S.Thiruvengadam*, learned Counsel for the appellant, drawing our attention to the disability certificate issued to the writ petitioner by the competent authority, submitted that the petitioner is a differently abled person with a disability percentage of 60%. Even in the present tender called for by the third respondent Corporation, in respect of the shop which is earmarked for physically handicapped, only a sum of Rs.10,00,000/- is demanded as solvency and Rs.5,00,000/- is demanded as deposit. Therefore, directing the petitioner for Rs.10,00,000/- deposit and

¹ (2012) 8 SCC 216



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Rs.15,00,000/- solvency and that too within an impossible period was arbitrary on the part of the third respondent.

4. Per *contra*, *Mr.J.Ravindran*, learned Additional Advocate General for the third respondent, would submit that Rs.10,00,000/- deposit and Rs.15,00,000/- solvency was insisted upon as is applicable for every other shop which is now being auctioned. The concessional rate was given for the shop which is exclusively given for differently abled persons and the same cannot be relied upon by the petitioner as he is not getting allotment under the differently abled quota, but, by virtue of preferential allotment.

5. We are not able to accept the contention of the learned Additional Advocate General. Even though it is for the third respondent Corporation to set the conditions in respect of the deposit as well as the solvency certificate, we find from the notification issued in respect of the very same shopping complex, in respect of another shop which is earmarked for differently abled, that only a sum of Rs.5,00,000/- is demanded as deposit and solvency is required for only Rs.10,00,000/-. Even though the petitioner is getting shop by virtue of the earlier orders of this Court, still, it



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is to be seen that the petitioner is also a differently abled person. When by the impugned notice, dated 07.11.2022, the petitioner was required to arrange for a deposit of Rs.10,00,000/- and solvency for a sum of Rs.15,00,000/- within a period of 7 days, it must be seen that it would be difficult for a person who is differently abled to immediately arrange for such an amount on par with any other person.

6. It is in this context, as per Section 3 of *The Rights of Persons with Disabilities Act, 2016*, it becomes the duty of the appropriate Government to ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others. Keeping that in mind, when a shop was earmarked for differently abled, the third respondent Corporation has fixed the deposit only as Rs.5,00,000/- and the solvency as Rs.10,00,000/-. The said policy of asking for reduced sum would only be in consonance with Section 21 of the *Act* demonstrating equal opportunity policy of the Government. Therefore, we find that non-consideration of the same in the matter of allotment of the shop in respect of the petitioner amounts to discrimination. In that view of the matter, the order of the learned Single Judge requires interference.



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7. In the result,

(i) W.A.No.149 of 2023 is allowed;

(ii) The order of the learned Single Judge, dated 22.11.2022 in W.P.No.30751 of 2022 is set aside;

(iii) W.P.No.30751 of 2022, filed by the petitioner is allowed on the following terms:-

(a) The order of the third respondent, dated 07.11.2022 in Na.Ka.No.1707/A1/2022/Ma-4 is quashed inasmuch as it mandates deposit amount of Rs.10,00,000/- and solvency to the tune of Rs.15,00,000/- in respect of the petitioner;

(b) The petitioner shall deposit a sum of Rs.5,00,000/- and produce solvency for a sum of Rs.10,00,000/- within two weeks from the date of receipt of the copy of the judgment;

(c) Upon such production, the third respondent shall proceed to allot the shop to the petitioner as per procedure and other usual terms and conditions, being made applicable to others, shall also apply;

(iv) There shall be no order as to costs.

(v) Consequently, connected miscellaneous petition is closed.

(T.R., ACJ.)

(D.B.C., J.)



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Index : yes

Speaking order

Neutral Citation : yes

grs

Note : Issue order copy on 03.04.2023.

To

1. The Secretary,
Municipal Administration
and Water Supply Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The District Collector,
Vellore District,
Vellore.
3. The Commissioner,
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