



WEB COPY



W.P.No.12436 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.12436 of 2020

And

W.M.P.No.15342 of 2020

Sri Sivashanmuga Transport
Rep. by its Partner

... Petitioner

Vs.

1.The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai – 600 001.

2.The Traffic Manager,
Chennai Port Trust,
Rajaji Salai,
Chennai – 600 001.

3.Deputy Traffic Manger,
Lands and Building,
Chennai Port Trust,
Rajaji Salai,
Chennai – 600 001.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records and quash the Order dated 09.06.2020 passed by the third respondent herein and direct the respondents to refund the Security Deposit



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amount paid by the petitioner pursuant to the Allotment Order No. 175/2016-17 dated 01.12.2016.

For Petitioner : Mr.C.Manohar Gupta
for M/s.Gupta and Ravi

For Respondents : Ms.Madhuri Ponti Reddy

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records and to quash the order dated 09.06.2020 passed by the third respondent and direct the respondents to refund the security deposit amount paid by the petitioner pursuant to the Allotment Order No.175/2016-17 dated 01.12.2016.

2.The case of the petitioner is that the petitioner is a Partnership Firm and is engaged in the business of stevedoring and as such perform the activities of stevedores and port handling agents which predominantly involves the functions of loading and unloading cargo from the ships which arrive at the docks and operate and maintain containers, pay loaders and other vehicles/ machinery for the said purposes. The respondents granted allotment order dated



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01.12.2016 by which the petitioner was allotted open space measuring an extent of 270 sq.mts. at the Western side of hazardous shed in III Section for occupation as a licensee under monthly licence basis for the purpose of using the same as dock office for placing a 20 ft. container and maintenance of pay loaders and other vehicles.

3.The further case of the petitioner is that the petitioner allotted the open space initially for a period of 11 months from 01.11.2016 to 30.09.2017 and as per clause 9 of the allotment order dated 01.12.2016, if the licensee requires renewal of licence, then application for renewal duly accompanied by the receipt for payment of the advance licence fee for the subsequent month must be made to the Chennai Port Trust atleast 7 days before the expiry of the period of licence. Accordingly, the petitioner submitted application for renewal of licence and the petitioner was granted licence for a further period of 11 months commencing from 01.10.2017 to 31.08.2018. Thereafter, the lease period was periodically extended and lastly extended upto 30.09.2019.

4.The further case of the petitioner is that the petitioner submitted a letter of undertaking dated 21.09.2019 undertaking to



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vacate and hand over the open space on expiry of the licence period on 30.09.2019. Thereafter the respondents commenced e – tender cum auction process and vide letter dated 11.03.2020 granted further extension of licence for the said open space from 01.10.2019 to 30.06.2020 or till tender is finalized. Since the petitioner was not desirous of participating in the e – tender cum auction, the petitioner sent a letter dated 18.03.2020 stating that the petitioner is desirous of vacating and surrendering the open space by 31.03.2020 and requested the respondents to refund the security deposit amount paid by the petitioner and also sent a letter dated 20.03.2020 to the respondent requesting to permit the petitioner to dismantle their sheds and allot gates to enable the petitioner to move all the equipment, materials and vehicles out of the port area.

5.The further case of the petitioner is that thereafter the Government of India declared lock down due to coronavirus pandemic and hence, the petitioner requested the respondents to grant time till 30.04.2020 to fully remove the petitioner's belongings. However, the petitioner received a letter dated 09.06.2020 from the third respondent stating that since the petitioner did not participate in the e-tender cum auction, the occupation of the premises from



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01.10.2019 is treated as unauthorized occupation and asked the petitioner to vacate the premises on or before 30.06.2020 and to remit the penal licence fee of Rs.12,11,492/- for the period of the alleged unauthorized occupation between 01.10.2019 to 30.06.2020. Hence, this writ petition.

6.The learned counsel appearing for the petitioner submitted that the petitioner was allotted open space measuring an extent of 270 sq.mts. at the Western side of hazardous shed in III Section for occupation as a licensee under monthly licence basis for the purpose of using the same as dock office for placing a 20 ft. container and maintenance of pay loaders and other vehicles vide allotment order dated 01.12.2016 initially for a period of 11 months from 01.11.2016 to 30.09.2017 and the same was periodically extended extended upto 30.09.2019.

7.The learned counsel appearing for the petitioner further submitted that the petitioner submitted a letter of undertaking dated 21.09.2019 undertaking to vacate and hand over the open space on expiry of the licence period on 30.09.2019. Thereafter the respondents commenced e – tender cum auction process and forced



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the petitioner to participate in the e – tender cum auction for occupying the open space and since the petitioner did not participate in the e – tender cum auction, issued the impugned order, which is not sustainable one.

8.The learned counsel appearing for the respondents submitted that the petitioner ought to have participated in the e – tender cum auction and if the petitioner was not successful then the petitioner should have decided to vacate the premises. The learned counsel further submitted that though the petitioner submitted a letter of undertaking dated 21.09.2019 undertaking to vacate and hand over the open space by 30.09.2019, the petitioner did not vacate the premises by 30.09.2019. Hence, the impugned order is perfectly in order and warrants no interference.

9.Heard the arguments advanced on either side and perused the materials available on record.

10.The facts in the present case is not in dispute. Admittedly, the petitioner was allotted open space measuring an extent of 270 sq.mts. at the Western side of hazardous shed in III Section for



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occupation as a licensee under monthly licence basis for the purpose of using the same as dock office for placing a 20 ft. container and maintenance of pay loaders and other vehicles vide allotment order dated 01.12.2016 initially for a period of 11 months from 01.11.2016 to 30.09.2017 and the same was periodically extended extended upto 30.09.2019. Thereafter, the respondents decided to go for e – tender cum auction process and since the petitioner was not desirous of participating in the e – tender cum auction submitted a letter of undertaking dated 21.09.2019 undertaking to vacate and hand over the open space on expiry of the licence period on 30.09.2019. However, the petitioner was not allowed to vacate the premises and vide letter dated 11.03.2020, the respondents granted further extension of licence for the said open space from 01.10.2019 to 30.06.2020 or till tender is finalized.

11.Admittedly, the petitioner did not participate in the e – tender cum auction and was ready to vacate the premises. However, the respondents claim that the petitioner ought to have participated in the e – tender cum auction and if the petitioner was not successful then the petitioner should have decided to vacate the premises. Since the petitioner did not participate in the e-tender cum auction,



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the occupation of the premises from 01.10.2019 is treated as unauthorized occupation and hence the petitioner was asked to vacate the premises on or before 30.06.2020 and to remit the penal licence fee of Rs.12,11,492/- for the period of the alleged unauthorized occupation between 01.10.2019 to 30.06.2020.

12.This Court perused the letter of undertaking dated 21.09.2019 submitted by the petitioner, wherein, it is clearly stated that the petitioner has been issued with vacation notice to vacate the area on or before 30.09.2019. Thereby, the petitioner had given the undertaking that they will hand over the port area including the covered and other structures erected by them without claiming any compensation on expiry of the licence period i.e., 30.09.2019. When such being the position, the respondents not allowing the petitioner to vacate the premises and later imposing penal licence fee is not sustainable one.

13.In view of the above, this Court is inclined to set aside the impugned order. Accordingly, the impugned order dated 09.06.2020 passed by the third respondent is set aside. The respondents are directed to allow the petitioner to vacate the premises, within a



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period of four weeks from the date of receipt of a copy of this order.

Thereafter, it is open for the respondent to float e – tender cum auction for the open space occupied by the petitioner.

14.The writ petition is allowed on the above terms. No costs.

Consequently, the connected miscellaneous petition is closed.

22.06.2023

pri

Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

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