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W.P.Nos.35580 of 2019 etc, and batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.Nos.35580, 35581, 35585 to 35592, 35596 to 35598, 35600 to 35602, 35604, 35605, 35610, 35614, 35616, 35619, 35622, 35624, 35630, 35631 and 35640 of 2019

and

W.M.P.Nos.36450, 36452, 36457, 36459, 36461, 36463, 36465, 36467, 36469, 36471, 36478, 36479, 36481, 36483, 36486, 36489, 36492, 36496, 36499, 36506, 36512, 36514, 36518, 36526, 36532, 36535, 36541 of 2019

W.P.No.35580 of 2019

S.Sulaiman

... Petitioner

Vs.

The Chief Executive Officer,
Cantonment Board,
St.Thomas Mount,
Pallavaram,
Chennai – 600 016.
Respondent

...

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the present impugned public notice of the respondent vide No.STM/REV/2658 dated 14-12-2019 and quash the same.

For Petitioner in all : Mr.R.Kannan
W.P.s

For Respondent in : Mr.C.Mohan for M/s.King &
all W.P.s Partridge



W.P.Nos.35580 of 2019 etc, and batch

COMMON ORDER

WEB COPY

Since the issue involved in the present writ petitions are one and the same they are disposed of by way of this common order.

2. It is the case of the petitioners that during the year 1998, the respondent had constructed temporary structured sheds which consists of 28 shops measuring an extent of 40 sq.ft each at Ranganatha Mudhali Street, Pallavaram. Subsequently, a group of persons formed an association namely Cantonment Pallavaram Ranganatha Mudali Street Small Merchants Association, and applied for allotment of shops before the respondent. Since no response was forthcoming, the said association filed a writ petition in W.P.No.17063 of 1998 and the same was dismissed by this Court. Aggrieved over the same, the association preferred a writ appeal in W.A.No.1968 of 2000, which appeal was dismissed by this Court holding that the dismissal of the writ appeal will not debar the respondent to consider the case of the members of the association, individually afresh, if they are otherwise found eligible, in accordance with law. The petitioners in respective writ petitions applied for grant of license for the shops with the respondent, pursuant to which permission was granted to 27 members of the association for running



W.P.Nos.35580 of 2019 etc, and batch

business at Pallavaram Cantonment area after imposing certain conditions.

After accepting all the conditions, the petitioners and the respondent in respective writ petitions entered upon an agreement, for which the respondent allotted respective shops to the respective petitioners. Subsequently, the petitioners obtained electricity service connections to the respective shops. Thereafter, a Caveat was sent to the petitioners from the District Munsif Court, Alandur and Sub Court, Tambaram filed by the respondent. When the petitioners inquired with the respondent, they came to know that a public notice dated 14.12.2019, has been passed by the respondent in the daily newspaper Dinakaran inviting the tenders for the allotment of the shops which was already run by the petitioners. Challenging the public auction notice dated 14.12.2019, issued by the respondent, the present writ petitions have been filed by the petitioners.

3. Learned counsel for the petitioners submit that though initially, the petitioners' representation in respective writ petitions seeking allotment of temporary structured sheds in their favour was considered by the respondents and allotment was granted in their favour, however, without satisfying the conditions imposed in the agreement and without giving any opportunity to the



W.P.Nos.35580 of 2019 etc, and batch

petitioners in respective writ petitions, all of a sudden the respondent issued public notice on 14.12.2019, inviting tenders with an intent to alienate the shops in favour of third parties which is *per se* unsustainable.

4. Learned counsel appearing for the respondent in respective writ petitions submits that admittedly during the year 2014 the temporary structured shops were allotted in favour of the petitioners in respective writ petitions. Subsequently, the tender notification dated 14.12.2019 was issued by the respondent inviting tenders for the aforesaid shops. In terms of the letter of allotment, the petitioners were issued with notice of termination on 17.12.2019, to vacate the temporary structured shed allotted in their favour after providing one month time for the petitioners to vacate the said premises. Pursuant to the Public notice dated 14.12.2019 and the notice of termination dated 17.12.2019, tenders were received in respect of the aforesaid shops after reserving 3 shops out of 28 shops for persons with disability. For better appreciation the highest bids are quoted hereunder:

Sl.No	Shop No.	No. of Bids	Highest Bid Amount (Per Month)	Highest Bidder
4	4	7	12,600/-	C.Baskaran
5	5	5	13,500/-	C.Baskaran
6	6	6	14,400/-	C.Baskaran



W.P.Nos.35580 of 2019 etc, and batch

Sl.No	Shop No.	No. of Bids	Highest Bid Amount (Per Month)	Highest Bidder
7	7	8	14,004/-	V.Santhana Krishnan
8	8	4	14,400/-	V.Santhana Krishnan
9	9	5	13,500/-	V.Santhana Krishnan
10	10	5	13,500/-	V.Santhana Krishnan
11	11	5	13,500/-	C.Baskaran
12	12	4	13,500/-	D.Singaravelan
13	13	2	13,500/-	D.Singaravelan
14	14	4	13,500/-	D.Singaravelan
15	15	4	14,004/-	P.Chandrasekaran
16	16	4	13,500/-	V.Kumar
17	17	5	12,000/-	V.Kumar
18	18	5	13,500/-	D.Singaravelan
19	19	4	13,500/-	D.Singaravelan
20	20	3	14,400/-	R.Rajagopal
21	21	3	13,500/-	R.Rajagopal
22	22	3	15,003/-	M.Gajendran
23	23	4	15,100/-	M.Gajendran
24	24	6	15,200/-	M.Gajendran
25	25	6	15,300/-	M.Gajendran
26	26	2	14,300/-	R.Rajagopal
27	27	2	14,300/-	R.Rajagopal
28	28	5	10,500/-	S.Surya

5. He further submits that though the petitioners participated in the tender during the pendency of the writ petitions and submitted their bids, however, the highest bids were quoted by the third parties. In view of the pendency of these writ petitions, allotment orders were not given in favour of the highest bidders. Hence, the reliefs sought for by petitioners has no legal



W.P.Nos.35580 of 2019 etc, and batch

merits to be granted and the petitioners cannot impede the acceptable process of issuance of tender for calling for bids and cannot claim to occupy the shops as a matter of course or right and accordingly, he prayed to dismiss these writ petitions.

6. Heard learned counsel appearing on either side and perused the materials placed before this Court.

7. Challenging the issuance of the public notice dated 14.12.2019 by the respondent, inviting tenders with regard to the allotment of structured shops which were already run by the petitioners, the petitioners have filed the above writ petitions.

8. Admittedly petitioners were allotted structured shops in the year 2014, subsequently, as per the terms of the letter of allotment, the petitioners were issued with notice of termination on 17.12.2019, pursuant to the public notice dated 14.12.2019, inviting tenders for allotment of shops which were run by the petitioners. Though the facts stand as such, however, during the pendency of these writ petitions, the petitioners participated in the public auction and submitted their bids, however, the highest bids were quoted by



W.P.Nos.35580 of 2019 etc, and batch

other persons who participated in the said public auction and the same was allotted in favour of them. Due to the pendency of these writ petitions allotment order was not issued in favour of the highest bidders.

9. The very same issue fell for consideration before this Court in ***W.P.Nos.19152, 19755 of 2009*** reported in ***(2012) 2 MLJ 383*** in case of ***Cuddalore Bus Stand and Lawrence Road Shop Trades Welfare Sangam Vs. The Secretary to Government of Tamil Nadu and Ors.*** wherein this Court held that the public property cannot be alienated to anybody, as it shall amount to unauthorized construction. The relevant portion of the order passed by this Court is extracted hereunder:

"16.In the present case, it must be noted that the second respondent being the Controlling Authority had directed the Municipality to adhere to the Government norms in the matter of allotment of shops. There is no escape for the Municipality from obeying the order of the Government. Further, all resolutions of the Municipality council cannot become binding on the Commissioner. Unless resolutions are in accordance with the rules and regulations and directives of the Government, the Commissioner cannot be directed to obey such resolution. For the question of allotment of shops to same shop



WEB COPY



W.P.Nos.35580 of 2019 etc, and batch

keepers, if such an action is taken and enforced through Court, the same will be repugnant to rule of law. The Court cannot be a party to such an illegal act. If petitioners are desirous, they must also follow the same route. One illegal act will not confer any enforceable right on the petitioners. In the matter of exemption, there cannot be any equal.

17. In this context, the respondents referred to a division bench judgment of this Court in **A.Sathar Vs. The District Collector, Coimbatore and another** reported in **AIR 1998 MADRAS 217**, wherein this Court held in paragraph 2 as follows:

"2....We are of the view that the extension of the lease to the appellant is against the interest of the Panchayat. As already noticed the rental income from the properties owned by the Panchayat is one of the sources of income to the Panchayat. Therefore, the interest of the Panchayat cannot be jeopardised by permitting the appellant to continue in possession of the premises in question at the enhanced rate of 15 per cent as prayed for. There are absolutely no merits in this writ appeal and the same is dismissed."

18. A further reference was made to a division bench judgment of this Court in **DCW Ltd. Vs. The State of Tamil Nadu and others** reported in **AIR 2005 MADRAS 264**. The following passages found in paragraphs 14 and 23 of the said judgment may be



WEB COPY



W.P.Nos.35580 of 2019 etc, and batch

usefully extracted below:

14.It is well settled in the aforesaid decisions that property belonging to the Government or an instrumentality of the State is not private property, and hence it cannot be disposed off at the sweet will of the authorities in any manner they choose. Such property can only be given by the State or instrumentality of State ordinarily through public auction/public tender as held in Selvarani's case cited supra (2005 (1) CTC 81). Public property is not largesse which can be given by the Government to anybody. Since the appellant was given the grant only as temporary occupation for a period of twelve years, they cannot insist that the grant be continued even after twelve years as of right. If the appellant has made any investment on the said land they should have realized that after twelve years they have to vacate the land, and it is not that they have a right to continue in possession of the land till eternity. The appellant has no monopoly over the said land which belongs to the Government. After expiry of the lease the public property should be put to public auction/public tender after advertising it in well-known newspapers having wide circulation, so that there is transparency in the matter and all eligible persons can apply. In this way, Article 14 of the Constitution of India will be complied with, otherwise it will be violated.

23.Moreover, in our opinion, the petitioner's conduct also disentitles it for relief under the discretionary jurisdiction of Article 226 of the Constitution. When a person



WEB COPY



W.P.Nos.35580 of 2019 etc, and batch

remains in occupation of a property, even after his grant has expired, he is not acting in a fair manner. There was no fresh grant or renewal in favour of the petitioner after 12 years period, which expired on 31.03.2003. Without a fresh grant of lease, the occupation of the land in question by the petitioner was totally illegal and unauthorized. We are not inclined to exercise our discretion under Article 226 of the Constitution in favour of such unauthorized occupants, whatever may be the merits of the case....."

19. In the light of the same, this court is not inclined to interfere with the impugned order. Hence both the writ petitions will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed."

10. In view of the aforesaid dictum, this Court is of the view that since the petitioners in respective writ petitions were given grant of the structured shops only as temporary occupation, they cannot insist that the grant to be continued even after expiration of the agreement as of right. Without a fresh grant of lease issued by the respondent Board, the occupation in the subject property by the petitioners in respective writ petitions is purely illegal and unauthorized.



W.P.Nos.35580 of 2019 etc, and batch

WEB COPY

11. Hence, the prayer sought for in these writ petitions cannot be granted in favour of the petitioners. Accordingly these writ petitions are dismissed with a direction to the respondent to issue fresh public notice calling for tenders with regard to allotment of shops within a period of four (4) weeks from the date of receipt of a copy of this order. The petitioners are at liberty to participate in the public auction. No costs. Consequently connected miscellaneous petitions are closed.

03.04.2023
(1/2)

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Index : Yes / No
Speaking order / Non speaking order
Netruai Citation Case : Yes / No



WEB COPY



W.P.Nos.35580 of 2019 etc, and batch

M.DHANDAPANI, J.

rap

W.P.Nos.35580 of 2019 etc, and batch



WEB COPY



W.P.Nos.35580 of 2019 etc, and batch

03.04.2023

1/2

W.M.P.Nos.36449, 36451, 36456,
36458, 36460, 36462, 36464,
36466, 36468, 36470, 36475,
36477, 36480, 36482, 36485,
36487, 36491, 36494, 36498,
36505, 36508, 36511, 36516,
36522, 36530, 36534, 36540 of
2019

in

W.P.Nos.35580, 35581, 35585 to
35592, 35596 to 35598, 35600 to
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M.DHANDAPANI ,J.

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03.04.2023

(2/2)

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