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W.P.No.1931 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.1931 of 2024

Hakkim

... Petitioner

Vs.

The Commissioner,
Tiruppur Municipal Corporation,
Tiruppur District.

... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent to refund the deposit amount of Rs.69,60,000/- which was deposited towards the lease of the shop Nos.1 and 2 situated in the First Floor, Terminal Building, No.3, Kamarajar Salai, Muthamizh Arignar Dr.Kalaignar Karunanidhi Central Bus Terminus, Tiruppur District based on the representation of the petitioner dated 19.12.2023.

For Petitioner : Mr.V.Raghavachari
Senior Counsel
for M/s.M.Rajamathivanan
For Respondent : Mr.Abhishek Murthy
Government Advocate



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ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus directing the respondent to refund the deposit amount of Rs.69,60,000/- which was deposited towards the lease of the shop Nos.1 and 2 situated in the First Floor, Terminal Building, No.3, Kamarajar Salai, Muthamizh Arignar Dr.Kalaignar Karunanidhi Central Bus Terminus, Tiruppur District based on the representation of the petitioner dated 19.12.2023.

2.The learned Senior Counsel appearing for the petitioner submitted that the respondent issued gazette publication for lease of shops situated at No.3, Terminal Building, Kamarajar Salai, Muthamizh Arignar Dr.Kalaignar Karunanidhi Central Bus Terminus, Tiruppur District vide Gazette Notification No.39 dated 01.07.2022. The petitioner participated in the auction held on 12.10.2022 and became the successful bidder. The respondent fixed the rent for shop no.1 as Rs.1,85,000/- and deposit was fixed at Rs.16,65,000/- and rent for shop no.2 as Rs.2,55,000/- and deposit was fixed at Rs.22,95,000/- and after payment of the deposit by the petitioner, the respondent passed lease order in favour of the petitioner. Apart from the deposit



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amount of Rs.39,60,000/- [Rs.16,65,000/- + Rs.22,95,000/- which is the nine months advance amount], the petitioner had also deposited a sum of R.30,00,000/- [Rs.15,00,000/- each] as the auction deposit amount.

3.The learned Senior Counsel appearing for the petitioner further submitted that soon after opening of the shops, the petitioner found lot of encroachments in the subject premises and in this regard, he made representation dated 02.02.2023 to the respondent. Since the petitioner faced many problems, he decided to surrender the shops to the respondent in terms of proceedings of the respondent dated 02.12.2022 wherein, condition no.5 makes it clear that if the petitioner thinks that the shop is not necessary, he should make representation to the respondent prior to three months. The petitioner made representation dated 21.02.2023 to the respondent stating that he is surrendering the shops from that day and sought for refund of Rs.69,60,000/- already deposited by him, however, till date there is no response from the respondent.

4.The learned Senior Counsel appearing for the petitioner further submitted that as per the proceedings of the respondent dated



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02.12.2022, if the petitioner thinks that the shop is not necessary, he should make representation to the respondent prior to three months.

Since the petitioner made representation dated 21.02.2023 to the respondent stating that he is surrendering the shops from that day, the three months period expired on 21.05.2023 and the petitioner has to pay the rent till 21.05.2023, however, the petitioner has already deposited a sum of Rs.69,60,000/-. The learned Senior Counsel further submitted that till date, the respondent has not refunded the balance amount after adjusting the admissible rent from Rs.69,60,000/- to the petitioner.

5.The learned Government Advocate appearing for the respondent submitted that the respondent issued a gazette notification for lease of shops located at No.3, Terminal Building, Kamarajar Salai, Muthamizh Arignar Dr.Kalaignar Karunanidhi Central Bus Terminus of Tiruppur City Municipal Corporation as per District Gazette Notification No.39 dated 01.07.2022. Thereafter, a tender/ auction notice for the shops in the subject premises was issued and tender/ auction was conducted on 12.10.2022, following the guidelines of Government Order No.92 of Municipal Administration and Water Supply Department dated 03.07.2007.



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6.The learned Government Advocate appearing for the respondent further submitted that the petitioner participated in the auction held on 12.10.2022 after paying a sum of R.30,00,000/- [Rs.15,00,000/- each] as the auction deposit amount and became the successful bidder for shop nos.1 and 2 located on the first floor of the subject premises. According to G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007, the respondent fixed the rent and deposit vide proceedings dated 02.11.2022. The rent for shop no.1 was set at Rs.1,85,000/- per month with deposit of Rs.16,65,000/- and rent for shop no.2 was set at Rs.2,55,000/- per month with deposit of Rs.22,95,000/- as lease for the period of three years.

7.The learned Government Advocate appearing for the respondent further submitted that after payment of the deposit amount by the petitioner by way of demand draft, the respondent issued proceedings dated 02.12.2022, granting licence to the petitioner for shop nos.1 and 2 in the subject premises for a period of three years from 2023 to 2025 and the lease period commenced from 01.01.2023, covering the period of three years upto 31.12.2025 and a



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Memorandum of Understanding was entered into between the petitioner and the Tiruppur Municipal Corporation.

8.The learned Government Advocate appearing for the respondent further submitted that though the petitioner made representation dated 21.02.2023 to the respondent stating that he is surrendering the shops from that day, he did not hand over the premises and he continued to operate the shops till 31.05.2024 and further submitted that the petitioner has not paid the arrears of rent since January, 2023.

9.The learned Government Advocate appearing for the respondent further submitted that Clause 8 of the Public Tender Conditions reads as follows: 'In case of any repairs to the said building or loss of the goods furnished, the corresponding amount shall be adjusted from the deposit paid by the lessee. The decision of the Commissioner is final. There is no right to sue in court'. He further submitted that Clause 20 of the Public Tender Conditions reads as follows: 'Failure of the tenant to comply with the general or special conditions will result in the cancellation of the licence and re-auction of the premises. The lessee shall not be entitled to any compensation for



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such loss and shall forfeit the advance paid. Additionally, any individual subject to such proceedings shall be disqualified from participating in any public auction conducted by the Corporation. If, upon inquiry, it is found that the individual is bidding under another name or jointly, the disqualification shall remain in effect.'

10.The learned Government Advocate appearing for the respondent further submitted that Clause 23 of the Public Tender Conditions reads as follows: 'The lessee shall not alienate the leased premises. Shops shall not be placed on the walkways within the premises, and no encroachments shall be made. If the Corporation become aware of any such encroachment, it reserves the right to cancel the lease immediately.' He further submitted that Clause 31 of the Public Tender Conditions reads as follows: 'Upon the expiry of the lease period, the lessee has no right to request an extension of the lease on the grounds of having incurred significant expenses or the business being unprofitable.'

11.The learned Government Advocate appearing for the respondent further submitted that the petitioner failed to act in accordance with the Public Tender Conditions and further submitted



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that after adjusting the amount of Rs.69,60,000/- already deposited by the petitioner, the petitioner has to pay a sum of Rs.14,55,883/- towards arrears of rent till 31.05.2024.

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

13.Admittedly, the respondent issued a gazette notification for lease of shops located at No.3, Terminal Building, Kamarajar Salai, Muthamizh Arignar Dr.Kalaignar Karunanidhi Central Bus Terminus of Tiruppur City Municipal Corporation and thereafter, a tender/ auction notice for the shops in the subject premises was issued and tender/ auction was conducted on 12.10.2022. The petitioner participated in the auction held on 12.10.2022 after paying a sum of R.30,00,000/- [Rs.15,00,000/- each] as the auction deposit amount and became the successful bidder for shop nos.1 and 2 located on the first floor of the subject premises. The rent for shop no.1 was set at Rs.1,85,000/- per month with deposit of Rs.16,65,000/- and rent for shop no.2 was set at Rs.2,55,000/- per month with deposit of Rs.22,95,000/- as lease for the period of three years.



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14.After payment of the deposit amount by the petitioner by way of demand draft, the respondent issued proceedings dated 02.12.2022, granting licence to the petitioner for shop nos.1 and 2 in the subject premises for a period of three years from 2023 to 2025 and the lease period commenced from 01.01.2023, covering the period of three years upto 31.12.2025 and a Memorandum of Understanding was entered into between the petitioner and the Tiruppur Municipal Corporation.

15.The grievance of the petitioner is that due to the encroachments in the subject premises, he could not run the shops and he sustained loss and hence, he made representation to the respondent for surrendering the shops. The issue that arise for consideration in this writ petition is whether the petitioner is entitled for refund of the amount which he already deposited.

16.It is relevant to extract hereunder Clause 13 of the Memorandum Of Understanding dated 28.11.2022 entered into between the petitioner and the respondent:

'மாதாந்திர உரிமத் தொகையை குறிப்பிட்ட தேதிக்குள்



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கட்டத்தவறிய காரணத்திற்காகவும் மேலும் எந்த ஒரு பொது அல்லது சிறப்பு நிபந்தனைகளின்படி உரிமதாரர் நடக்கத் தவறினால் உரிமத்தை ரத்து செய்து மறு ஏலம் நடத்தலினால் ஏற்படும் இழப்பிற்கு நான் பொறுப்பாவது அல்லாமல் என்னால் செலுத்தப்பட்ட முன்பணத்தையும் இழக்க ஒப்புக்கொள்கிறேன்.'

17.A perusal of the above clause makes it clear that if the petitioner commits default in payment of rent, the respondent is entitled to cancel the licence and to re-conduct auction, in which case the petitioner is not entitled for refund of the amount deposited by him.

18.It is relevant to extract hereunder condition no.5 of the proceedings of the respondent dated 02.12.2022:

'கடை தேவையில்லை என கருதும் பட்சத்தில் 3 மாதங்களுக்கு முன்பே எழுத்து மூலமாக ஆணையர் அவர்களுக்கு விண்ணப்பிக்க வேண்டும்.'

19.A perusal of the above condition makes it clear that if the petitioner thinks that the shop is not necessary, he should make



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representation to the respondent prior to three months.

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20.In the present case, the petitioner is not a defaulter. He is not able to run the shops due to the encroachments in the subject premises, which was allowed by the respondent by not taking action against the encroachers. The petitioner made representation dated 02.02.2023 to the respondent seeking to take action against the encroachers and since there was no action on the part of the respondent and since the petitioner sustained loss, he decided to surrender the shops to the respondent. Thereby the petitioner made representation dated 21.02.2023 to the respondent stating that he is surrendering the shops from that day and sought for refund of Rs.69,60,000/- already deposited by him.

21.The encroachment made by the third party in the subject premises is also evident from the order dated 27.03.2024 made in W.P.No.34014 of 2023 by the Hon'ble Division Bench of this Court, wherein, it is observed that 'It goes without saying that unauthorised activity cannot be permitted. The same deserves to be curbed at the inception. The respondent has assured that steps are being taken to remove the unauthorised shops and prevent the unauthorised activity.



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The respondent shall periodically, with a greater frequency, supervise and monitor the subject place and ensure that no unauthorised activity takes place and if any unauthorised activity takes place, then, immediately coercive steps be taken against the erring persons.'

22.In view of the above, the petitioner succeeds the case and he is entitled for refund of the amount, however, he has to pay the rent from 01.01.2023 to 31.05.2023.

23.As per the counter affidavit filed by the respondent, the petitioner has not paid the arrears of rent since January, 2023. Hence, the petitioner is liable to pay rent for five months. In respect of shop no.1, rent has been fixed at Rs.1,85,000/- per month and GST for the same is Rs.33,300/- and in respect of shop no.2, rent has been fixed at Rs.2,55,000/- per month and GST for the same is Rs.45,900/-. Accordingly the petitioner is liable to pay a sum of Rs.2,18,300/- per month for shop no.1 and a sum of Rs.3,00,900/- per month for shop no.2. Hence, the amount to be paid by the petitioner amounts to Rs.10,91,500/- in respect of shop no.1 and Rs.15,04,500/- in respect of shop no.2. In total, the petitioner is liable to pay a sum of Rs.25,96,000/- towards arrears of rent.



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24.The petitioner has already deposited a sum of Rs.69,60,000/- and the same is not disputed by the respondent. Hence the respondent is directed to deduct a sum of Rs.25,96,000/- from Rs.69,60,000/- and refund the balance amount i.e., Rs.43,64,000/- [Rs.69,60,000/- - Rs.25,96,000/-] to the petitioner without any interest, within a period of four weeks from the date of receipt of a copy of this order.

25.The writ petition is disposed of in the above terms. No costs.

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

The Commissioner,
Tiruppur Municipal Corporation,
Tiruppur District.



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M.DHANDAPANI,J.
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