



W.P. No. 3807 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 3807 of 2021

G.Periyasamy

... Petitioner

-VS-

1. The Chairman & Managing Director,
The Tamil Nadu Small Industries Corporation Limited,
Near Sidco Electronics Complex,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai – 600032.

2. The Manager,
SIDCO Branch Office,
Dharmapuri.

Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondents to allot Shed No.17 at the Tiny Match Complex, Vellagoundanpalayam, Dharmapuri District on merits based on the Petitioner's representation dated 22.10.2020.

For Petitioner : Mr. S.Thiruvengadam

For Respondents : Mr. M.R.Rajavelayutham



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ORDER

WEB COPY Heard Mr. S.Thiruvengadam, Learned Counsel for the Petitioner and Mr. M.R.Rajavelayutham, Learned Counsel appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. According to the Petitioner, he is in occupation of the Tiny Shed bearing No. 16 constructed in a land measuring an extent of 0.0425 acres at Tiny Match Complex, Vellagoundanpalayam, Dharmapuri District, which has been allotted to him by the Respondent. The Petitioner claims to have made representations dated 02.02.2004, 13.09.2004, 24.12.2004, 27.11.2013 and 22.10.2020 to the Respondents to allot the adjacent building bearing Tiny Shed No. 17 for expansion of his business, but it has not fructified. In that backdrop, this Writ Petition has been filed seeking a direction to the Respondents to dispose his representations for allotting that adjacent property to him.

3. At the outset, it must be recapitulated here that the well settled legal position that the disposal of public property by the State or its instrumentalities partakes the character of a trust and the methods to be adopted for its disposal must be fair and transparent providing an opportunity to all the interested persons to participate in the process, has been lucidly explicated by the Hon'ble



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Supreme Court of India in ***Kasturi Lal Lakshmi Reddy –vs- State of Jammu***

WEB C **& Kashmir** [(1980) 4 SCC 1] in the following words:-

“10. There is increasing expansion of the magnitude and range of Governmental functions, as we move closer to the Welfare State, and the result is that more and more of our wealth consists of these new forms of property. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. The law has however not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largess, formerly regarded as privileges, have been recognised as rights, while others have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking Government discretion in the matter of grant of such largess. The discretion of the government has been held to be not unlimited in that the Government cannot give largess in its arbitrary discretion or as its sweet will or on such terms as it chooses in its absolute discretion. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard



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to the terms on which largess may be granted and the other in regard to the persons who may be recipients of such largess.

11. So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contractor dealing with his property. But the Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason if it does, its action would be liable to be invalidated.



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If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid....

14. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so.

15. The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted. It is now well settled as a result of the decision of this Court in *Ramana Dayaram Shetty –vs- International Airport Authority of India* [(1979) 3 SCC 489] that the Government is not free like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its



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absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the Court as a rule of administrative law and it was also validated by the Court as an emanation flowing directly from the doctrine of equality embodied in Article 14.”

Viewed from this perspective, any decision granting such allotment of the public property to the Petitioner at its mere asking on representations made on irrelevant considerations to suit the convenience of the Petitioner, just because it happens to hold the neighbouring land, would be contrary to law and defeat public interest, which cannot be countenanced.



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4. It is also evident that neither the Petitioner has any legally enforceable right to claim transfer of the public property by the Respondents, nor the Respondents have any legal obligation to be compelled to take decision on granting the same in favour to the Petitioner. At this juncture, it would be beneficial to refer to the decision of the Hon'ble Supreme Court of India in ***Director of Settlements, A.P. -vs- M.R. Apparao*** [(2002) 4 SCC 638], which reads as follows:-

"17.One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is



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in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right *must be subsisting on the date of the petition (Kalyan Singh v. State of U.P. [AIR 1962 SC 1183])*. The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."

5. Moreover, it is contended in the Counter-Affidavit dated 29.12.2021 filed by the Second Respondent that the said property is not vacant as on date as claimed by the Petitioner and it is in occupation of some third parties, which would obviously mean that it falls under the realm of disputed questions of fact, which cannot be effectively determined in the summary procedure followed under Article 226 of the Constitution. It must be recapitulated here that the Hon'ble Supreme Court of India in the decision in ***Roshina T. -vs- Abdul Azeez***



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K.T. [(2019) 2 SCC 329] has cautioned that such claims relating to property rights would have to be answered one way or the other only in a properly framed suit impleading necessary parties before the civil court.

6. In such circumstances, there is absolutely no justification for issuing any direction to dispose the futile representations in which the relief claimed by the Petitioner cannot be considered by the concerned authorities. Though obvious, it is clarified that refusal by the Court to grant the relief sought in this Writ Petition shall not be construed as precluding the Petitioner, if it is otherwise eligible and not disqualified, to participate in any tender or public auction whenever conducted for sale or lease of that public property following the prescribed procedure.

In the result, the Writ Petition is dismissed with the aforesaid observations. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 24.05.2024.

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To

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P.D. AUDIKESAVALU, J.

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