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W.P.(MD)No.27046 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2024

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.(MD)No.27046 of 2024

and

W.M.P(MD)Nos.22960 and 22961 of 2024

Sekar

... Petitioner

Vs.

1.The District Collector,
Office of the District Collector,
Trichy.

2.The Commissioner,
The Agricultural Marketing and Agro Business,
C IPEI-II Main Road,
Guindy, Chennai 600 032.

3.The Deputy Director,
Agricultural Marketing,
No.11, Arabic College Road,
Khaja Nagar,
Trichy.

4.The Secretary Incharge,
Trichy Vending Committee,
Trichy.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned notice issued by the fourth respondent Na.ka.E/4293/2012,



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dated 10.09.2024 and quash the same as illegal and unconstitutional and consequently directing the respondents to shift the existing Gandhi Market to the newly constructed K.Kallikudi Vegetable Market, Trichy within the time stipulated by this Court.

For Petitioner : Mr.B.Jameelarasu

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by Mr.A.Kannan
Additional Government Pleader

ORDER

The writ petition is filed challenging the impugned notice issued by the fourth respondent, dated 10.09.2024, calling upon the petitioner to remit the arrears of rent failing which the allotment in favour of the petitioner was directed to be cancelled.

2. The petitioner applied for allotment of shops in the new K.Kallikudi Vegetable Market, by enclosing the necessary documents along with the fees, in pursuance of the advertisement issued by the fourth respondent calling tenders for the shops. The petitioner was allotted two shops in Shop Nos.B1-5,52 and B1-24,33, vide proceedings, dated 05.09.2020, on the terms and conditions stated therein. As per the terms and conditions of the allotment, rent was fixed at Rs.1000/- per months for each shop. The petitioner paid the necessary deposit



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amount as prescribed in the said advertisement in favour of the fourth respondent. According to the petitioner, the allotment of shops at the new K.Kallikudi Vegetable Market were made by stating that the existing shops in Gandhi Market would be shifted shortly. On the basis of the clear assurance of the second respondent that the shops in the existing Gandhi Market Vegetable Complex would be shifted to K.Kallikudi Vegetable Market, the petitioner accepted the allotment. The petitioner was not able to open the shops and start her business as he was awaiting the shifting of Gandhi Market to New K.Kallikudi Vegetable Market. As the shops in Gandhi Market were not shifted, the petitioner was not able to open his shops and conduct business and so he suffered heavy loss. The petitioner submitted that although he did not conduct business he paid rent for a certain period. However, due to Covid pandemic, he was unable to continue paying rent, resulting in accumulation of substantial rental arrears. In this scenario, the fourth respondent issued the impugned notice dated 10.09.2024, directing the petitioner to pay the arrears of rent immediately failing which it was stated that the allotment would be cancelled and that arrears of rent would be recovered under the provisions of the Revenue Recovery Act. The petitioner aggrieved by the said order filed the above writ petition for the aforesaid relief.



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3. The learned counsel for the petitioner submitted that it was only on the assurance of the second respondent that the existing Gandhi vegetable market would be shifted to new K.Kallikudi vegetable market that, the petitioner applied for allotment of shops as per the tender and accepted the allotment of two shops in the year 2020. He further submitted that though more than 6 years lapsed, the assurance was not adhered and so the petitioner was not able to commence his business at the new K.Kallikudi vegetable market. He further submitted that it was only due to the inaction of the respondents in not adhering to the assurance that the petitioner was unable to conduct his business which ultimately resulted in accumulation of arrears of rent.

4. The learned Additional Advocate General for the respondents, on instructions, submitted that no such assurance was given as pleaded by the petitioner and the petitioner had voluntarily applied for allotment of shops in the new K.Kallikudi vegetable market. The learned Additional Advocate General submitted that even the terms and conditions of allotment did not refer to any assurance of shifting of Gandhi market to the new K.Kallikudi vegetable market. The learned Additional Advocate General further submitted that the petitioner was using the alleged assurance as a ruse for evading the liability of



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paying the huge arrears of rents. The learned Additional Advocate General submitted that the contention of the petitioner that he was waiting for more than 7 years for shifting of the old market without conducting business was unbelievable. The petitioner could not have retained the shop without conducting business, more so, when the petitioner was aware that he was liable to pay huge rent. The learned Additional Advocate General submitted that if really, the petitioner incurred losses, he would have surrendered the keys of the shop to the respondents. The learned Additional Advocate General submitted that there was absolutely no justification for the petitioner to retain the keys of the shop when he allegedly did not conduct any business there. The learned Additional Advocate General therefore submitted that there were no merits in the writ petition and the same deserved to be dismissed.

5. Heard both sides and perused the materials placed on record.

6. It is undisputed that the petitioner applied for allotment of shop in the new K.Kallikudi vegetable market by enclosing the required documents and fees for allotment in pursuance of the advertisement issued by the respondents calling for tender for allotment of shops. It is also undisputed that on receipt of the petitioner's application, the petitioner was allotted two shops in Shop Nos.B1-5,52 and B1-24,33, vide proceedings of the fourth respondent, dated



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05.09.2020, on certain terms and conditions stipulated in the allotment order. As the petitioner failed to remit the rent there was huge accumulation of rent of about Rs.10,25,261/-. The petitioner inspite of huge arrears of rent, retained the shops and therefore, the respondents were put to monetary loss. Ergo, the fourth respondent issued the impugned notice. Aggrieved by the impugned order, the petitioner filed the above writ petition.

7. The petitioner's case is that the petitioner had accepted the allotment of the shops only on the assurance of the respondents that Gandhi Market would be shifted to K.Kallikudi Vegetable Market. The petitioner having taken such stand is bound to establish the same. The burden is on the petitioner to show when, how and by whom the assurance was given. There is absolutely no iota of material to establish the alleged assurance. On the other hand, the learned Additional Advocate General, referring to the terms and conditions of the allotment order and the advertisement calling for tenders, filed in the type set of papers submitted that no such assurance was given. I have gone through the terms and conditions of the allotment order and also the advertisement and I find no promise or assurance as claimed by the petitioner is found therein. On the contrary, one of the terms and conditions of allotment is that the Trichy Market Committee, was entitled to recover the possession of the shop for non



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payment of rent for three consecutive months, and that the allotment would be deemed to be cancelled automatically on failure to remit the rent for three consecutive months. I am therefore of the view that only to evade the liability to pay huge arrears of rent of Rs.10,25,261/-, the petitioner has come out with the alleged assurance of shifting of Gandhi Market.

8. It is also pertinent to note here that the petitioner continued to retain the keys of the shop without paying any rent. The explanation given by the petitioner for retaining the keys is that he was hoping that the Gandhi Market would be shifted to K.Kallikudi Vegetable Market. According to the petitioner, he retained the keys of the shop without doing business in anticipation of shifting of Gandhi Market for over 7 years. In my opinion, no reasonable person would hold on to the keys of the shop without conducting business, fully aware of the obligation to pay the rent. I therefore find the said contention of the petitioner not only improbable but also farcical. So, the said contention lacks merit. In any event, the petitioner having accepted the allotment of the shops voluntarily and fully knowing that he was bound by the terms and conditions of the allotment cannot wriggle out of the liability, more so, when no justifiable reasons are assigned for the same. The respondents having established the violations of the terms and conditions of the allotment order, I find no infirmity



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or illegality in the impugned order and hence the same does not call for any interference.

9. I therefore find no merits in the writ petition and the same is dismissed.

No costs. Consequently, connected miscellaneous petitions are closed.

25.11.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
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N.MALA, J.

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