

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2015

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.16430 of 2015
and MP.No.1 of 2015

1.K.Madhaiyan
2.C.Annadurai
3.P.V.Krishnamurthy
4.P.S.Nawab John
5.M.Alagammal

.. Petitioners

Vs

The Executive Officer,
Pennagaram Town Panchayat,
Pennagaram,
Dharmapuri District.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondent to permit the petitioners to run the shops in Shop Nos.1 to 5, Bus Stand, Pennagaram, Dharmapuri District by giving one year time and giving assurance to the petitioners after constructing the shops will be hand over to the petitioners by fixing rent as per Government guideline.

For Petitioners : Mr.C.Prakasam

For Respondent : Mr.V.Subbiah
Special Government Pleader

ORDER

The petitioners who are five in numbers who are the lessees of Shops in Pennagaram Bus Stand constructed by the Pennagaram Town Panchayat, have approached this Court for issuance of Writ of Mandamus to direct the respondent to permit the petitioners to run the shops in Shop No.1 to 5 at Pennagaram Bus Stand by giving one year time and assurance to the petitioners after construction of the shops, will be handed over to them by fixing a rent as per the Government guidelines.

2. Earlier the petitioners have filed a Writ Petition before this Court in W.P.No.30166 of 2010. In the said Writ Petition, the petitioners questioned the notice issued by the second respondent dated 27.12.2010. By the said notice, the respondents attempted to evict the petitioners alone, though there were totally 42 shops in the bus stand. The reason given in the said notice dated 27.12.2010 is that the Town Panchayat has passed a resolution on 29.11.2010 to improve the facilities in the bus stand and to construct permanent shops.

3. At the time when the earlier Writ Petition was entertained, an interim order was granted, by which the petitioners continued in possession. The Writ Petition was pending and after nearly five years, it was heard by this Court on 13.04.2015 and this Court after taking into consideration the facts and circumstances of the case and also the fact that the respondent/Town Panchayat did not file any counter affidavit, observed that it will be inequitable to allow the respondents to implement the notice dated 27.12.2010. With the said observation, the Writ Petition was disposed of leaving it open to the respondents to initiate fresh action, if they are so advised. Thus, the object for which the earlier notice was issued on 27.12.2010, was to provide better facilities in the bus stand complex and to construct permanent shops. It is important to note that the resolution dated 29.11.2010 in Resolution No.89, did not refer to the 5 shops namely Shop Nos.1 to 5 occupied by the petitioners, but refers to all 42 shops in the bus stand complex.

4. Be that as it may, after the earlier Writ Petition was disposed of, the impugned notices were issued to the petitioners calling upon them to evict and hand over possession within a period of seven days, failing which, they will be constrained to evict them by forces. Two reasons have been cited in the impugned notice; one being the respondent Town Panchayat seeks to augment the revenue and secondly to improve the facilities of the shop.

5. In the Writ Petition, apart from contending that the impugned auction is illegal, discriminatory, arbitrary, tainted with malafide, specific allegations have been made against the President and Vice President of the Town Panchayat, who had secured lease in the name of Tmt.S.Vijayalakshmi, wife of the President and Tmt.S.Maheswari, sister of the Vice President and they were paying paltry sum as monthly rent and whereas the petitioners, who were given a small open area of 10"x10" were paying rents between Rs.3,723/- and Rs.6,742/-, whereas the kith and kin of the President and Vice President were paying Rs.961/- and Rs.579/- respectively. That apart, several other averments and allegations were made and therefore this Court thought it fit to appoint an Advocate Commissioner by an order dated 21.09.2015. The operative portion of the direction/scope of warrant issued to the Advocate Commissioner is as follows :

"6. Accordingly, Mr.T.Rajkumar, Advocate, High Court having Office at Old No.189, Ist Floor, Linghi Chetty Street, Parrys, Chennai-600 001 is appointed as Advocate Commissioner, who shall visit the Pennagaram Town Panchayat bus stand and note down the physical feature of the petitioner's shop as well as other shops and to note down the particulars as to whether the petitioners shops are located in the prime area of the bus stand and also to note the condition of all the shop premises including the petitioner's shops. The Commissioner shall also take photographs and file a report on or before 12.10.2015. The Officials of the Municipality shall give the entire details of the shops and rent amount being paid by the occupants to each shop, to the Advocate Commissioner.

6. In terms of the above direction, the learned Advocate Commissioner had to visit the Town Panchayat Bus Stand, note down the physical features of the petitioners' shops as well as other shops; note down the particulars as to whether the petitioners' shops are located in prime area of the bus stand; note down the condition of all premises including the petitioners' shops and for which purpose, the Commissioner has to take photographs and file a report.

7. The learned Advocate Commissioner has promptly filed a report supported by photographs, which has been neatly placed in an album along with the CD containing the photographs of other areas, of which print out has not been taken. Apart from photograph, each photograph bears the Shop Numbers, names of the lessee and other relevant details.

8. The respondent has filed a counter affidavit inter alia contending that they propose to develop the shopping area and the petitioners in Writ Petition have to hand over the shops to them. Further, it is stated that the resolution was passed by the Town Panchayat only to increase the income of the Town Panchayat and detailed estimate for construction of shopping complex has been sent to the Assistant Director of Town Panchayat and the same is under consideration. Therefore, it is stated that the plea raised by the petitioners contending that they are sought to be unlawfully evicted is not tenable. Further the counter affidavit states that every measure has been taken by the elected body to improve and develop the income of the Pennagaram Town Panchayat.

9. Heard the learned counsel for the parties and perused the materials placed on record as well as the report of the learned Advocate Commissioner, the sketch produced by the Executive Officer and the respondent Town Panchayat.

10. From the report of the learned Advocate Commissioner, it is seen that the five shops which has been allotted to the petitioners were not in fact shops , but an open area over which the petitioners have put up temporary structures. The learned Advocate Commissioner would state that not only the petitioners, the other 37 shop owners have encroached into the common area. This should be seriously dealt with by the respondent and the encroachment over and above the allotted extent should be forthwith removed. Secondly as noticed above, in the impugned order two reasons have been stated. One is to increase the revenue of the Town Panchayat and second is to improve the facilities in the bus stand.

11. On a perusal of the sketch produced by the Executive Officer, it is evidently clear that both these stand cannot be achieved and it is only a proposal to remove the petitioners' five shops. In fact, there is no demolition required for these shops, because, it is only a temporary structure. That apart, it is not known as to how the revenue will be increased if the five shops are removed, when they are paying five times more than the rent paid by the President's wife and Vice President's sister. There is no gross discrimination in the lease rental rates collected from the various shop owners. The learned Advocate Commissioner also pointed that there are temporary shops and one of the area is shown as "Kulam" It is fully a open area, freely accessible to the general public. Furthermore, in respect of 37 other shops, the Commissioner has found that lease have been renewed upto the year 2018. Thus, it is evidently clear that twin objective sought to be achieved through the impugned notice are in fact a ruse with a view to somehow evict the petitioners from the area in question. Admittedly, they are small traders and if they are evicted from the trading area, it cannot increase the revenue. But the reason assigned in the impugned order is not only arbitrary, but it is also discriminatory since 37 other shops are not been proposed to be demolished and as already observed, it is not known as to how the small five areas measuring 10"x10" have affected the income of the Town Panchayat. Thus, it is evident that the petitioners have been discriminated, singled out and the intention appears to be not bonafide.

12. Hence, in view of all the above reasons, the Writ Petition is allowed. Since this Court has observed that the removal of shops would serve no purpose, the Town Panchayat shall accept the rental from the petitioners and allow them to continue in business as it has been done for other shop owners. This Court places on record the efforts taken by the learned Advocate Commissioner, his prompt attitude in submitting the report and clear submissions made in the open Court. Though the Advocate Commissioner has filed an application for additional remuneration on a suggestion made by this Court, he has submitted that he is fully satisfied with the remuneration already paid as per the order dated 21.09.2015 and hence, no additional remuneration is ordered.

13. Since the order of status quo had been in force, it is stated that the respondent/Town Panchayat has not received the rent from the petitioners. In the light of the above, the Director of Town Pachayat is directed to receive the rent from the petitioners. There shall be no orders as to the costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

ds

To

1. The Executive Officer,
Pennagaram Town Panchayat,
Pennagaram,
Dharmapuri District.

2. The Director of Town Panchayat
Kuralagam, Chennai

1 cc to Mr.C. Prakasam, Advocate, Sr. 65830

W.P.No.16430 of 2015

VS (CO)
kk 28/12

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