

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WA.No.796/2017 & CMP.No.10986/2017

D.Kuppammal ..Appellant/Writ petitioner

Vs

The Commissioner
Mayiladuthurai Municipality
Mayiladuthurai. ..Respondent/Respondent

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court dated 6.4.2017 made in WP.No.4426/2017 filed under Article 226 of the constitution of India praying for the issuance of writ of certiorari, to call for the records of the 1st respondent passed in Na.Ka.No.1924/2015/ H2 dated 13.01.2017 and to quash the same.

For Appellant: Mr.G.Sankaran

JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.]

The writ petitioner, aggrieved by the dismissal of the writ petition in WP.No.4426/2017 vide impugned order dated 06.04.2017, has filed the present writ appeal.

2 The appellant / writ petitioner, in the affidavit filed in support of WP.No.4426/2017 would aver among other things that she is the Convenor of "Shri Maha Mariamman Self Help Group" comprising of members belonging to poor and downtrodden and socially suppressed community and she would further state that the respondent / Municipality had constructed a public toilet in the new Bus Stand near Varadhachariar Park under ISP and Vambay Scheme and on completion of construction, it was handed over to the writ petitioner / appellant for the purpose of proper maintenance and also in the interest of public health, vide proceedings of the respondent dated 28.03.2013 and a direction was also given to the petitioner to maintain the toilet in a hygienic manner without giving any room for any complaint from the public. The petitioner, in pursuant to the order of Allotment dated 28.03.2013 issued by the respondent / Municipality, was maintaining the said toilet by engaging the members of the

Self Help Group without any complaint whatsoever. However, the running of the toilet sought to be disturbed and therefore, she filed OS.No.50/2015 on the file of the Court of District Munsif at Mayiladuthurai, against the respondent herein, praying for permanent injunction, restraining them from dispossessing her from maintaining the said toilet except under due process of law. The said suit, after contest, came to be decreed as prayed for vide judgment and decree dated 23.11.2016 and no further challenge has been made and it has become final. Later on, the respondent / Municipality has sent the impugned communication dated 13.01.2017, informing the writ petitioner / appellant that the writ petitioner / appellant, while maintaining toilet, used to collect usage charges from the general public and complaints have also been received and also indicated that in order to augment revenue for the Local Body, a decision has been taken to go for public auction and therefore, informed the writ petitioner that the license granted for maintaining the toilet, has been cancelled and called upon her to hand over the possession of the same within fifteen days from the date of receipt of the said notice/communication. The writ petitioner, aggrieved by the impugned proceedings of the respondent / Municipality dated 13.01.2017, has filed the said writ petition.

3 The said writ petition was entertained and interim stay of operation of the impugned order, was granted for a limited period vide order dated 22.02.2017. The writ petition was taken up for final disposal and a Single Bench of this Court has recorded the finding that the petitioner was merely asked to maintain the toilet and thus, there is no right vest in her and through the impugned communication, the writ petitioner was informed of the decision of the Local Body to go for public auction and for which, the writ petitioner cannot be a person said to be aggrieved. The Single Bench also recorded the finding that the petitioner is not paying any fees for such accommodation and in such view of the matter, there is no necessity to put her on notice also and citing the said reasons, has dismissed the writ petition vide impugned order dated 06.04.2017 and further indicated that till the auction process is over in the form of conferment, the petitioner can continue to maintain the toilet. The writ petitioner aggrieved by the dismissal of the said writ petition, has preferred the present writ appeal.

4 Mr.G.Sankaran, learned counsel appearing for the appellant would strenuously contend that the respondent / Municipality while issuing the impugned proceedings, has given a total go-by to the findings recorded in the judgment and decree dated 23.11.2016 in OS.No.50/2015, wherein a specific finding has been recorded that the petitioner did not collect any usage charges and no complaint from the public whatsoever, has been received, through the testimony of one of the officials of the respondent / Municipality, viz., DW1. It is the further submission that as on today, the maintenance of

the toilet is being done free by the petitioner's Self Help Group and in the event of auction allowed to be continued, usage charges will be levied, thereby, public will be put to hardship and detriment and taking into consideration of the fact that the Women Self Help Group is benefited, prays for relaxation of the condition / payment of Earnest Money Deposit with a permission to participate in the Tender proceedings or in the alternative, to keep the writ appeal pending and call for the report as to the result of the auction proceedings.

5 The Court has considered the submissions made by the learned counsel for the appellant / writ petitioner and perused the materials placed before it.

6 The appellant / writ petitioner, on an earlier occasion, apprehending that the services rendered by the Self Help Group in the form of free maintenance of the toilet sought to be dispensed with without resorting to due process of law, has filed a civil suit in OS.No.50/2015 and obtained a decree on 23.11.2016. The result of the civil proceedings is that services of the writ petitioner as a licensee, cannot be dispensed with, without resorting to due process of law.

7 A perusal of the order granting license would indicate that the appellant / writ petitioner shall not give any room for any complaint while maintaining the toilet. This Court has also put a specific question to the learned counsel for the appellant as to whether the appellant / writ petitioner is collecting any usage charges, it is the categorical submission of the learned counsel that no such charges are being collected and it appears that the appellant / writ petitioner is rendering social service.

8 It is not in dispute that the status of the appellant / writ petitioner is only a licensee and though in paragraph No.2 of the impugned proceedings, it has been stated that complaints have been received from the general public as to the collection of usage charges, the said fact has not been weighed with the mind of the respondent / Municipality for the reason that in paragraph No.3 of the proceedings of the respondent dated 13.01.2017, a decision has been taken to augment the revenue of the Local Body and accordingly, the license to maintain the said toilet, is brought forth by way of public auction. A perusal of the Tender-cum-Public Auction Notice dated 04.07.2017 issued by the respondent / Municipality, published in Dinathanthi News Daily, Tanjore Edition, dated 05.07.2017, would also indicate that the Local Body has also passed a Resolution in No.116 dated 19.06.2017 to go for Tender-cum-Public Auction of the right of maintenance of the said toilet in the form of License. As rightly observed by the learned Single Judge, in the impugned order, the appellant / writ petitioner was given a mere right to maintain the toilet and she is not paying any fees / license fee for that and therefore, the contention put forth

by the writ petitioner / appellant that she should have been put on notice, has been rejected.

9 In the considered opinion of the Court, the reasons assigned for the dismissal of the writ petition, cannot said to be perverse and no infirmity is also noted. It is also to be reiterated at this juncture that the writ petitioner / appellant was a mere licensee and she has no vested right to maintain the toilet and the Local Body, in order to augment revenue, took a fair decision to go for Tender-cum-Public Auction and it cannot be faulted with. It is also to be noted that the writ petitioner / appellant did not make a challenge to the Tender-cum-Public Auction Notification issued by the respondent / Municipality dated 04.07.2017.

10 The respondent / Municipality shall ensure fair and transparent procedure while conducting the Tender-cum-Public Auction in terms of the Notification dated 04.07.2017 and after the process is over, shall also ensure that the public toilet in the Mayiladuthurai Bus Stand is maintained in a hygienic manner without giving any room for any complaints.

11 The writ appeal is dismissed at the admission stage itself, with the above observations. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AP

To

The Commissioner
Mayiladuthurai Municipality
Mayiladuthurai.

+ 1 cc to Mr.G. Sankaran, Advocate SR.48868

WA.No.796/2017

EV(CO)
Eu 1.8.17