

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.535 of 2004

Palani Town Muslim
Dharma Paripalana Sangam,
represented by its Secretary
M.Sahul Hameed

... Petitioner

Vs.

1. Govt. Of Tamil Nadu
rep. by its Secretary
Local Administration
Fort St. George,
Chennai - 600 009.
2. Palani Municipality
rep. by its Commissioner
Palani, Dindigul (Dt.)

.... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the second respondent not to remove the shops in the land bearing TS No.50, at Subramaniam Road, Palani, belonging to the petitioner Sangam and further direct the second respondent to hold an enquiry as to the nature of business constituting market or individual business.

For Petitioner : Mr.H.Nazirudeen

For Respondent : Mr.M.Digvijaya Pandian for R1
Additional Government Pleader
Mr.R.Srinivas for R2

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus forbearing the second respondent not to remove the shops in the land bearing T.S.No.50, at Subramaniam Road, Palani, belonging to the petitioner Sangam and further to direct the second respondent to hold an enquiry as to the nature of business constituting market or individual business.

2.Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader appearing for the first respondent and the learned counsel appearing for the second respondent.

3.The brief facts of the case are as follows: The petitioner property is a Wakf property. For the purpose of achieving the objects of the Wakf, the petitioner Sangam is recognized by the Wakf Board and the petitioner is paying the contribution to the Wakf Board. The income derived from the properties are utilized only for religious, charitable and philanthropic purpose.

4.The petitioner made a representation to the second respondent seeking permission to have private vegetable market in the Wakf properties. The second respondent by way of resolution dated 29.08.2002 refused to grant permission. Hence, the petitioner Sangam has preferred an appeal under Section 36 of the Tamil Nadu District Municipalities Act before the first respondent/ State Government for cancelling the resolution. In view of the pendency of the appeal and in compliance of the resolution, the petitioner had given up the proposal to have a private market.

5.Thereafter, since the petitioner Sangam had chosen to put up two shops in the place belonging to the Wakf, the Sangam leased out the two shops for the persons for business purposes. Subsequently, the second respondent having construed the lease of two shops for vegetable business as a private market issued notice dated 09.09.2002, for removing the same. Hence, the petitioner filed W.P.No.38550 of 2002 before this Court, challenging the notice of the second respondent dated 09.09.2002 and this Court vide order dated 11.10.2002, has held as follows:

"4.When the records show that the application was for permission for running vegetable market and the second record also shows that this permission was not granted, there is no justification to quash the said order since there is no illegality pointed out by the learned counsel for the petitioner except to state that what is in existence is not a market but two shops. It is difficulty for this court to go into the dispute facts here. However, if the petitioner is able to show to the respondents that these are the two shops for which permission has been granted already by the respondent Municipality, the respondent Municipality will necessarily take note of the same. The writ petition is disposed of

accordingly. No costs. Consequently connected W.M.P. is closed."

6.The learned counsel appearing for the petitioner submitted that the petitioner Sangam constructed shops and is doing the vegetable business in the shops and prays that it should not be construed as private market as claimed by the second respondent. Hence, he prayed that without the second respondent's interference, the petitioner may be permitted to run the business in the Wakf property. He further submitted that the petitioner Sangam has also made a representation dated 08.01.2004, in this regard, to the second respondent.

7.Mr.Srinivas, learned counsel appearing for the second respondent drew the attention of this Court to Section 262 of the Tamil Nadu District Municipalities Act, 1920, wherein, that Section impose the condition that no person shall open a new private market or continue to keep open a private market unless he obtains from the council a licence to do so.

8.It is useful to extract hereunder Section 262 of the Tamil Nadu District Municipalities Act, 1920:

"262.Licence for private market.- (1) No person shall open a new private market or continue to keep open a private market unless he obtains from the council a licence to do so.

(2) Application for such licence shall be made by the owner of the place in respect of which the licence is sought [not less than thirty and not more than ninety days before such place is opened as a market, or the commencement of the year for which the licence is sought to be renewed], as the case may be.

(3) The council shall, as regards private markets already lawfully established and may, at its discretion as regards new private markets, grant the licence applied for subject to such regulations as to supervision and inspection and to such conditions as to sanitation, drainage, [water-supply], width of paths and ways, weights and measures to be used, and rents and fees to be charged in such market as the council may think proper; or the council may refuse to grant any such licence for any new private market. The council may, however, at any time, for breach of the conditions

thereof, suspend or cancel any licence which has been granted under this section. The council may also modify the conditions of the licence to take effect from a specified date.

(4) When a licence is granted, refused, suspended, cancelled or modified under this section, the council shall cause a notice of such grant, refusal, suspension, cancellation or modification in English and [in a regional language] of the district to be posted in some conspicuous place at or near the entrance to the place in respect of which the licence was sought or had been obtained.

(5) Every licence granted under this section shall expire at the end of the year."

Perusal of the above provision discloses that it is necessary to obtain a licence from the Municipality for running a private market.

9. It is useful to refer hereunder that the Law Lexicon - cum - digest defines Market as:

"9047. Market: S 2(5), Territorial Councils Act. Includes any place where persons assemble for the sale of, or for the purpose of exposing for sale, meat, fish, fruits, vegetables, animals intended for human food or any other articles of human food whatsoever with or w/o the consent of the owner of such place, notwithstanding that there may be no common regulation for the concourse of buyers & sellers & whether or not any control is exercised over the business of, or the persons frequenting, the market by the owner of the place or by any other persons.

S 2(xx), Cantt Act. - do - (then add) but shall not include a single shop or group of shops not being more than six in number & shops within unit lines."

10. The disputed question of facts whether it is a private shop or private market cannot be gone into under Article 226 of the Constitution of India. It is for the Authorities to decide whether it is a private market or individual shops belonging to the Sangam. Hence, this Court is not inclined to grant the relief sought for by the petitioner since the matter involves disputed question of facts, which have to be decided only by the

Authorities. It is open to the petitioner to approach the appropriate forum for his grievance. Accordingly, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pri

To

1. The Secretary
Govt. Of Tamil Nadu
Local Administration
Fort St. George,
Chennai - 600 009.
2. The Commissioner
Palani Municipality
Palani, Dindigul (Dt.)

+1cc to Mr.R.Srinivas, Advocate, S.R.No.50598
+1cc to Mr.P.Haribabu, Advocate, S.R.No.50039
+1cc to Mr.M.S.Velusamy, Advocate, S.R.No.50026
+1cc to the Government Pleader, S.R.No.50148

W.P.No.535 of 2004

RSI(CO)
EU(28/08/2017)

सत्यमेव जयते

WEB COPY