

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.23594 of 2016
and
W.M.P.Nos.20206 & 20207 of 2016

Miss.S.Priya

.. Petitioner

Vs.

- 1.The Secretary to Government,
Revenue Department.
Government of Puducherry,
Puducherry.
- 2.The District Collector,
Government of Puducherry,
Puducherry.
- 3.The Commissioner (Excise) cum Secretary
to Government - Revenue,
Government of Puducherry.
- 4.The Deputy Commissioner,
(Excise)cum Secretary,
Government of Puducherry.

5.Mr.Mohanakrishnan

.. Respondents

Writ petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to direct against the respondents 1 to 4 to call for the entire records pertaining to the order of confirmation dated 30.06.2016 passed by the 4th respondent in favour of the 5th respondent herein as the successful bidder in auction conducted by the Government of Puducherry for the Arrack Shop in A.S.No.4 (o), Oulgarat Commune, Karuvadikuppam, Puducherry-605008 for the period of 2016-2017 and quash the same and direct the respondents 1 to 4 to renew the Lease in favour of the

petitioner for the Arrack Shop in A.S.No.4(o), Oulgarat Commune, Karuvadikuppam, Puducherry-605008 for the period of 2016-2017 as per renewal application dated 26.05.2016.

For Petitioner : Mr.A.R.L.Sunderasan,
Senior counsel.

For Respondents : Mr.K.R.Harin,
Additional Government Pleader,
Puducherry, For R1 to R4
Mr.B.BalaVijayan, for R5.

O R D E R

The petitioner is aggrieved against the order of confirmation dated 30.06.2016 passed by the 4th respondent in favour of the 5th respondent in respect of the Arrack Shop in A.S.No.4(o) Oulgarat Commune, Karuvadikuppam, Puducherry-605008. The Petitioner also consequently seeks for a direction to the respondents 1 to 4 to renew the lease in favor of the petitioner for the said Arrack shop for the period 2016-17 as per his renewal application dated 26.05.2016.

2. Heard Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for the petitioner and the learned counsels appearing for the respondents.

3. When the matter was initially taken up for admission on 11.07.2016, this Court passed an order calling upon the petitioner to produce necessary documents in support of the compliance of the conditions stipulated in the notice dated 23.06.2016. The said order reads as follows:

"I have heard Mr.C.Uma Shankar, learned counsel for the petitioner.

2. Prima facie, this court is of the view that the petitioner has not fulfilled the conditions stipulated in the notice dated 23.06.2016, issued by the fourth respondent. In terms of the said notice, the petitioner is required to produce Bank Guarantee/FDR and clear all arrears till the said date. The no due certificate produced by the petitioner is only for the arrears of Kist. Therefore, it does not mean that the petitioner has complied with the conditions

stipulated in the notice dated 23.06.2016. Further, the letter given by the Indian Bank, Kamaraj Salai Branch, Puducherry, dated 20.06.2016, is only 'in principle' sanction for a Bank Guarantee and the Bank has stated that this will not bind them or their Official. Therefore, the petitioner has to prove that he had given the requisite Bank Guarantee/FDR well before the date on which the auction was conducted, in which the sixth respondent has been declared as the successful bidder, and license issued in his favour. Faced with this situation, the learned counsel appearing for the petitioner seeks two weeks' time to produce necessary documents.

Post after three weeks."

4. Thereafter, the matter was taken up on 01.08.2016, for further hearing, on which day, there was a change of counsel for the petitioner, who seems to be not aware of the earlier order passed on 11.07.2016. Therefore, this Court on 01.08.2016, passed the following order, clearly indicating that the petitioner will not be heard on other grounds, unless and until the petitioner satisfies the above interim direction issued by this Court. The said order reads as follows:

"It is represented on behalf of M/s.AL.Gandhimathi Associates, the learned counsel appearing for the petitioner that the counsel, who is engaged in the matter, is not available today. Unfortunately, the learned counsel, who has entered appearance recently (i.e. on 25.07.2016) is not aware of the order passed by this Court when the matter was heard for admission on 11.07.2016. For better reference, the order is quoted herein below:-

"I have heard Mr.C.Uma Shankar, learned counsel for the petitioner.

2. Prima facie, this Court is of the view that the petitioner has not fulfilled the conditions stipulated in the notice, dated 23.06.2016, issued by the fourth respondent. In terms of the said

notice, the petitioner is required

to produce Bank Guarantee/FDR and clear all arrears till the said date. The no due certificate produced by the petitioner is only for the arrears of kist. Therefore, it does not mean that the petitioner has complied with the conditions stipulated in the notice, dated 23.06.2016. Further, the letter given by the Indian Bank, Kamaraj Salai Branch, Puducherry, dated 20.06.2016, is only "in principle" sanction for a Bank Guarantee, and the Bank has stated that this will not bind them, or their Officials. Therefore, the petitioner has to prove that he had given the requisite Bank Guarantee/FDR well before the date on which, the auction was conducted, in which, the sixth respondent has been declared as the successful bidder, and licence issued in his favour. Faced with this situation, the learned counsel appearing for the petitioner seeks two weeks' time to produce necessary documents."

2. In terms of the above order, the counsel, who had entered appearance previously, was granted two weeks' time to produce necessary documents to satisfy the query raised by this Court. However, the new counsel appears to be totally ignorant of the above direction issued by this Court. Hence, unless and until, the petitioner satisfies the above direction, this Court will not be inclined to hear the petitioner on other grounds.

List after three weeks"

5. Thereafter, the matter is taken up today, after few adjournments.

6. The learned Senior Counsel submitted that though the

petitioner is not in a position to place the necessary documents before this Court, as directed by the earlier interim orders,

still the petitioner has to be heard on merits in the writ petition. The learned Senior Counsel for the petitioner submits that the petitioner will not be in a position to comply with the interim order passed by this Court.

7. I don't think that the learned Senior Counsel is justified in making such contention unless and until the petitioner either comply with the order passed by this Court, or get it set aside by the Appellate Court / Forum. In this case, admittedly, the said interim order passed by this Court has not been challenged and is still in force. Therefore, without complying the said interim order, the petitioner is not entitled to seek for hearing of the main writ petition.

8. Considering the above stated facts and circumstances and the submission made by the learned Senior Counsel, I don't think that the petitioner can seek indulgence of this Court to exercise its discretionary jurisdiction to entertain and hear the writ petition further in the absence of compliance of the interim order passed by this Court earlier. Accordingly, this writ petition dismissed.

9. The learned Senior Counsel, at this stage, seeks an indulgence of this Court to issue a direction to the respondents 1 to 4 to refund the amount paid along with the renewal application. Needless to say, that it is for the concerned respondent to consider the said request of the petitioner and pass orders on merits and in accordance with law, and therefore, this Court, at this stage, is not inclined to issue any such direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

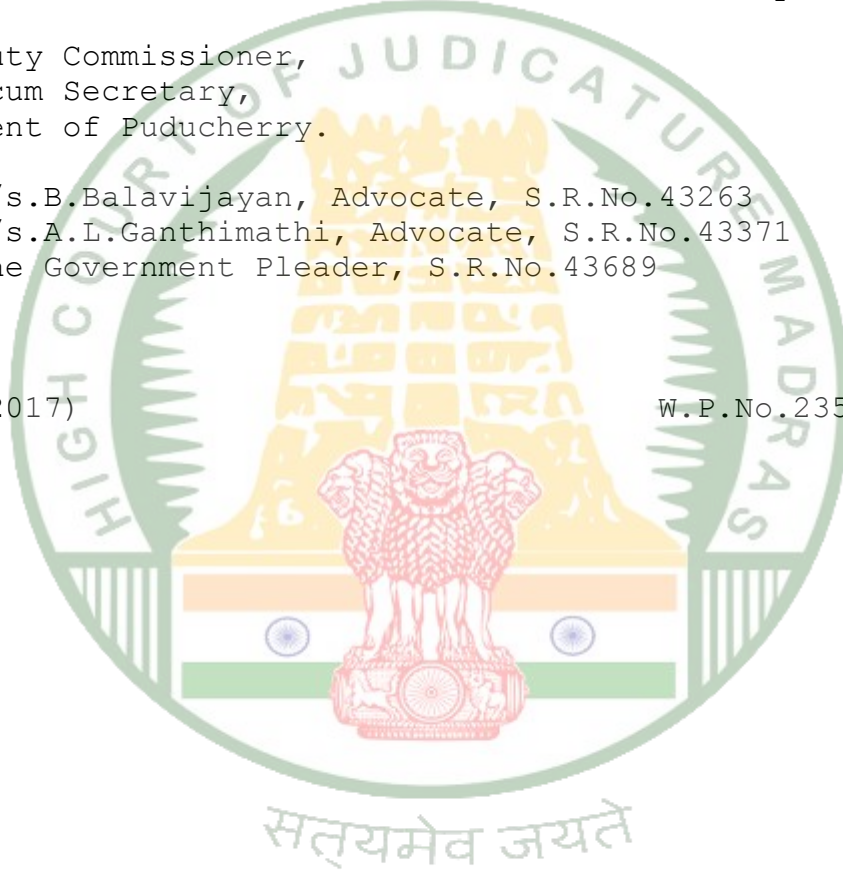
To

1. Secretary to Government,
Revenue Department.
Government of Puducherry, Puducherry.
2. The District Collector,
Government of Puducherry, Puducherry.
3. The Commissioner (Excise) cum Secretary,
to Government - Revenue, Government of Puducherry.
4. The Deputy Commissioner,
(Excise) cum Secretary,
Government of Puducherry.

+1cc to M/s.B.Balavijayan, Advocate, S.R.No.43263
+1cc to M/s.A.L.Ganthimathi, Advocate, S.R.No.43371
+1cc to the Government Pleader, S.R.No.43689

NR(CO)
CU(04/07/2017)

W.P.No.23594 of 2016



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