

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2017

Coram

The Honourable Mr.Justice HULUVADI G.RAMESH,
and
The Honourable Dr.Justice S.VIMALA

W.A.NO.79 OF 2016

1. The Commissioner of Excise,
Government of Puducherry,
Puducherry.

2. The Deputy Commissioner of Excise,
Government of Puducherry,
Puducherry ... Appellants/Respondents

versus

N.Satyaseelan ... Respondent/Petitioner

For Appellant : Mr.A.Tamilvanan

For Respondent : Mr.R.Suresh Kumar for
M/s.K.M.Vijayan Associates

Prayer: This Writ Appeal is filed under Clause 15 of the Letters Patent, seeking to set aside the order of the learned Judge dated 18.12.2015 in W.P.No. 16777 of 2015.

Writ petition filed under Article 226 of the Constitution of India praying for the issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in publication issued in No.1060/thu.Aa (Ka)/Auction/2015-16 Puducherry dt 8.6.2015 and quash the same in so far as the Shop No.1A allotted to the petitioner is concerned in Item No.1 of the notification and consequentially direct the respondents to permit the petitioner to operate the arrack shop for the period 2015-16 as the license for the period 2014-15 was unutilized by non supply of arrack by the respondents

JUDGMENT

(Judgment of the Court was made by
HULUVADI G. RAMESH, J.)

This Writ Appeal is directed against the order of the learned single Judge, dated 18.12.2015 in W.P.No. 16777 of 2015.

2. By proceedings dated 8.6.2015, the Deputy Commissioner of Excise, Puducherry, has issued notification for public auction of retail vending of Toddy and arrack shops, including the appellant's arrack shop for the lease period from 1.7.2015 to 30.6.2016 for the lease year 2015-16. Aggrieved by the same, the respondent has approached this Court by way of Writ Petition.

3. According to the respondent, he was unable to take minimum quantity of arrack as per the norms and also pay the kist as there were no considerable sales of arrack due to location of another arrack shop belonging to one Jayalakshmi. In such circumstances, he requested the appellants for remission of kist amount and also for shifting the arrack shop of Jayalakshmi. Despite of his repeated representations, the appellants had not taken steps either for re-locating the shop or waiving of kist amount. As the appellants are insisting the respondent to pay the kist amount of Rs.8,25,300/- per month and proceeding with the auction of his shop, the respondent has filed the writ petition.

4. The learned Judge, after adverting to the various submissions made on either side, allowed the writ petition on the ground that contrary to the norms, shop of the licensee Jayalakshmi was located nearer to the respondent's shop affecting the sales drastically, which made him unable to take the minimum quantity of arrack from the Government and hence, it was not open to the appellants to demand kist from the respondent from the date of stoppage of arrack and accordingly, the impugned proceedings came to be quashed.

5. Heard the learned Government Pleader (Pondicherry) appearing for the appellants and the learned counsel for the respondent.

6. It appears that the respondent was a successful bidder of two arrack shops situated at Ariyankuppam Commune Panchayat and Abisekkakuppam for excise year 2013-14. The

dispute is with regard to the shop situated at Ariyankuppam. It is to be noted that after expiry of the excise year 2013-14, the respondent has renewed the lease for the said shop for the year 2014-15 at 5% enhanced kist amount, which establishes that he derived the profits. It is also to be noted that the so-called arrack shop belonging to Jayalakshmi, located nearer to respondent's shop, was very much existing from the lease year 2010-11 to 2013-14 and knowing full well about the same, the respondent got renewed the lease for the year 2014-15 on payment of enhanced 5% kist. Even though the shop was brought to re-auction on 21.1.2015, due to intervention of the Court by way of interim stay, auction was not conducted. It is contended on behalf of the appellants that taking advantage of stay granted by this Court, the respondent stopped paying monthly kist and became due for a sum of Rs.75 lakhs to the Government, which prompted the Government to stop the supply of liquor to the appellant's shop. Therefore, having accepted the terms and conditions of the lease and the contractual obligations and continuing with the shop, it is not open to the respondent to stop the payment of kist. Despite non paying the kist, permitting the respondent to operate the arrack shop for further period, i.e. for 2015-16 as granted by the learned Judge, in our view, cannot be sustained. Accordingly, we set aside the order of the learned Judge. However, taking note of the facts and circumstances of the case and the hardships expressed by the respondent, we direct the respondents to re-consider the case of the respondent and take appropriate decision in accordance with law by imposing justifiable conditions.

With the above direction, this Writ Appeal is disposed of. No costs.

Sd/-

सत्यमेव जयते
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

suk
To

1. The Commissioner of Excise,
Government of Puducherry,
Puducherry.

2. The Deputy Commissioner of Excise,
Government of Puducherry,
Puducherry

+1cc to Government Pleader for Puducherry, sr.22449

+1cc to M/s.K.M.Vijayan Associates, Advocate sr.22178

W.A.NO.79 OF 2016

vsn(co)
ss(19/6/2017)



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