IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.No.33963 of 2002
and
W.M.P.No.50218 of 2002

Tmt. Chandrakani
W/o Late G.Subramaniam

...Petitioner

Versus

1. The District Collector,
Dindigul District, Dindugul.

2. The Divisional Excise Officer,
Palani, Dindigul District.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records in Na.Ka.No.S.S.R. 59/86/J3, dated 19.07.2002, passed by the first respondent and to quash the same.

For Petitioner : Mr.E. J. Ayyappan

For Respondents : Mrs. A.Sri Jayanthi
Special Government Pleader

ORDER

Heard Mr. E. J. Ayyappan, the learned counsel appearing for the petitioner, and Mrs. A. Sri Jayanthi, the learned Special Government Pleader for the respondents.

2. The petitioner has filed this Writ Petition, challenging the order passed by the first respondent, dated 19.07.2002.

3. By the impugned order, the petitioner has been directed to pay a sum of Rs.1,61,956.35, being the loss of revenue interest to the Government on account of her husband being not able to operate the licence granted to him, for running the arrack shop, bearing No.14/86-87, Ottanchantram.

4. The licensee is the petitioner's husband, who was granted the licence for the said arrack shop, by proceedings of the Assistant Commissioner of Excise, Dindugul, dated 08.08.1986. At the time, when the petitioner's husband was issued a licence, he had remitted a total sum of Rs.2,72,500/-, which includes i) Earnest Money Deposit (EMD) of Rs.2,500/-, ii) Half month rental amount of Rs.30,505/- and iii) 2 1/2 month rental amount of Rs.30,505/- The period of license was from 15.07.1986 to 31.12.1986.

4.1. The petitioner's husband suffered a severe heart ailment. Consequently, he was unable to run the shop, inspite of having paid a huge sum of money of Rs.2,72,500/-. Therefore, he surrendered the licence to the second respondent on 08.09.1986.

4.2 The fact that the petitioner's husband, due to his health condition, had surrendered the licence is not disputed by the second respondent in the counter affidavit filed by him, rather, it has been admitted. The request for surrender was accepted and an order was passed by the first respondent on 19.09.1986. Much after the said order, the second respondent issued a notice, dated 31.12.1993. By then, the petitioner's husband died. This fact is also accepted in the counter affidavit.

4.3 The petitioner, having left with no other option, filed a Writ Petition, challenging the said notice, dated 31.12.1993, demanding payment of Rs.1,61,956.35. The Court, by order, dated 30.07.2001, allowed the Writ Petition and quashed the notice, dated 31.12.1993 without prejudice to the rights of the respondents to proceed from the stage of the show cause notice, dated 27.01.1988. This notice appears to have been issued to the petitioner's husband.

4.4 Though the licence was surrendered on 08.09.1986, i.e., within 20 days from the date of grant of licence, and the same was accepted by an order, dated 19.09.1986, the respondent did not take immediate action to bring the shop for re-auction, but, after nearly 2 months, the shop was re-auctioned and licence was granted to one P. Rajangam, by proceedings of the first respondent, dated 30.11.1986.

5. Now, the question would be as to whether the petitioner would be liable to pay for the notional loss caused to the Government exchequer. In terms of the licence condition, if a licensee is unable to lift the minimum stock or unable to operate the licence due to his default, then, the Government has to be compensated for the loss, which is called as ''Notional Loss''. This amount can be recovered as arrears of land

revenue in the event of default committed by the erstwhile licensee. However, the case on hand is a peculiar case, where, it is not a question of failure to operate the licence, but, a case of surrender of licence, which was accepted by the Authorities on 19.09.1986. At the time of surrender, the respondents had a sum of Rs.2,72,500/- to their credit, which the petitioner's husband had deposited, viz., three months rent along with EMD of Rs.2,500/-. The respondents have adjusted the amount, and demanded the balance sum.

6. Prior to the passing of the impugned order, when notice was issued after the disposal of the Writ Petition, the petitioner has effected payment of Rs.12,000/-, which is admitted in para No.7 of the counter affidavit. As pointed out earlier, the re-auction was conducted belatedly, and the delay in bringing the shop for re-auction cannot be attributable to the petitioner or to her husband. The new licensee took charge only from 30.11.1986. So far as the period, for which, the petitioner's husband did not operate, at best, can be construed as period of three months, commencing from the date of issue of licence and the date on which the petitioner's husband had paid the entire rental for three months period, viz., Rs.2,72,500/-, of which, Rs.2,500/- was towards EMD.

7. Therefore, in the peculiar facts and circumstances of the case, as it is a case of surrender of licence, the respondents could not have demanded further sum from the petitioner. Further, as noticed above, a sum of Rs.12,000/-, which was paid by the petitioner has also not been adjusted. Therefore, this Court is of the firm view that, by adjusting the amount, which was lying to the credit of the petitioner with the respondents, viz., a sum of Rs.2,72,500/-, + payments made by the petitioner viz. Rs.12,000/- no further amount is liable to be recovered from the petitioner.

8. For the above reasons, the Writ Petition is allowed, the impugned order is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

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To

1. The District Collector,
   Dindigul District, Dindugul.

2. The Divisional Excise Officer,
   Palani, Dindigul District.

+1CC Mr.E.J.AYYAPPAN, Advocate SR.No.69172
+1CC GOVT.PLEADER Advocate SR.No.68872

EGR 13/11/2017

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