



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

**W.A(MD)NO.1449 OF 2017
against
W.P(MD)No.20440 of 2017
and
C.M.P(MD)No.11109 of 2017**

Abdullah,
Son of Mohammed Hussain,
President,
Integrated Manapparai Taluk
Manavarai and Iravai Psanatharkal
Farmer Association,
Register No.198 of 2013,
1222, East Street,
Puthanatham Post,
Manapparai Taluk,
Trichy District.

: Appellant/Petitioner

.vs.

1. The State Government of Tamil Nadu,
represented by its Commissioner of Municipalities
Administration,
Annexe Building 6th Floor,
Chepauk,
Chennai - 600 005.
2. The District Collector,
Trichy District,
Trichy.
3. The Trichirappalli District Co-operative Milk Producers' Union,
represented by its General Manager,
Kottapattu,
Pudukkottai Road,
Trichirappalli - 620 023.
4. The Special Officer-cum-Commissioner,
Manapparai Municipality,
Manapparai, Trichy District.



5. The Regional Director of Municipal Administration,
Thanjavur Region,
No.1, Ayya Street,
Near Kodimarathu Moolai,
Thanjavur.

: Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order of this Court dated 7.11.2017 passed in W.P(MD)No.20440 of 2017, by allowing the Writ Appeal.

Prayer in WP(MD). 20440/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified mandamus to call for the records pertaining to the impugned order issued by the 4th respondent in Na.Ka.No.744/2017/A2 dated 28.10.2017 and quash the same and consequently directing the respondents No.4 and 5 to allot one Shop to the Petitioners Sangam in the Manapparai New Bus Stand, Manapparai Taluk, Trichy District for establishing Aavin Booth.

For Appellant : M/s.S.Vinayak

For Respondents : Mr.G.Muthukannan
1 to 3 and 5 Govt.Advocate

For Respondent-4 : Mr.J.Lawrance.

JUDGEMENT

[Judgement of the Court was made by **M.VENUGOPAL, J.**]

The Appellant/Writ Petitioner has preferred the instant intra-Court Writ Appeal as an 'aggrieved person' as against the order dated 7.11.2017 in W.P(MD)No.20440 of 2017 passed by the Learned Single Judge, in dismissing the Writ Petition.

2.Heard both sides.

3.By consent, the main Writ Appeal is taken up for final disposal.

4.Earlier, the Learned Single Judge while passing the impugned order, dated 7.11.2017 in W.P(MD)No.20440 of 2017(filed by the Appellant as Writ Petitioner) at paragraph 2 and 3, had observed the following:

<https://hcservices.ecourts.gov.in/hcservices/>

'2.The learned counsel appearing for the



petitioner places reliance on the communication said to have been issued by the third respondent. The third respondent has no statutory authority to give any direction to the fourth respondent to allot a shop in the Manapparai Bus Stand premises. It has been consistently held that public properties cannot be given away on patronage to any person. The said allotment should necessarily be made only through auction.

3.The fourth respondent has rightly rejected the request of the writ petitioner. In any event, it is not Aavin which is before this Court. It is only a private individual who has come to this Court. The Petitioner has no locus-standi and has no right either. There is no merit in this Writ Petition.....''

and accordingly, dismissed the Writ Petition.

5.Assailing the correctness, legality and validity of the impugned order, dated 7.11.2017 in W.P(MD)No.20440 of 2017 passed by the Learned Single Judge in dismissing the Writ Petition, the Appellant/Writ Petitioner has filed the present Writ Appeal by taking a plea that the Learned Single Judge had committed an error in coming to the conclusion that the Appellant/Writ Petitioner as 'no locus-standi' to secure the shop for establishment of 'Aavin Booth'.

6.The Learned Counsel for the Appellant/Writ Petitioner projects an argument that the Learned Single Judge should have seen that the Respondents 2 and 3 after a detailed enquiry, had made recommendations to allot shop to and in favour of the Appellant for establishing an 'Aavin Booth'. The Learned Counsel for the Appellant takes a plea that in respect of few shops, the Fourth Respondent/Municipality allotted shops without any public auction and as such, the action of the Fourth Respondent/Municipality is arbitrary and discriminatory one. Yet another contention advanced on behalf of the Appellant is that the Fourth Respondent/Municipality had not placed the matter before the Council for taking appropriate action and in short, the Council being an elected body, is to take a decision. However, in the instant case, it is represented on behalf of the Appellant that the Rejection Order was passed in a mechanical manner and that too, without application of mind.

7.Per contra, it is the submission of the Learned Counsel for the Fourth Respondent that the Learned Single Judge had rightly dismissed the Writ Petition on the ground that the Appellant has no locus-standi and has no right either and the same is a flaw-

8.At this juncture, a mere glance of the grounds of the main

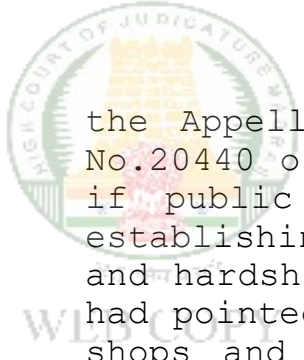


Writ Petition in W.P(MD)No.20440 of 2017 (filed by the Appellant/Writ Petitioner) indicates latently and patently that the Appellant as Writ Petitioner, at Para 13, had averred that if the public auction is conducted and one shop is not given for establishing an 'Aavin Booth', he would be put to irreparable loss and great hardship and furthermore, it was made mention of that a prima facie case and balance of convenience was on the Appellant's side etc.

9. Apart from that, the Appellant in the main Writ Petition had taken a ground that the Fourth Respondent/Municipality ought to have placed the matter before the Council and the Council had to take action. After that only, it is contended on behalf of the Appellant that Fourth Respondent/Municipality shall pass orders. However, in the instant case, the Fourth Respondent/Municipality had not resorted to such a recourse, but passed the impugned order in a mechanical fashion. It is also represented on behalf of the Fourth Respondent/Municipality before this Court that as on date, there is no elected Council and by virtue of the amendment made to the Tamil Nadu District Municipalities Act, 1920, the Commissioner of the Municipality concerned is appointed as Special Officer and he has been vested with necessary powers based on the Tamil Nadu District Municipalities Act, 1920.

10. In this connection, this Court, aptly points out that Section 321 of the Tamil Nadu District Municipalities Act, 1920 speaks of 'General provision regarding licences and permission'. In the instant case on hand, on going through the impugned order passed by the Fourth Respondent, dated 28.10.2017, addressed to the Commissioner, it was clearly mentioned that based on the tender notification and as per the conditions of the lease/licence, the highest bidder would be allotted the shop and the said practice is in oath and without following this procedure, for personal reasons, the Commissioner of the Fourth Respondent/Municipality has no power to relax the Rules and accordingly, the Appellant/Writ Petitioner was informed.

11. Continuing further, the Appellant was also informed that in respect of allotment of shops based on lease, the advertisements would be given in daily papers and that if the advertisement was to be given, then separate notice would be issued to the Appellant. The Applicant, if he so desires can take part in the public auction/tender and in the said auction, the auction of the highest bidder would be confirmed and this fact was also informed to the Appellant. In short, the Commissioner of the Fourth Respondent/Municipality, in categorical terms, had stated that by relaxing the Rules, the shops could not be allotted to the Appellant/Writ Petitioner. The aforesaid reasoning of the Fourth Respondent/Municipality in the impugned order, dated 28.10.2017 ex-facie, in the considered opinion of this Court, does not suffer from any material irregularity or patent illegality. Furthermore,



the Appellant as Writ Petitioner, in his affidavit in W.P(MD) No.20440 of 2017, at paragraph 13, had come out with a plea that if public auction is 'conducted', one shop is not given for establishing 'Aavin Booth', he would be put to irreparable loss and hardship. As such, the Appellant himself in the Writ Grounds had pointed out that he is ready to pay the market rent for the shops and if the shop is allotted for establishing the ''Aavin Booth''.

12. When that be the fact situation, when public auction is not conducted and all the more, when the Appellant/Writ Petitioner was informed by the impugned order, dated 28.10.2017 of the Fourth Respondent/Municipality, that when the auction/tender notification is published prescribing necessary conditions for the tender notification/public auction, then he can take part and the highest bidder in the said auction/tender notification will get the confirmation order in his favour, as pointed out by the Fourth Respondent/Municipality, is free from any legal infirmities in the eye of Law. Looking at from any angle, the Writ Appeal sans merits.

13. In fine, the Writ Appeal stands dismissed, leaving the parties to bear their own costs. The order of the Learned Single Judge in W.P(MD) No.20440 of 2017, dated 7.11.2017 is confirmed, for the reasons assigned in this Writ Appeal. No costs. Consequently, connected Civil Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner of Municipalities Administration,
Government of Tamil Nadu,
Annexe Building 6th Floor,
Chepauk,
Chennai - 600 005.
2. The District Collector,
Trichy District,
Trichy.
3. The General Manager,
Trichirappalli District Co-operative Milk Producers' Union,
Kottapattu,
Pondicherry Road,
Trichirappalli - 620 023.



4. The Special Officer-cum-Commissioner,
Manapparai Municipality,
Manapparai, Trichy District.

5. The Regional Director of Municipal Administration,
Thanjavur Region,
No.1, Ayya Street,
Near Kodimarathu Moolai,
Thanjavur.

+ 1 cc TO Mr.A.Joel Paul Antony , Advocate in SR No. 91068
+ 1 cc TO Mr.J.Lawrance , Advocate in SR No. 90947

vsn

AE/SKN RSK/SAR1/20.12.2017/6P/8C

JUDGEMENT MADE IN
W.A(MD) NO.1449 OF 2017
and
C.M.P (MD) No.11109 of 2017
05.12.2017