

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.06.2018
CORAM:

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.A.No.622 of 2018
and C.M.P.No.6052 of 2018

1. The Commissioner of Excise,
Government of Puducherry,
Puducherry.
2. The Deputy Commissioner (Excise),
Office of the Deputy Commissioner (Excise),
Thattanchavadi, Puducherry.
3. Deputy Collector (Excise),
Office of the Deputy Collector-Excise,
Thattanchavadi, Puducherry-9. ... Appellants/
Respondents

Vs.

V. Kasinathan ... Respondent/Petitioner

PRAYER: Writ Appeal has been filed under Clause 15 of Letters of Patent against the order dated 04.01.2018 in W.P.No.25213 of 2017.

Prayer in WP.No.25213/2017:Writ petition filed under Article 226 of the constitution of India, praying to issue a writ of mandamus forbearing the respondents from any manner conducting re-auction of petitioner shop in Arrack Shop No.18(V) Bangur of Villinur Commune Panchayat on 20.09.2017 or any other date and consequently directing the respondents to permit the petitioner to shift the arrack shop to Ariyur Village as per request of the petitioner dated 04.08.2017 without insisting of kist from 1.7.2017 to until the reopening of attack shop.

For Appellants : Mr.J.Kumaran,
Government Advocate (Pondicherry)
For Respondent: Mr.S.Sarath Chandran

J U D G M E N T

(Judgment of the Court was made by SUBRAMONIUM PRASAD, J.)

This Writ Appeal has been filed by the Commissioner of Excise, Puducherry against the order dated 04.01.2018 passed in W.P.No.25213 of 2017.

2. The respondent herein, (Writ Petitioner) was a bidder in an auction conducted by the petitioners for grant of license to run an arrack shop. The Writ Petitioner was the highest bidder in respect of Shop No.18(V), Pangur Village, Villianur Taluk, Pondicherry. The Writ Petitioner was granted the license by an order dated 30.06.2017 to run the arrack shop for the period of one year i.e. from 01.07.2017 to 30.06.2018. The bid amount was Rs.7,07,000/-.

3. Writ Petition bearing No.19056 of 2017 was filed in this Court by one P.Pandian in a representative capacity opposing the opening of the arrack shop. An interim order directing the Excise authorities to close down the shop in question forthwith was passed. The Writ Petition was dismissed on 05.09.2017.

4. Pursuant to the dismissal of the Writ Petition, the appellants herein, ordered the opening of the arrack shop. The Writ Petitioner filed a representation on 08.09.2017 expressing difficulties in conducting the arrack shop in light of opposition from the general public.

5. Perusal of the material on record shows that this representation was considered and rejected by the authorities on 13.09.2017. Since the respondent herein, was not paying the kist amount, the authorities initiated action for re-auctioning the arrack shop. The respondent herein, therefore, filed the instant Writ Petition praying for an order/direction in the nature of Mandamus, forbearing the respondents from conducting the re-auction of the shop and also consider the representation of the petitioner dated 04.08.2017 without insisting of kist from 01.07.2017 to until the reopening of arrack shop.

6. The learned single Judge by the order impugned herein, allowed in Writ Petition restraining the appellants herein from bringing the shop in question for re-auction and directed the petitioners to consider the petitioner's representation dated 08.09.2017.

7. We have heard the learned counsel appearing for both parties.

8. As stated earlier, the Writ Petitioner is a successful bidder in an auction for grant of license to run the arrack shop i.e. Shop No.18(V), Pangur Village, Villianur Taluk, Pondicherry.

9. The Writ Petitioner was granted license for the arrack shop for period of one year i.e. from 01.07.2017 to 30.06.2018. From the narration of facts, it is evident that barring the period from 26.07.2017 to 07.09.2017, there was no

legal impediment in running the shop. The Writ Petitioner, instead of running the shop, gave a representation on 08.09.2017, which was rejected on 12.09.2017. The learned single Judge has, therefore, erred in directing the appellants herein to consider the petitioner's representation dated 08.09.2017, which already stands rejected by reply dated 12.09.2017, which was sent to the Writ Petitioner on 13.09.2017 by a registered letter. The prayer of the Writ Petition was to consider the representation dated 04.08.2017, which is not on record and no useful purpose would be served in directing the appellants herein to consider the same because the appellants herein have already rejected the representation dated 08.09.2017, which contains same/similar grievance.

10. Admittedly, the Writ Petitioner has not paid any kist after on 01.07.2017. In view of the failure on the part of the Writ Petitioner in paying the kist amount, the Excise authorities cannot be restrained from bringing the shop for acution. In any case, the period of license is expiring on 30.06.2017 and the Writ Petitioner cannot be permitted to run the shop after 30.06.2017. Hence, the order of the learned single Judge in W.P.No.25213 of 2017, dated 04.01.2018 restraining the authorities from re-acutioning the shop cannot be sustained and therefore, is set aside.

11. Accordingly, this Writ Appeal stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.
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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Excise,
Government of Puducherry, Puducherry.
2. The Deputy Commissioner (Excise),
Office of the Deputy Commissioner (Excise),
Thattanchavadi, Puducherry.
3. Deputy Collector (Excise),
Office of the Deputy Collector-Excise,
Thattanchavadi, Puducherry-9.

+1cc to Government Pleader SR.No.38052

RV(CO)
sm:5.7.2018