

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.25539 of 2017
and
W.M.P.No.26945 of 2017

Mrs.J.Indira Gandhi

.. Petitioner

Vs.

1. The District Collector,
Dharmapuri District,
Collectorate,
Dharmapuri-636 705.
2. The Pennagaram Selection Grade Town Panchayat,
Represented by its Executive Officer,
Pennagaram, Dharmapuri District.
3. Dharmapuri District Co-operative Milk
Producers' Union,
Represented by its General Manager,
Salem Main Road, Kanakamutlu (PO),
P.B.No.13, Krishnagiri - 635 002.
4. Mrs.Kanmani

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the first and second respondents to forthwith take necessary action to remove the fourth respondent from the place allotted to the petitioner, i.e. adjacent to the entrance of Pennagaram Town Panchayat Bus Stand, and to further direct the second and third respondents to accord renewal of the license and permission granted to the petitioner to run the Aavin Milk Booth for a further period so as to enable the petitioner to run her Aavin Milk Booth from the said place.

For Petitioner : Mr.Arun Anbumani
For Respondents : Mr.S.N.Parthasarathi,
Govt. Advocate for R-1
Mr.M.Perumal for R-2
No appearance for R-3
Mr.A.P.Raja Prabhu for R-4

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Mandamus to direct the first and second respondents to forthwith take necessary action to remove the fourth respondent from the place allotted to the petitioner, i.e. adjacent to the entrance of Pennagaram Town Panchayat Bus Stand, and to further direct the second and third respondents to accord renewal of the license and permission granted to the petitioner to run the Aavin Milk Booth for a further period, so as to enable the petitioner to run her Aavin Milk Booth from the said place.

2. According to the petitioner, she was given lease/licence for setting up an Aavin Milk Booth and run the same adjacent to the entrance of the Pennagaram Town Panchayat Bus Stand. The fourth respondent has encroached the place that has been allotted to the petitioner. The petitioner was running an Aavin Milk Booth and lease/licence was given by the respondents 2 and 3, but unfortunately, on account of the disturbance caused by the fourth respondent, the petitioner could not continue her business. It is the further case of the petitioner that pursuant to an application made to the second respondent seeking permission to erect the Aavin Booth in the vacant place adjacent to the above said bus stand, the request was considered and that after completion of necessary formalities by paying necessary charges, the application made was scrutinised and permission was granted to the petitioner to run the said Aavin Milk Booth. The other documents in support of the claim application was also scrutinised and that inspection was conducted. The second respondent granted lease/licence to the petitioner to erect the Aavin Milk Booth. The licence was initially granted on 01.10.2016 till 31.03.2017, which was extended.

3. It is the further case of the petitioner that the fourth respondent overnight, with the help of touts, has illegally occupied the place allotted to the petitioner and pushed the Aavin Milk Booth from the place that has been allotted to the petitioner. The petitioner has sent a communication requesting that lease/licence may be renewed, but however, the lease/licence period was renewed only upto September 2017, and thereafter, on account of the dispute between the petitioner and the fourth respondent, no further steps have been taken to extend the period of lease/licence. It is submitted by the learned counsel for the petitioner that the fourth respondent has no locus-standi to continue in the place that has been allotted to the petitioner. The petitioner is a successful allottee of lease/licence as stated supra.

4. The learned counsel for the fourth respondent opposed the contentions of the petitioner and the Selection Grade Town Panchayat/Government and would submit that the Selection Grade Town Panchayat/Government will file necessary report in this regard. Since it is contended by the learned counsel for the fourth respondent that the livelihood of the fourth respondent would be affected and that the petitioner has been allotted in a different place, this Court appointed an Advocate Commissioner to inspect the place in question and submit a report as to whether the petitioner has been allotted the place and as to which is his original place of allotment. The Advocate Commissioner has filed his report, dated 20.12.2017. There is no counter affidavit filed by the fourth respondent. After seeing the said report of the learned Advocate Commissioner, the learned counsel for the fourth respondent submitted that the Court may pass appropriate orders taking into account the report of the Advocate Commissioner. A cursory reading of the report filed by the learned Advocate Commissioner and from the submissions made by the learned counsel for the parties, it comes to be known that the place belongs to the Government/second respondent-Selection Grade Town Panchayat and that the petitioner has been allotted the said place, which has been taken by the fourth respondent. The place occupied by the fourth respondent is housed for vending fruit business and that the said place has been allotted to the petitioner.

5. As the fact that the fourth respondent has not been given the said place by any one, much less by the Government/Panchayat, to run the fruit stall and that the Government/Panchayat's land has been allotted, namely adjacent to the entrance of the said bus stand, to the petitioner by official respondents, namely respondents 2 and 3, I find much force in the contentions of the petitioner.

6. Accordingly, the Writ Petition is disposed of, directing the fourth respondent to remove the belongings within 72 hours from the date of receipt of a copy of this order, failing which it is open for the respondents 1 and 2 to remove the said belongings of the fourth respondent with the help of the jurisdictional Police and that the fourth respondent cannot contend at a later point of time that there is a loss or damage to the belongings of the fourth respondent. As the period of lease/licence has expired, the petitioner cannot run the business in the place where it has been allotted by the respondents 1 and 2. It is needless to mention that the request of the petitioner either for extension of the lease/licence period or for fresh lease/licence, shall be considered by the respondents 1 and 2, as the petitioner could not run her

business on account of the hindrance caused by the fourth respondent. No costs. Consequently, the miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

CS

To

1. The District Collector,
Dharmapuri District,
Collectorate, Dharmapuri-636 705.
2. The Pennagaram Selection Grade Town Panchayat,
Represented by its Executive Officer,
Pennagaram, Dharmapuri District.
3. Dharmapuri District Co-operative Milk
Producers' Union,
Represented by its General Manager,
Salem Main Road, Kanakamutlu (PO),
P.B.No.13, Krishnagiri - 635 002.

+1cc to Mr.A.P.Raja Prabhu, Advocate, S.R.No.14719

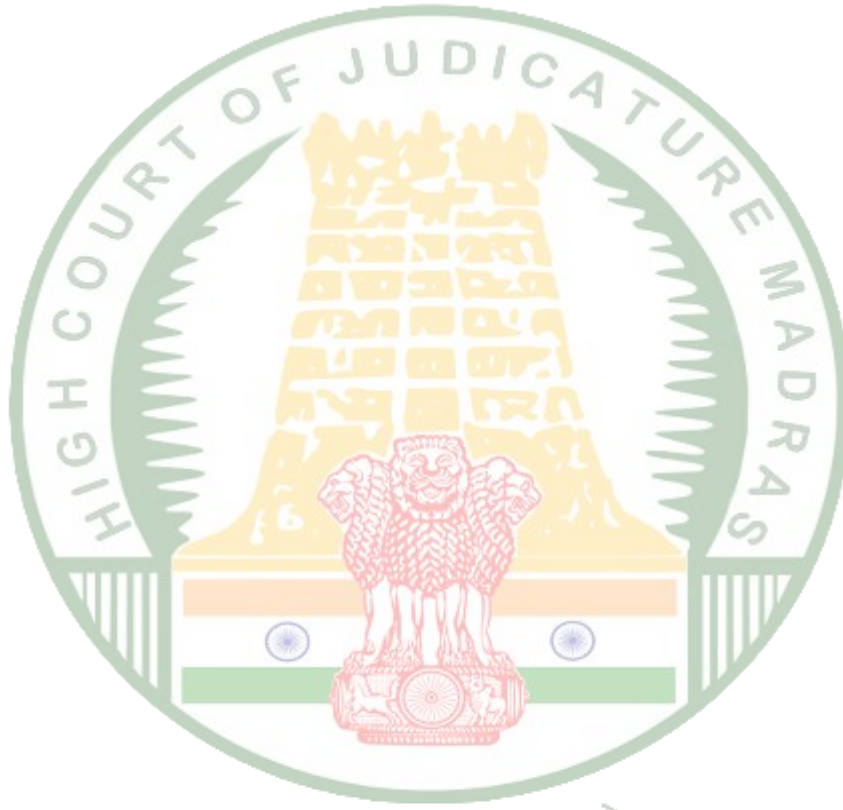
+2cc to Mr.Arun Anbumani, Advocate, S.R.No.14558

W.P.No.25539 of 2017

RRK(23/03/2018)

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