

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2018

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

WP.Nos. 19169 of 2012, 9935 of 2013 and 11168 of 2014
and
MP Nos.1 & 2 of 2012, 1 of 2013 and 1 of 2014

A.B.Theyagarajan

...Petitioner in all the
petitions

Vs.

1. The District Collector,
Erode District,
Erode.

2. The Executive Officer,
Anthiyur Town Panchayat,
Anthiyur
Bhavani Taluk,
Erode District.

...Respondents in all the
petitions

PRAYER in W.P.No.19169 of 2012: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling upon the production of the records relating to the order dated 16.07.2012 made in Na.Ka.No.152/2012, passed by the 2nd respondent herein and quash the same and direct the 2nd respondent to issue licence to the petitioner to run chicken stall.

PRAYER in W.P.No.9935 of 2013: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the 2nd respondent herein to receive the licence fee and other fees if any, from the petitioner for the year 2013-2014 and subsequent years in respect of the chicken stall at No.39, Annasalai, Anthiyur, Erode District and direct the 2nd respondent to issue licence for the year 2013-2014 and subsequent years.

PRAYER in W.P.No.11168 of 2014: Writ petition filed under Article 226 of the Constitution of India praying for issuance of

a Writ of Mandamus to direct the 2nd respondent herein to receive the licence fee and other fees if any, from the petitioner for the year 2014-2015 and subsequent years in respect of the chicken stall at No.39, Annasalai, Anthiyur, Erode District and direct the 2nd respondent to issue licence for the year 2014-2015 and subsequent years.

For Petitioner : M/s.S.Senthilnathan
(in all the petitions)
For Respondents : Mr.B.Anand, G.A.
(in all the petitions)

C O M M O N O R D E R

The petitioner has come up with the Writ Petition in W.P.No.19169 of 2012, to quash the impugned notice of the 2nd respondent, directing the petitioner to close the chicken shop within a period of one week and to direct the 2nd respondent to issue licence to run chicken stall.

2. Writ Petitions in W.P.Nos.9935 of 2013 and 11168 of 2014 have been filed to direct the 2nd respondent to receive the licence fee from the petitioner for the years 2013-2014, 2014-2015 and subsequent years in respect of the chicken stall at No.39, Annasalai, Anthiyur, Erode District and to direct the 2nd respondent to issue licence for the said periods.

3. The case of the petitioner is that he is running a small chicken stall for the past several years at No.39, Annasalai, Anthiyur, Erode District. The income from the chicken stall is the only source for livelihood for his family. The petitioner paid licence fee and PFA fee every year to the 2nd respondent. While so, a notice dated 14.05.2012 was issued by the 2nd respondent, directing the petitioner to remove the chicken stall within a period of one week.

4. The further case of the petitioner is that since the order was passed without giving any opportunity to the petitioner, he along with others filed W.P.Nos.15132 to 15135 of 2012, challenging the notice. This Court by an order dated 19.06.2012, disposed of the writ petitions with an observation that the impugned notice can be treated as show cause notice and directed the petitioners to give reply within a period of seven days. Accordingly, the petitioners sent a reply and the second respondent directed the petitioners to appear for enquiry on 12.07.2012.

5. The petitioner would allege that when he appeared for

enquiry on 12.07.2012, the 2nd respondent without even recording his statement, passed the impugned order in violation of Article 19 of the Constitution of India.

6. The petitioner would further allege that he challenged the order of the 2nd respondent in W.P.No.19169 of 2012, and an interim stay was granted in M.P.No.1 of 2012, dated 24.07.2012. Thereafter, the petitioner sent a licence fee to the 2nd respondent for the years 2013-14 and 2014-2015. But the 2nd respondent refused to receive the licence fee, hence he filed two writ petitions for issuance of writ of mandamus.

7. The second respondent by the impugned order dated 16.07.2012, rejected the request of the petitioner to issue licence to run the chicken stall on the ground that pursuant to the resolution of the 2nd respondent-Town Panchayat, it was decided to have the chicken stall in one particular place and issue licence by a public auction to avoid health hazard, like dengue, malaria, etc.,

8. Heard Mr.S.Senthilnathan, learned counsel for the petitioner and Mr.B.Anand, learned Government Advocate for the respondents and perused the materials available on record.

9. In similar circumstances, a learned Single Judge of this Court by an order dated 25.04.2003, in W.P.No.1414 of 2003, following an un-reported decision of another learned Single Judge dated 21.08.2001, in W.P.Nos.15114 to 15116 of 2001, has held as follows:

"4. Learned counsel appearing for the petitioner has relied upon an unreported decision of Justice F.M.Ibrahim Kalifulla in W.P.Nos.15114 to 15116 of 2001 disposed of on 21.8.2001, wherein it was observed :

2. Admittedly the petitioners applied for the licence to start a chicken stall in a rented premises not belonging to the respondent Panchayat. If that be so, in the event of the petitioners satisfying the other legal requirements relating to the running of such chicken stall having regard to the various other aspects as stipulated in respect of such issuance of licence under the provisions of Panchayat Act, the respondent can issue the licence to them. It is not open for the respondent to deny the grant of licence on the vicious plea that running of chicken stall within the Panchayat limit can be carried on only on auction basis. When the petitioner applied for issuance of the licence in respect of the premises which they took on lease from the concerned private owner, there is no

scope for the respondent to reject the issuance of licence in favour of the petitioners on the ground mentioned in the proceedings impugned in these writ petitions. Therefore, the order impugned in these writ petitions cannot be sustained.

3. While setting aside the order impugned in these writ petitions, the respondent is directed to consider the issuance of licence in favour of the petitioners based on their applications in the event of their satisfying the other requirements relating to running of a chicken stall within the Panchayat limits as per the conditions prescribed under the provisions of the Panchayat Act ..
(Emphasis added)

5. In the present case, one of the main reasons for rejection of licence seems to be the possibility of loss to be caused to the Municipality. In view of the above decision, such a stand is not open to be taken. Moreover, the application for licence was for the year 2002-2003, which has come to an end.

6. In such circumstances, the writ petition is disposed of with an observation that if fresh application would be filed by the respondents regarding the possible health hazard and impediment to be caused to the traffic and the permissibility of having a shop in the residential area, such application may be considered in accordance with law within a period of eight weeks from the date of receipt of such application. It is made clear that no opinion has been expressed on these aspects. No costs. Consequently, the connected miscellaneous petitions are closed."

10. In the instant case, licence to run the chicken stall was refused on the sole ground that the Town Panchayat in the resolution decided to have chicken stall in one place and licence would be issued to the successful bidder in public auction. In the light of the above decisions, the reason assigned in the impugned order cannot be countenanced.

11. In my considered view, the decision referred supra, would squarely apply to the case on hand. In such view of the matter, the petitioner is entitled to succeed in these Writ Petitions. In fine, these petitions are allowed on the same

lines, as extracted in the above paragraph. No costs.
Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pvs

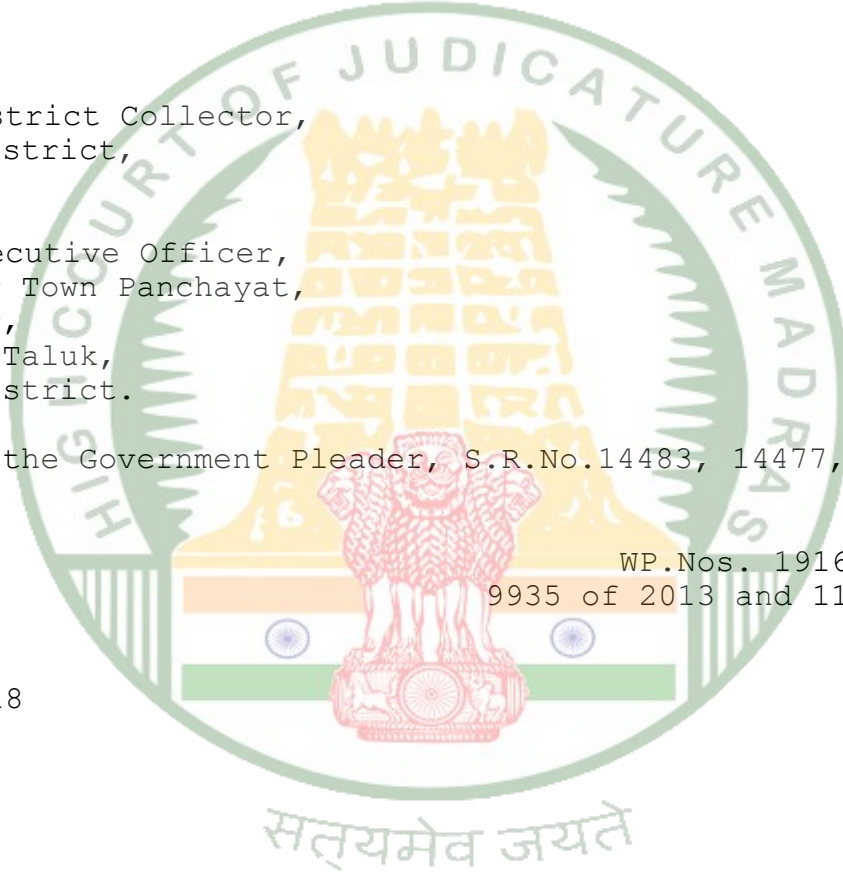
To

1. The District Collector,
Erode District,
Erode.
2. The Executive Officer,
Anthiyur Town Panchayat,
Anthiyur,
Bhavani Taluk,
Erode District.

+1cc to the Government Pleader, S.R.No.14483, 14477, 14482

WP.Nos. 19169 of 2012,
9935 of 2013 and 11168 of 2014

sr(co)
cs/08/06/18



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