



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 05.07.2018

CORAM

THE HONOURABLE MR.JUSTICE **K.RAVICHANDRABAABU**

AND

THE HONOURABLE MRS.JUSTICE **T.KRISHNAVALLI**

W.A.(MD)No.819 of 2013

WEB COPY

The Pennington Committee (Regd)
rep. by its Secretary
No.9 Library Street,
Srivilliputhur,
Virudhunagar District.

.. Appellant/Petitioner

Vs.

The Commissioner,
Srivilliputhur Municipality,
Srivilliputhur.

.. Respondent/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order passed by the learned single Judge of this Court in W.P(MD)No.13451 of 2012 dated 18.01.2013.

Prayer in WP(MD)No. 13451 of 2012 :

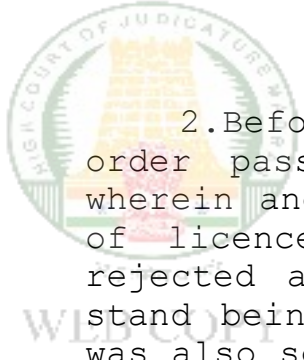
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, by calling for records of the respondent passed in Na.Ka.No.82/2007/A5 dated 04.10.2012 and quash the same as illegal and contrary to statutory provisions and direct the respondent to grant licence to the petitioner for running of the Two Wheeler stated in the petitioner's premises situated at T.S.No.453 and 454 at Door No.66, (Old No.43A) Nethaji Street, Srivilliputhur, Virudhunagar District by considering the applications of the petitioner dated 21.12.2008 and 06.02.2012.

For Appellants : Mr.ARL.Sundaresan
Senior Counsel
For Respondent : Mr.J.Parekkumar

JUDGMENT

[Judgment of the Court was delivered by **K.RAVICHANDRABAABU, J.**]

Aggrieved against the dismissal of the writ petition by the writ Court, the present writ appeal is filed by the writ petitioner.



2. Before the writ Court, a challenge was made against the order passed by the respondent Municipality dated 04.10.2012, wherein and whereby, the request of the writ petitioner for grant of licence to run a cycle stand within their premises, was rejected also with specific direction to close down the cycle stand being run by the writ petitioner. A consequential prayer was also sought for a direction to the respondent to grant licence to the petitioner for running the two wheeler stand in the petitioner's premises situated at S.Nos.453 and 545 at Door No.66 (Old No.43A) Nethaji Street, Srivilliputhur, Virudhunagar District. The writ Court dismissed the writ petition by specifically observing that in the approved plan obtained by the writ petitioner, basement area was shown only as a vehicle parking area to park the vehicles of the persons, who visit the petitioner's complex.

3. Heard the learned senior counsel Mr.ARL.Sundaresan for the appellant and the learned standing counsel Mr.V.Parekkumar for the respondent Municipality.

4. The crux of the dispute between the parties is in respect of running a private cycle stand by the writ petitioner, admittedly, within the property belonging to the writ petitioner. There is no dispute to the fact that the writ petitioner obtained building plan approval by showing the basement as a vehicle parking area, obviously, for the benefit of the vehicles, which are to be parked in the petitioner's complex by the people who visit the complex. In other words, the vehicle parking area left in the basement is meant for the persons, who visit the petitioner's complex containing several number of shops and commercial area and therefore, such vehicle parking area shown in the approved plan cannot be utilized as a private cycle stand as claimed by the petitioner. Therefore, the Writ Court has rightly considered that aspect and rejected the request of the petitioner, with which, we find no reason to interfere. At the same time, as the petitioner has obtained the plan approval by showing the basement area as a vehicle parking area, the respondent Municipality cannot prevent the petitioner from utilizing such area as a vehicle parking area, as admittedly the said vehicle parking area lies within the private property of the petitioner. If the petitioner seeks to collect some fees for parking the vehicle in that parking area, which according to the learned senior counsel is not prohibited, the respondent Municipality cannot have any objection as the maintenance of such area is well within the control of the writ petitioner.

5. Therefore, the writ appeal is disposed of with an observation that though the writ petitioner/appellant is not entitled to get any licence to run a private cycle stand in the basement area, the respondent Municipality at the same time cannot prevent the writ petitioner from using it as a vehicle parking area as per the approved plan granted by the competent authority.



6.The learned senior counsel appearing for the appellant further contended that if there is any violation of the building plan approval, it is open to the concerned authority to proceed against the writ petitioner. Needless to say that if there is any violation of the building plan approval, it is open to the concerned authority to take appropriate action after following due procedure.

7.The learned senior counsel further submitted that the respondent Municipality has put the premises under the lock and seal. If that is so, in view of the order passed in the writ appeal, the respondent is directed to remove the lock and seal so as to enable the petitioner / appellant to utilize the premises, as per the approved plan. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(SAR-IV)

To

The Commissioner,
Srivilliputhur Municipality,
Srivilliputhur.

+1cc to Mr.S.Kadarkarai, Advocate Sr.No.71424
+1cc to Mr.P.Srinivas, Advocate Sr.No. 71861

SKN

VB/PN/SAR4/25.07.2018/3P/4C

W.A. (MD) No.819 of 2013
05.07.2018