

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24/7/2019

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.21478 of 2019
a n d
W.M.P.Nos.20685 and 20686 of 2019

S. Vasudevan

..Petitioner

Vs

1. The Commissioner
Erode Municipal Corporation
Erode District.

2. M. Praveen

3. C. Prakash

..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of certiorarified mandamus to call for the records pertaining to the impugned license granted by the first respondent vide his office proceedings in Na.Ka.No.A1/982/2017 dated 21/12/2018 with regard to the land to an extent of 25 x 12 i.e., 300 sq.ft at Nethaji Road, near Manikoondur, Erode in Ward No.27 in favour of the third respondent and quash the same and consequently restraining the first respondent from disturbing the said land used as public toilet.

For Petitioner : Mr.I.C.Vasudevan

For Respondents : No Appearance

O R D E R

(Order of the Court was made by S.MANIKUMAR, J)

Petitioner, is a resident of Nethaji Road, Municipal Chatram, Erode, has sought for a writ of certiorarified mandamus, to quash the impugned license granted by the Commissioner, Erode Municipal Corporation, Erode District, first respondent, in proceedings in Na.Ka.No.A1/982/2017, dated 21/12/2018, with regard to the land to an extent of 25 x 12,

i.e., 300 sq.ft, at Nethaji Road, near Manikoundu, Erode, in Ward No.27, in favour of Mr.C.Prakash, third respondent and consequently, to restrain the Commissioner, Erode Municipal Corporation, Erode District, first respondent, from disturbing the said land to be used as public toilet.

2. Supporting the prayer sought for, petitioner has contended that there is a pay and use public toilet, maintained by Commissioner, Erode Municipal Corporation, Erode District, first respondent, at Brough road, near Manikoundu, Erode, in Ward No.27, having an extent of about 500 sq.feet, for more than 50 years and the same has been renovated recently. In fact, the said toilet is situated in the busy market area, that too in the main road and has been used by the public at large, for the purpose of bathing and to attend the nature's call.

3. M.Praveen, second respondent was given license by the first respondent for the period from 1/11/2018 to 31/10/2019, vide, Proceedings, in Na.Ka.No.A1/160/2016, dated 2/11/2018 and as such, the second respondent has been maintaining the same by collecting necessary charges. Petitioner, who is a daily wage driver, use the same for bathing and attend nature's call.

4. C. Prakash, third respondent, who is running a biscuit bakery, adjacent to the said toilet, on the backside of the same, managed to get a lease, from the first respondent, vide Office Proceedings, in Na.Ka.No.A1/982/2017, dated 21/12/2018, with regard to the land, to the extent of 25 x 12 i.e., 300 sq/feet, for their use, as if the said land is a vacant land.

5. Petitioner, has further submitted that in fact, the said land is a part of the above said public toilet and people used to take bath in that place. A bore well for the public toilet is situated at that place. If that place is occupied by the third respondent, people cannot use the public toilet conveniently and even water supply to the said toilet will be more affected, which would lead to closure of the said public toilet. It is also pertinent to note that though it is a busy and famous textile market area, people from other parts of the State and even other parts of India used to come there and use the same, since there is no other public toilet available in that place. Apart from that, utility area of the said public toilet will be considerably reduced and people cannot use the same conveniently, for bathing. During the first week of May 2019, third respondent demolished the compound wall, on the backside of the said toilet, for entering into the said land, leased out to him, from his adjacent shop. Therefore, on 16/3/2019, petitioner, made a representation to the first respondent, to cancel the said lease given to the third respondent, but the same was not considered so far. Hence the

petitioner has come forward with the instant writ petition, praying for the relief, as stated therein.

6. Heard Mr.I.C.Vasudevan, learned counsel for the petitioner and perused the materials available on record.

7. Material on record discloses that on 2/11/2018, Commissioner Erode Corporation, first respondent has granted license to Mr.M.Praveen to collect charges for using toilet at Brough road, Erode Corporation, for a period of three years from 1/11/2018 to 31/10/2021, subject to certain conditions, and the same is extracted hereunder:-

"1. The charges for toilet and bathroom shall be collected as follows:-

- | | | |
|------------------|-----|---------|
| 1. For Urination | ... | Rs.0.50 |
| 2. For motion | ... | Rs.1.00 |
| 3. For bathroom | ... | Rs.3.00 |

2. The bus stand payment toilet and bathroom shall be kept open for 24 hours for public use. The other payment toilets shall be kept open from 05.30 hours, to night 10.00 hours, daily. Tap water facility and electricity facility etc., shall be kept neat and hygienic without any complaint by the licensee on his own. The licensee shall arrange for keeping the toilet clean. The water should be used only for toilet use. It shall not be used for any other purpose.

3. The compressor and electric motors fixed by the Corporation shall be maintained properly. In the event of fault, it shall be mended by the licensee on his own costs. The Corporation will not incur any responsibility for that. The compressor and electric motors shall be returned in proper condition to the Corporation at the end of license period.

4. The license shall be cancelled in the event of collecting amount for payment toilets without receipts, collecting excess amount, not maintaining with clean and hygienic and in violating the event of the condition.

5. The Corporation properties shall be maintained without any damage

6. The printed receipts as approved by the Commissioner shall be given by the licensee for collecting the amount at his own costs. The amount shall not be collected without giving proper receipts. The aforesaid receipts shall be sealed

with the Corporation seal before use. The printed receipts shall have the book number, serial number and the amount to be collected. The excess amount shall not be collected above the amount fixed by the Corporation, failing which the license will be cancelled. Deposits amount shall be forfeited. The licensee shall not have the right to seek damages.

7. The licensee is not entitled to the claim damages or the deduction in the license for the period of non-functioning of toilets due to failure of electricity, general strike and other reasons. The licensee shall on his own arrange for electricity facility and other facility.

8. In all Corporation toilets, all drivers and conductors shall be permitted to use free of costs.

9. In the event of filling up of septic tanks in payment toilets, the licensee shall remove the waste at his own costs.

10. The general and special auction conditions of the year 2016 - 2019 is applicable to this also.

11. The payment toilet licensee shall clean the septic tank through the Corporation waste water vehicle and keep the same empty by 10th day of March, failing which it shall be cleaned by the corporation and the costs shall be deducted from the deposits paid by the licensee.

12. It is subject to the condition and orders issued by the Government and corporation Administration in future.

13. No case shall be filed in violation to Rules contained in Erode Corporation Act.

14. The licensee shall be banned to implement all the Rules issued by the Government regarding licensee every now and then."

8. Material on record further discloses that by an other proceeding, in Na.Ka.No.A1/982/2017, dated 21/12/2018, Commissioner, Erode Corporation, has accepted the highest bid offered by Mr.C.Prakash, third respondent herein and issued license to enjoy vacant land ad-measuring 25x12 (300 s.ft), belonging to the Corporation, situated near Corporation Payment Toilet, at Nethaji road, Manikoundu, Erode town, Ward No.27, for collection of charges, within the limits of Erode Corporation. For brevity, proceeding, dated 21/12/2018, of the Commissioner, Erode Corporation, is reproduced hereunder:-

"The demand of Thiru.C.Prakash participated in General Auction/Tender, as per Ref.No.1, as tendered, the highest bid of monthly rent of Rs.5101 for grant

of license to enjoy the vacant land admeasuring 25 x 12 (300 sq.ft) belonging to Corporation, situated near Corporation payment toilet at Nethaji road, Manikoundu, Erode town, Ward No.27, within the limits of Erode Corporation was accepted as per the prior permission in Ref.No.2. As per that, lease was granted for the period 1/1/2019 to 31/12/2021, subject to the following condition. Further, it is also ordered to increase the rent for 15% on the completion of consolidated period of three years.

Conditions:

1. On receipt of this order, 9 months rent deposit amount of Rs.45,909/- and Electricity connection security deposit Rs.5,000/- and in total rs.50,909/- shall be paid immediately. Failing which the lease shall be cancelled and public auction will be conducted again. If loss is caused in the public auction, action will be taken in the Court of law to get damages from the concerned lessee.

2. The lessee shall pay every month rent in the Corporation Office, within 10th day of that month. Failing which shall pay along with no penalty of Rs.1.50 for Rs.100/- per month.

3. Within seven days from the date of receipt of order, the registered lease agreement deed registered at Sub-Registrar Office, shall be handed over at Corporation Office.

4. In the event of non-payment of monthly rent properly, the Commission or his authorised officer shall have the right to cancel the lease hold right at the risk of lessee, to attach the shop, to lock and seal the shop, to make liable the lessee, for all the loss incurred by re-auction the same.

5. The lessee is not entitled to any profit. But if the loss is caused to Corporation, it shall be recovered from the lessee.

6. Electricity charges shall be paid by the lessee every months. If additional electricity connection is required, the lessee, after getting permission from the Commissioner, shall obtain in the name of Commissioner, at his own costs.

7. If drinking water connection is required, the lessee shall deposit the same at his own costs and shall pay the drinking water charges to the Corporation.

8. Without written permission from the Corporation office, any point of the vacant land shall not be changed or demolished.

9. The vacant land shall not be leased or sub-leased to third parties.

10. The security amount, electricity deposit amount shall be refunded after handing over the vacant land in good condition and completion of audit.

11. The lease hold licence and lease period in three years for the vacant land. If the lessee wants to hand over before the Corporation, before the expiry of lease period, it shall be communicated in writing before 90 days to the office. For that 90 days, lessee shall pay the rent amount and electricity charges.

12. Further, after the completion of the three years lease period has handed over at present, if the lessee wants to continue to enjoy the lease right it shall be applied to Corporation in writing before 90 days. Failing which, it is assumed that the lessee need not leasehold the right and action will be taken to re-auction the leasehold right.

13. It is bound by all condition and orders issued by the Government and Corporation Administration in future.

14. There shall not be any dangerous and awkward business in that place.

15. There shall not be any easy unflammable work or business in that place.

16. There shall not be any sale of banned things.

17. The professional tax shall be paid once in every six months (April to September first half year and October to March Sector half year)

18. The lessee shall pay the tax and charges levied by the Central and State Government then and there.

19. The service tax (GST) shall be paid along with rent every month.

20. The case shall not be filed against the Rule incorporated in Erode Corporation Act.

21. Lease is bound by all General and Special condition for the year 2019 - 2022."

9. Erode corporation is empowered to lease vacant land for public purposes. Though the learned counsel for the petitioner has contended that, earlier the said vacant land was used for public, for parking vehicles and that therefore, there cannot be any construction of public toilets and in such circumstances, proceeding, dated 21/12/2018, of the Commissioner, Erode Corporation, issued in favour of third respondent, has to be quashed, cannot be countenanced, for the reason that land is

owned by Erode Corporation and is left to the Corporation, to lease out the same, for public purpose. In a vacant land, there cannot be urination and toilets have to be constructed. Judicial notice can also be taken that it is the policy of the Central Government that under Swach Bharat Scheme, there should be public toilets.

10. In the light of the above discussion, we do not find any infirmity in the proceeding of the Commissioner, Erode Municipal Corporation, Erode District, dated 21/12/2018, impugned in this writ petition. Accordingly, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

mvs

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Erode Municipal Corporation,
Erode Dist.

+1cc to Mr.I.C.Vasudevan, Advocate, SR.No.63241
+1cc to the Govt.Pleader, Vide Sr.No.63404

Writ Petition No.21478 of 2019

Kak (29/07/2019)

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