

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2380 of 2018
and CMP No.19051 of 2018

B. Vijaya .. Appellant/Petitioner

-vs-

1. The Union of India,
Represented by
The Chief Secretary to Government,
Government of Puducherry,
Puducherry.
2. The Secretary to Government,
Hindu Religious Institutions Department,
Government of Puducherry,
Puducherry.
3. The Commissioner,
Hindu Religious Institution,
Government of Puducherry,
Puducherry.
4. The Executive Officer,
Sri Badra Kaliyamman Koil Devasthanam,
Ambagarathur,
Karaikal,
Puducherry State.
5. The Senior Divisional Retail Sales Manager,
Indian Oil Corporation Limited,
Triveni 3rd floor,
No.35, Sastri Road,
Trichy .. Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order made in W.P.No.2357 of 2017 dated 23.08.2018.

WP.No.2357 of 2017:filed under Article 226 of the Constitution of India, directing the respondents 1 to 4 to forthwith execute lease deed in favour of the fifth respondent in respect of land in O.S. No.96/1 Ambagarathur Karaikal belonging to the fourth respondent so as to enable the fifth respondent to install and enable the petitioner to carry on retail outlet.

For appellant : Mr.R. Sankarasubbu
For Respondents 1 to 4 : Mr.C.T. Ramesh, AGP(P)
For Respondent No.5 : Mr.V. Anantha Natarajan

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The Writ Appeal arises out of an order passed in W.P.No.2357 of 2017 dated 23.08.2018.

2. The appellant filed a writ petition, giving rise to this writ appeal where the prayer was for a Mandamus directing the respondents, particularly the respondents No.2 and 3 herein, to execute the lease deed in favour of the fifth respondent in respect of the land in O.S.No.96/1, Ambagarathur, Karaikal, that was offered for setting up of a Petroleum Retail Outlet keeping in view the earlier order passed by Government of Puducherry dated 05.06.2010.

3. In the absence of any response, inspite of other formalities having been completed, the appellant was compelled to file a writ petition in W.P.No.26396 of 2011. During the pendency of the said writ petition, the Government of Puducherry informed the Court that a civil suit has been filed in respect of the said land and a status-quo order has been granted. As such, after taking notice of the said information, the learned Single Judge consigned the writ petition with liberty to the appellant / petitioner as well as Indian Oil Corporation to contest the matter before the Civil Court and obtain appropriate orders.

4. The appellant, thereafter, appears to have got herself impleaded in the said suit being O.S.501/2010, wherein, the plaintiffs who had sought an injunction and had been granted injunction of status quo entered into a compromise with the defendant / Indian Oil Corporation including the appellant herein and the said suit was dismissed on 26.09.2016. The judgment and decree of the trial court has been brought on record.

5. The appellant thereafter renewed her request to The Commissioner, Hindu Religious Institutions, Government of Puducherry / respondent No.3 herein for execution of the lease deed along with a revalidated No Objection Certificate from the Office of the Sub Divisional Magistrate, Karaikal.

6. Having failed to get any response in that regard, the appellant preferred the writ petition, giving rise to the present appeal, which has been dismissed by the learned Single Judge holding that the appellant does not have any legal right to get the lease deed executed.

7. The question, therefore, raised is that the said right to get the lease deed executed emanates from the Government Order dated 05.06.2010, and with dissolving of the suit which was made the reason for opposing the claim of the appellant in the previous round of litigations before this Court, no further impediment remains. Therefore, it is urged on behalf of the appellant that the learned Single Judge ought not to have dismissed the writ petition and should have issued Mandamus as prayed for keeping in view of the aforesaid background of the case.

8. The writ appeal has been opposed by the learned Additional Government Pleader appearing for Government of Puducherry contending that the conclusion drawn by the learned Single Judge that the appellant does not have any legal right to be enforced is correct inasmuch as the compromise in the suit does not bind the Government of Puducherry. In essence, the opposition is to the effect that any compromise entered into either by the defendant / appellant herein and the plaintiffs in the suit would not in any way bind the Government of Puducherry.

9. We have considered the submissions raised and we find that the writ petition which was filed was not to give effect to the terms of compromise in the suit. The petition was filed for a mandamus to the respondents, particularly respondents 2 and 3 to take notice of the fact that the injunction in the suit no longer existed and in the absence of any legal impediment, the

respondents should proceed to take appropriate steps for executing the lease deed keeping in view the Order dated 05.06.2010.

10. We also find that entering into compromise and the disposal of the suit do not in any way dilute the Order dated 05.06.2010 which does not appear to have been withdrawn so far.

11. For all the aforesaid reasons, we find that the learned Single Judge was not justified in dismissing the writ petition on the ground that the appellant has not established even a semblance of legal right. To the contrary, the petitioner has made out a case for a mandamus to the competent authority to consider the claim and pass orders. Accordingly the order passed by the learned Single Judge dated 23.08.2018 is set aside.

12. It is stated by the learned Additional Government Pleader that The Executive Officer, Sri Badra Kaliyamman Koil Devasthanam / fourth respondent herein is the competent authority who has to take appropriate action for consideration of the execution of the lease deed.

13. Accordingly we direct the fourth respondent herein to pass appropriate orders in respect of the claim made by the appellant keeping in view the Government Order dated 05.06.2010 and also keeping in view the fact that the suit itself has been disposed of as a result whereof the order of status quo is no longer in existence. The order shall therefore be passed in accordance with law as expeditiously as possible within a period of six weeks from the date of receipt of a copy of this order.

14. With the above directions, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. The Chief Secretary to Government,
Union of India,
Government of Puducherry,
Puducherry.
 2. The Secretary to Government,
Hindu Religious Institutions Department,
Government of Puducherry,
Puducherry.
 3. The Commissioner,
Hindu Religious Institution,
Government of Puducherry,
Puducherry.
 4. The Executive Officer,
Sri Badra Kaliyamman Koil Devasthanam,
Ambagarathur,
Karaikal,
Puducherry State.
 5. The Senior Divisional Retail Sales Manager,
Indian Oil Corporation Limited,
Triveni 3rd floor,
No.35, Sastri Road,
Trichy
- +1 cc to Mr.R.Sankarasubbu Advocate sr102181
+1 cc to Mr.V.Anantha Natarajan Advocate sr102176
+1 cc to the Government pleader sr102785

W.A.No.2380 of 2018

pvs (co)
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