



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2019

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.A. (MD) No.46 of 2019

and

C.M.P. (MD) Nos.251, 252 and 2505 of 2019

The Commissioner,
Thirumangalam Municipality,
Thirumangalam,
Madurai District.

... Appellants

-vs-

M.Murugandi

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 11.09.2018, passed in W.P.(MD) No.14535 of 2018, on the file of this Court.

Prayer in WP(MD). 14535/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records in connection with the impugned order passed by the respondent in his proceedings in Na.Ka.No. 3022/2017/A1 dated 02.07.2018 and quash the same.

For Appellant : Mr.A.Kannan

For Respondent : Ms.A.Muthu Kavi

J U D G M E N T

[Judgment of the Court was made by T.S.SIVAGNANAM, J.]

The Writ Appeal has been filed by the Thirumangalam Municipality, challenging the order passed in W.P.(MD) No.14535 of 2018 dated 11.09.2018.

2.The respondent/writ petitioner was granted license to collect daily toll fee in the daily market, falling within the control of Thirumangalam Municipality. It is the admitted case

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that license was granted to the respondent, but a third party was collecting the toll fee and this was questioned by the Thirumangalam Municipality and an order was passed by the Municipality, canceling the license granted to the respondent and the same was set aside in W.P.(MD) No.7965 of 2018 on 27.04.2018, on the ground that show cause notice was not issued and subsequently a show cause notice was issued and objections were called and cancellation order was passed on 02.07.2018, canceling the license. Before the learned Single, the respondent/writ petitioner virtually admitted the guilt and assured to give an undertaking to the Thirumangalam Municipality that he will not violate any of the conditions in the future. Recording the same, the Writ Petition was allowed.

3.In our considered view, neither indulgence nor discretion shall be shown to the respondent, who violated the terms and conditions of the license. If there has been infraction of the conditions of license, the license contemplates only termination of license. In the said circumstances, the Writ Court cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India and direct the appellant Municipality to impose some other punishment, especially when the petitioner/licensee admitted his guilt and assured to give an undertaking that in future he will not violate any of the license conditions. Therefore, in our view, the directions issued by the learned Writ Court calls for our interference.

4.In the result, the Writ Appeal is allowed and the order passed by the learned Single Judge dated 11.09.2018, passed in W.P.(MD) No.14535 of 2018 is set aside and directs the appellant Municipality to issue fresh auction cum tender notification for issuing license to collect toll fee in Weekly Market. Under normal circumstances, the writ petitioner would be prevented from participating in the auction because of his antecedent. However, taking note of the circumstances, we permit the respondent to participate in the fresh auction to be called for. Till the fresh license is issued, the appellant Municipality shall collect the toll by deploying their staff by collecting it departmentally. The respondent is directed to handover all the belongings of the Commissioner, Thirumangalam Municipality within 3 days. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)



sj
To
The Commissioner,
Thirumangalam Municipality,
Thirumangalam,
Madurai District.

+1 CC to M/s.A.KANNAN, Advocate (SR-85814[F] dated 09/09/2019)

+1 CC to M/s.A.AMUTHAKAVI, Advocate (SR-85920[F] dated 09/09/2019)

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