



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2019

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.A(MD)NO.848 OF 2019
and
C.M.P(MD)No.7235 of 2019**

Palani Municipality,
represented by its Commissioner,
Palani, Dindigul District. :Appellant/Second Respondent

.vs.

- 1.Palani Town Muslim Dharma Paribalana
Sangam,Wakf,
represented by its Vice President,
Palani Town, Dindigul District. :Ist Respondent/Petitioner
- 2.The Principal Secretary to Government,
Municipal Administration and Water Supply
Department, Government of Tamil Nadu,
Fort St.George,Chennai. :2nd Respondent/Ist Respondent
- 3.The Tamil Nadu waqf Board,
represented by its Chief Executive Officer,
No.1, Jaffer syrang Street,
Vallal Seethakathi nagar,
Chennai - 600 001. : 3rd Respondent/3rd Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.16429 of 2018, dated 13.03.2019.

Prayer in WP(MD). 16429/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in G.O.(D)No.179 dated 19/04/2018, quash the same as illegal and direct the second respondent to issue license to the petitioner for having a private vegetable market in the petitioner's property in T.S.No.50, Ward.No.4, Subramaniam St, Palani.



For Appellant

:Mr.K.Chellapandian
Addl.Advocate General
for Mr.P.Srinivas

For Respondent-1

:Mr.G.Chandrasekar

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JUDGMENT

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

This Writ Appeal is filed against the order made in W.P(MD) No.16429 of 2018, dated 13.3.2019.

2.The appellant is the second respondent before the Writ Court. The said Writ Petition was filed challenging the order of the first respondent/Government in G.O.(D)No.179, dated 19.4.2018 and consequently for seeking a direction to the second respondent to issue license to the petitioner for running private vegetable market in the Petitioner's property at T.S.No.50, Ward No.4, Subramaniapuram, Palani. Through the said impugned Government Order, the first respondent/Government rejected the appeal presented by the Writ Petitioner challenging the order of the Municipality refusing to grant license to the Petitioner to run such private market.

3.The case of the Petitioner before the Writ Court is that the property in which the Petitioner seeks to run private market was previously let out to the Palani Municipality for running the market and therefore, now, the Municipality cannot turn around and say that it is not a fit place for running the private market.

4.The Writ Court, after hearing both sides and finding that the reasons assigned for refusing to grant license are not justifiable, issued a direction to the authorities to grant license in favour of the Writ Petitioner to run the said private market. Insofar as the period in which the Petitioner was running the market without license is concerned, the Writ Court granted liberty to the Municipality to initiate independent proceedings for quantifying the charges payable by the Petitioner to the Municipality.

5.The learned Additional Advocate General appearing for the appellant submitted that the finding of the Writ Court that it is not the case of the Municipality that the place is unfit for running the market, is factually not correct, since in their counter affidavit filed before the Writ Court, they have specifically raised an objection at Paragraph No.13, by stating that the place is not having the requisite amenities for running the market and there is no facility in the place. He further submitted that basic infra-structural facilities required for running the market, must be



available, whereas, those facilities are not factually available in the disputed site. Therefore, it is contended that the Writ Court erroneously observed as if the Municipality conceded that it is a fit place for running the market.

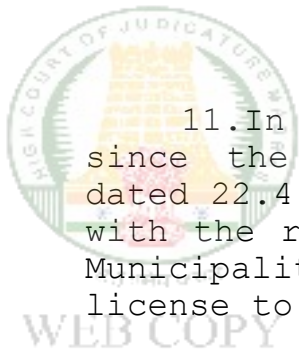
6. On the other hand, the learned counsel for the first respondent/Writ Petitioner submitted that when the Palani Municipality itself was running the market in the said place as a lessee from the Writ Petitioner earlier, they cannot now turn around and say that it is not a fit place for running the market. He further submitted that, in any event, since the Municipality has issued a communication to the Petitioner on 22.4.2019, subsequent to the disposal of the Writ Petition, calling upon the Petitioner to furnish certain documents, for considering the request for grant of license, the Writ Petitioner will furnish those documents, so as to enable the Municipality to consider the request for issuing license. He further submitted that insofar as the defects pointed by the Municipality is concerned, unless the petitioner is permitted to enter into the premises, they will not be in a position to carry out those defects or provide certain amenities which are said to be missing. Therefore, he submitted that for carrying out the repairs and for providing the amenities, the Petitioner must be permitted to enter into the property, which is under lock and seal.

7. The learned Additional Advocate General appearing for the appellant fairly submitted that if the Writ Petitioner satisfies that the place in which they are seeking to run the private market is fit for grant of license, the request of the Petitioner will be considered. He further submitted that the Petitioner can enter into the property only for the purpose of carrying out the repairs or for providing the amenities, which are required for the purpose of granting license.

8. We heard both sides and perused the materials placed before this Court.

9. There is no dispute to the fact that the place in which the Petitioner was running the private market is not issued with any license by the Palni Municipality to run such market. No doubt, the Writ Court has directed the Municipality to issue such license to the Petitioner. As rightly pointed out by the learned Additional Advocate General, the Writ Court has chosen to issue a positive mandamus on an erroneous view that it is not the case of the Palani Municipality that the place is unfit for running the market.

10. On the other hand, the counter filed before the Writ Court, more particularly, the averments made in Paragraph 13 therein would clearly indicate that the Municipality has pointed out certain defects in support of the contention that the said place is not fit for running the market.



11. In any event, pursuant to the disposal of the Writ Petition, since the Municipality themselves have issued a communication dated 22.4.2019 as stated supra, it is for the Petitioner to comply with the requirements as called upon therein, so as to enable the Municipality to consider the request of the Petitioner for grant of license to run the market.

12. Accordingly, this Writ Petition is disposed of by issuing the following directions:

(a) the writ petitioner shall comply with the requirements sought for in the proceedings, dated 22.4.2019 issued by the Palani Municipality within a period of four weeks from the date of receipt of a copy of this order;

(b) only for carrying out any repairs or for providing certain amenities as required for running the market, the Petitioner shall be permitted to enter into the subject-matter property;

(c) the Petitioner shall not, under the guise of entering into the said property, open any shop and run the same, without getting license;

(d) on providing all the details and the documents and also on satisfying all the requirements for running the private market, the Palani Municipality shall consider the request of the Petitioner for grant of license and pass appropriate orders within a period of four weeks from the date of compliance of such requirements.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar (CS)

vsn

To

1. The Principal Secretary to Government,
Municipal Administration and Water Supply
Department, Government of Tamil Nadu,
Fort St. George, Chennai.

2. The Chief Executive Officer,
Tamil Nadu waqf Board,
No.1, Jaffer syrang Street,
Vallal Seethakathi nagar,
Chennai - 600 001.



+1 CC to M/s.G.CHANDRASEKAR, Advocate (SR-80835[F] dated 09/08/2019)

+1 CC to M/s.P.SRINIVAS, Advocate (SR-80973[F] dated 09/08/2019)

+1 CC to M/s.SPL GP (SR-81219[F] dated 09/08/2019)

vsn

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KK/SAR/29.08.2019/5P-6C/