

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.01.2020
C O R A M
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.11984 of 2005
&
W.P.M.P.Nos.13087 & 13088 of 2005

Elizabeth Luke ... Petitioner

Vs.

1.Regional Senior Manager,
Sports Development Authority of Tamil Nadu,
Coimbatore Region,
Coimbatore.

2.G.S.Arumugham

3.The Member Secretary of Tamil Nadu
Sports Development Authority,
No.1168m Periyar Evera High Road,
Nehru Park, Chennai - 600 084.

... Respondents

(R3- Impleaded as per
dated 18.01.2018 by the
order of this Court)

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus to call for the records relating to the order in Rc.No.1000/A/2004 dated 28.02.2005 issued by the 1st respondent, quash the same and consequently, allot the shop Nos.37 & 38, Nehru Stadium, VOC Park, Coimbatore in favour of the petitioner.

For Petitioner : Mr.C.V.Vijayakumar

For Respondent 1 : Mr.I Sathish

For Respondent 2 : Mr.S.Silambarasan, Senior Counsel

ORDER

This writ petition has been filed challenging the order dated 28.02.2005 passed by the first respondent cancelling the lease granted to the petitioner in respect of Shop Nos. 37 & 38, Nehru Stadium, Shopping Complex, Coimbatore.

2. It is the case of the petitioner that originally shop Nos.37 & 38 in Nehru Stadium, Shopping Complex, Coimbatore was allotted to the petitioner's mother, Sosamma Samual as well as the petitioner by the first respondent on lease. It is her case that she has been paying the rent regularly to the first respondent. According to the petitioner, her mother died on 26.06.2002. According to the petitioner, the second respondent was inducted as a partner by the petitioner as well as her mother Sosamma Samual, the original allottees.

3. According to the petitioner, the impugned order dated 28.02.2005 has been passed by the first respondent terminating the lease on the ground that the petitioner's mother Sosamma Samual has given an advertisement in the Hindu Newspaper on 06.02.2005 for giving ownership rights or lease rights in respect of shop Nos.37 & 38 in Nehru Stadium, Shopping Complex, Coimbatore for a huge amount of Rs.28,00,000/-. According to the petitioner, neither the petitioner nor her mother had given any advertisement in the Hindu Newspaper as alleged in the impugned order and only at the behest of the second respondent who is a partner of the petitioner as well as the petitioner's mother, the impugned order has been issued by the first respondent terminating the lease granted to the petitioner as well as her mother. Aggrieved by the impugned order dated 28.02.2005, this writ petition has been filed.

4. Heard Mr.C.V.Vijayakumar, learned counsel for the petitioner, Mr.I sathish, learned counsel for the first respondent and Mr.S.Silambanan, learned Senior Counsel for the second respondent.

5. This Court has perused and examined the impugned order dated 28.02.2005. As seen from the impugned order, the first respondent has terminated the lease granted to the petitioner as well as her mother.

6. As seen from the affidavit filed in support of this writ petition, the petitioner denies that her mother had given any advertisement in the Hindu Newspaper on 06.02.2005 as alleged in the impugned order. Further, it is the case of the petitioner that on the date of the impugned order dated 28.02.2005 which has been addressed to the petitioner's mother Sosamma Samual, she was not alive as she died as early as on 26.06.2002. The first respondent has also not enclosed the copy of the Hindu Newspaper dated 06.02.2005 to the petitioner along with the impugned order dated 28.02.2005.

7. Further it is also the case of the petitioner that no show cause notice was received by the petitioner or by his mother prior to the issuance of impugned order dated 28.02.2005.

The impugned order dated 28.02.2005 also does not refer to the issuance of any show cause notice prior to the cancellation of lease. It is also the case of the petitioner that without any notice to the petitioner who is the original allottee, the second respondent has also been recognised as a lessee by the first respondent on the basis that the second respondent is a sub lessee under the petitioner and is running the business. Admittedly, the petitioner as well as her mother Sosamma Samual were the allottees of the first respondent right from the year 1983.

8. It is also the case of the petitioner that a civil suit was filed by the petitioner against the second respondent for accounts wherein a judgment and decree was passed, directing the second respondent to pay a sum of Rs.60,000/- to the petitioner in respect of the partnership business. Thereafter, the petitioner has also preferred an appeal against the said Judgment and decree and the said appeal enhanced the amount payable by the second respondent to Rs.1,50,000/-. Aggrieved by the same, the second respondent has filed a second appeal before this court which is now pending. This fact has also not been disputed by the learned Senior Counsel for the second respondent.

9. It is the case of the second respondent that he has been in possession and running his business as a sub-lessee under the petitioner in the shop Nos.37 and 38 from the year 2000 onwards. According to him, the partnership was dissolved on 01.10.2003 itself.

10. Considering all these factors, this Court is of the considered view that the first respondent by total non-application of mind and without affording any opportunity to the petitioner with regard to the aforementioned facts has passed the impugned order dated 28.02.2005 cancelling the lease which was awarded to the petitioner as well as her mother as early as in the year 1983. The first respondent has also violated the principles of natural justice by not affording the petitioner with sufficient opportunity to put forward his case with supporting evidence.

11. For the foregoing reasons, the impugned order dated 28.02.2005 passed by the first respondent is hereby quashed and the matter is remanded back to the first respondent for fresh consideration with regard to the cancellation of lease and the first respondent shall pass final orders in accordance with law with regard to the cancellation of lease as well as granting of fresh lease to the second respondent after affording sufficient opportunity to the petitioner as well as the second respondent including granting them rights of personal hearing within a

period of twelve weeks from the date of receipt of a copy of this order. Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

12. It is made clear that till final orders are passed by the first respondent, the second respondent shall be permitted to carry on the business in the shop Nos.37 and 38, Nehru Stadium, Shopping Complex, Coimbatore and his permanent continuation to carry on business in the aforementioned shops shall depend upon the final result in the orders to be passed by the first respondent pursuant to the directions given by this Court referred to supra.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

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To

1. Regional Senior Manager,
Sports Development Authority of Tamil Nadu,
Coimbatore Region,
Coimbatore.

2. The Member Secretary of Tamil Nadu
Sports Development Authority,
No.1168m Periyar Evera High Road,
Nehru Park, Chennai - 600 084.

+1cc to Mr.C.Vijayamumar, Advocate, SR.No.5577.
+1cc to Mr.S.Silambarasan, Advocate, SR.No.6058.
+1cc to Mr.I.Sathish, Advocate, SR.No.5186.

EV (CO)
CSR: 20.02.2020

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