IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.09.2020

CORAM

THE HONOURABLE THIRU JUSTICE N.ANAND VENKATESH

W.P.No.5947 of 2019 and
W.M.P.No.6768 of 2019

S.Sundararaman,
No.3/632, Kovai Main Road,
Attaiyampalayam,
Velayudhampalayam Post,
Avinashi 641 654,
Tiruppur District.

..Petitioner

versus

1. The Secretary,
   Rural Development and
   Panchayat Raj Department,
   Fort St. George,
   Chennai 600 009.

2. The Director of Rural Development and
   Panchayat Raj,
   Directorate of Rural Development and
   Panchayat Raj,
   Panagal Building,
   Chennai 600 015.

3. The Assistant Director of Panchayats,
   Collectorate, Tiruppur.

4. The Secretary,
   Velayuthampalayam Panchayat,
   Avinasi Union,
   Tiruppur District.

.. Respondents

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Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, forbearing the fourth respondent from auctioning the area of Kovai Main Road, Attyampalayam, Thiruppur District to run broiler chicken meat shop.

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For Petitioner : Mr.V.Pavel
For Respondents: Mr.E.Balamurugan, SGP

ORDER

This writ petition has been filed for issuance of writ of mandamus forbearing the fourth respondent from auctioning the area near Kovai Main Road, Tiruppur District, to run the chicken and meat shop.

2. The learned counsel for the petitioner submitted that the Panchayat has been conferred power under the relevant enactment and rules for granting license to run the chicken and meat shop. According to the petitioner, he is also having a chicken and meat shop in the same road and he participated in the earlier auction and was the highest bidder and he was given license to run the chicken and meat shop.

3. The learned counsel for the petitioner further submitted that the Panchayat cannot hold an auction for issuing license for slaughtering of chicken and meat. The petitioner submitted a representation in this regard on 04.01.2019. Since the same was not considered, the present writ petition has been filed seeking for appropriate directions.

4. The fourth respondent has filed the counter affidavit. The relevant portions in the counter affidavit is extracted hereunder:-

> "5. I submit that the road side building bearing D.No.3/631 is owned by one Subramaniam, S/o.Karunamoopan. This petitioner is occupying the above said private building on rental basis and conducting his trade/busines shop for keeping and selling live chickens without valid license from the panchayat. The above said private building is located within the Velayuthampalayam Panchayat and assessed for property tax. The above said owner of the building is regularly paying the property tax to Velayuthampalayam Panchayat. This petitioner has failed to obtain necessary license for his trade/business from the panchayat as contemplated in Section 159 of the Tamil Nadu Panchayat Act, 1994 as amended by Tamil Nadu Panchayat (Amendment) Act, 1999 (Tamil Nadu Act 19/1999) and as per panchayat resolution No.64/12-13 dated 01.12.2012 and as per the notification published in Tiruppur District Gazette on 24.01.2013 as per ref No.1575/2012(A3) dated 21.01.2013, of the District Collector and Inspector of Panchayats, Tiruppur. This petitioner has failed to remit the required license

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fees and obtain the valid license from the panchayat. This petitioner ha also failed to remit the tax on profession, trade, calling and employment as contemplated in chapter IX-A of the Tamil Nadu Panchayat Act, 1994.

6. I submit that this petitioner has participated and succeeded in public auction conducted by the panchayat and permitted to run a chicken meat shop with conditions in a particular place under the control of the panchayat near the road margin for the year 2017-18 on 14.04.2017 and for the year 2018-19 on 13.03.2018 and remitted Rs.7800/- and Rs.12,200/- to the panchayat for the respective years above stated. The auction period comes to an end on 31.03.2019. This petitioner has failed to conduct the above said shop in the place belonging to the panchayat and in contravention of the conditions, this petitioner has located this shop on the main road margin belonging to Highways and Rural Works Department and in front of his own business place at a rented private building at D.No.3/361. It is proposed to take suitable action to black list this petitioner not able to participate in the future such public auctions for disobeying the conditions imposed by the panchayat.

7. I submit that according to rule 9 of the Tamil Nadu Panchayats(Procedure for conducting public auction of lease and sale in the panchayats) Rules 2001 issued in G.O.(MS) No.277, Rural Development (C4) Department dated 22.11.2001, the Executive Authority or the commissioner or the secretary as the case may be, shall conduct auction of lease or sale of articles belonging to panchayat. According to rule 6 of the rules stated supra, the panchayat shall have power to lease out road margins under the control of the panchayat and street margins. According to rule 3(1) of the rules stated supra, the panchayat shall lease out or sell in public auction in open and transparent manner, the right to enjoyment of properties of a panchayat or right to the collection of fees for the use or public places in the panchayat for commercial purposes and other purposes specified in Rule 3(2) (VI) right to collect fees in the public market, cart stand, public landing or halting places, bus stand, slaughter houses, fish markets or ferry places under the control of the panchayat and street margins for sale of articles. Accordingly, the public auction for the year 2018-19 was conducted as per panchayat resolution No.41 of 2018 dated 28.02.2018. This petitioner has participated in the public auction conducted for the year 2018-19 on 13.03.2018 in which this petitioner is the highest

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bidder for Rs.12200/- and remitted this amount to the panchayat in challan No.032745 dated 13.03.2018 and the auction period comes to an end on 31.03.2019.

8. I submit that according to "1977 (I) MLJ page 318" by virtue of the power under section 156 and 157 (old sections 108 and 109) panchayat can lease out places earmarked for the business of vending mutton in public auction and according to "1916 (I) KB 665" the word "slaughter house" means a place used for preparation of beasts for the market which includes premises used at the time not for actual slaughtering but for incidental purposes connected therewith.

9. I submit petitioner's statement that the post of panchayat President /Executive Authority of Velayuthampalayam panchayaat as vacant is false. The Block Development Officers of village panchayats have been appointed as special officers of village panchayats as per section 261 A of the Tamil Nadu Panchayat Act, 1994. According to Rule 5 of the Tamil Nadu Village Panchayat (Assessments and collection of taxes) Rules 1999, the Executive Authority shall give to every person making panchayat of a tax, a receipt therefor signed by him or by some person duly authorized by him in that behalf. According by the panchayat secretary has been authorized to sign in the receipts is valid and cannot be questioned by the petitioner."

5. Mr.E.Balamurugan, learned Special Government Pleader appearing for the respondents submitted that the petitioner has approached this Court with unclean hands and the petitioner is running the business without valid license from the Panchayat in a private building. The learned Special Government Pleader also submitted that the license is mandatory under Section 159 of the Tamil Nadu Panchayat Act 1994.

6. The learned Special Government Pleader further submitted that the petitioner had participated in the auction that was conducted during the year 2017 and the auction period came to be end on 31.03.2019. The panchayat had therefore decided to conduct a fresh auction. The learned Special Government Pleader also brought to the notice of this Court G.O.Ms.No.212 dated 05.07.1999 and G.O.Ms.No.277 dated 22.11.2001. The learned Special Government Pleader submitted that insofar as slaughtering is concerned, it is regulated by these G.Os and the same will be strictly followed after conducting the auction. Therefore, he submitted that there is no merit in the writ petition and is liable to be dismissed.

7. This Court has carefully considered the submissions made

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on either side and the materials available on record. The case of the respondents is that the petitioner had participated in the public auction conducted during the year 2017-18 and he was the highest bidder. The auction period came to be end on 31.03.2019. Therefore, the Panchayat wants to conduct fresh auction. It was specifically undertaken both in the counter affidavit as well as while making the submissions that insofar as the slaughtering of animals is concerned, G.O.Ms.No.212 dated 05.07.1999 and G.O.Ms.No.277 dated 22.11.2001, will be strictly followed.

8. In view of the specific stand taken by the respondents, this Court cannot stop the Panchayat from conducting the fresh auction. It is always open to the petitioner to participate in the auction and the petitioner cannot expect that he will permanently conduct the business without giving any opportunity for others. The fifth respondent Panchayat is expected to strictly follow the rules and the G.Os, while conducting the auction and also in regulation of the slaughter of the animals. The Panchayat shall ensure that the business is conducted only after obtaining necessary license for the same.

9. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
   Rural Development and
   Panchayat Raj Department,
   Fort St. George,
   Chennai 600 009.

2. The Director of Rural Development and
   Panchayat Raj,
   Directorate of Rural Development and
   Panchayat Raj,
   Panagal Building,
   Chennai 600 015.

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3. The Assistant Director of Panchayats,
   Collectorate, Tiruppur.

4. The Secretary,
   Velayuthampalayam Panchayat,
   Avinasi Union,
   Tiruppur District.

+1cc to Mr.V.Pavel, Advocate, Sr.No.28740

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