



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.19751 of 2018

D.Senthil Kumar

... Petitioner

Vs

The Commissioner,
Karaikudi Municipality,
Karaikudi,
Sivagangai District.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned order dated 06.04.2018 on the file of the respondent in her proceedings No.Na.Ka.No.291/2016/E1, and quash the same and consequently, direct the respondent to pay the maintenance amount as per the agreement dated 08.03.2017.

For Petitioner	: Mr.K.Rajeshwaran
For Respondent	: Mr.P.Mahendran

ORDER

Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondent Municipality.

2.The petitioner's case is that he was awarded with the license to collect entry fee to the Modern Park near New Bus Stand in Kariapatti for the period commencing from 01.09.2015 to 31.03.2018. The petitioner was also mandated to maintain the said Park and in this regard, an independent agreement dated 08.03.2017 was entered into between the parties. The respondent had agreed to pay a sum of Rs.16,50,000/- for maintaining the Park.

3.The petitioner's specific contention is that the respondent had not paid him the maintenance charges. In this regard, the petitioner raised a demand on 02.02.2018 and 02.04.2018. The said demand was rejected by the respondent vide order dated 06.04.2018. The same has been challenged in this writ petition.

4.The respondent has filed a detailed counter affidavit. The learned counsel appearing for the respondent reiterated the contentions set out in the said counter affidavit.



5.I carefully considered the rival contentions and also went through the materials on record.

6.The impugned order is not sustainable on the very face of it. The respondent has taken a stand that as a licensee to collect entry fee to the Park, he was also under responsibility to maintain the Park in a hygienic and clean environmental condition and that, therefore, he cannot ask for maintenance charges. This order is perverse on the very face of it. The impugned order fails to take note of the agreement dated 08.03.2017 entered into between the petitioner and the respondent. The grant of license to the petitioner to collect entry fee to the Park is one thing. Requiring him to take care of the maintenance is another. If the petitioner as a licensee was also under a contractual obligations to maintain the Park in good condition, there is no need or necessity for the Municipality to enter into the agreement dated 08.03.2017. The impugned order has to be quashed and set aside for the sole reason of not taking into account the agreement dated 08.03.2017. Therefore, the order impugned in this writ petition is quashed.

7.On the last occasion, this Court called upon the petitioner to place materials with regard to the expenditure incurred by him for maintaining the Park. The petitioner has filed an additional type set of papers enclosing some materials. It is also seen that a measurement book was maintained and the expenditure incurred by the petitioner has also been noted.

8.The learned counsel appearing for the Municipality states that the respondent is willing to admit his liability only to the tune of Rs.06,91,500/- and that they do not admit the claim of the petitioner regarding the rest. The learned Standing Counsel also states that the agreement between the parties contemplates that if the dispute arises, the petitioner can always move the competent Civil Court.

9.Therefore, based on the admission made by the respondent Municipality, I direct the respondent to pay a sum of Rs.06,91,500/- to the petitioner within a period of four weeks from the date of receipt of a copy of this order. The respondent will hear the petitioner once again after issuing him an enquiry notice and after permitting him to place all the materials and pass orders afresh in accordance with law. The order to be passed by the respondent will of-course take note of the concession to pay the aforesaid sum of Rs.06,91,500/- to the petitioner herein. Such an order will be passed within a period of ten weeks from the date of receipt of a copy of this order. The order impugned in this writ petition is quashed. The respondent shall pass order on merits and in accordance with law in respect of the petitioner's other claims.



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10.The Writ Petition stands allowed on these terms. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rmi

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Commissioner,
Karaikudi Municipality,
Karaikudi,
Sivagangai District.

+1 CC to M/s.K. RAJESHWARAN, Advocate (SR-13302[F] dated 28/07/2020)

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AP(03/08/2020) 3P 3C