



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

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THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. No.17654 of 2021

and

WMP. Nos. 18808 and 18809 of 2021

D. Vasantha

.. Petitioner

Versus

1. The Dean,

The Government Mohan Kumaramangalam,
Medical College Hospital,
Salem - 1.

2. The Assistant Executive Engineer,

Public Work Department,
Building (ka & pa) Sub Division Hospital Works,
Salem - 7.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the first respondent in relation to impugned order dated 14.07.2021, vide Na.Ka.No.7357/Ti(Ma) Va/2019 and to quash the same as illegal and erroneous.

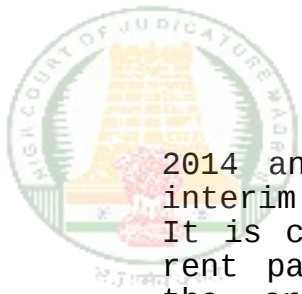
For Petitioner : Mr. M. Guruprasad

For Respondents : Mr. Stalin Abhimanyu
Government Counsel

ORDER

The petitioner calls in question the order dated 14.07.2021 of the first respondent and to quash the same as illegal and erroneous. By the order dated 14.07.2021, the first respondent directed the petitioner to vacate and handover the canteen run by her without immediate effect, by citing the prevalence of Covid-19 Pandemic.

2. It is stated that the petitioner is running a STD Booth as well as canteen in the premises of the first respondent hospital since 2004. In the year 2014, the second respondent passed an order dated 19.06.2014 directing the petitioner to vacate the canteen on the ground that the petitioner is selling unhygienic food besides causing acts of waste by dumping the vegetable and other canteen wastes in the drainage. Challenging the order dated 19.06.2014, the petitioner filed WP No. 18603 of



2014 and this Court granted interim stay. By virtue of the interim stay, the petitioner is continuing the canteen business. It is claimed that the petitioner has periodically remitted the rent payable to the respondents upto 10.08.2021. While so, by the order dated 10.07.2021 of the first respondent, the petitioner was directed to vacate and handover the canteen run by her by citing the prevalence of Covid-19 Pandemic. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner submits that the petitioner was directed to vacate the canteen by citing the prevalence of Covid-19 Pandemic. In the impugned order, there is no other reason assigned by the first respondent requiring the petitioner to vacate the shop. The petitioner has been running the shop since 2004 and also remitting the periodical rent. While so, the impugned order is arbitrary and unreasonable.

4. The learned Government Counsel opposed the writ petition by placing reliance on the counter affidavit. According to the petitioner, the petitioner was originally permitted to run the STD Booth only for a year from 2004 and it expired in the year 2005. In spite of expiry of licence, the petitioner has been squatting in the premises without any legal right. Further the petitioner has converted the business of running the STD Booth into a Canteen and serving adulterated and unhygienic food. Therefore, the petitioner was earlier shown the exit door by issuing an order dated 19.06.2014 and based on the interim order granted by this Court in WP No. 18603 of 2014, the petitioner continued to run the business. According to the learned Government Counsel, the Petitioner has remitted the annual rent not periodically but in one lump sum voluntarily only in the year 2021. In other words, the arrears of rent from 2014 to 2021 has been paid by the petitioner to avoid being evicted from the shop. In any event, the Government has taken a policy decision by issuing GO Ms. No.93, Public Welfare and Family Health Department dated 25.03.2015 not to let out the premises inside the Government Hospitals to private individuals and such canteens have to be run by Government Organisations. It is also ordered that tender has to be flouted for allotment of shops. Further, the order, which is impugned in this writ petition, was passed to ensure that there is no rise in the Covid-19 Pandemic by reason of the petitioner and other similarly placed persons running the shops and therefore also, closure of the shops is necessary. Above all, the respondents have proposed to shift all the canteens and shops from their current locations to a place to form a Food Court to avoid issues like drainage blocks, fire and rodent problems. While so, the learned Government Counsel prayed for dismissal of the writ petition.



5. It is apparent from the records that the petitioner is running the canteen inside the hospital premises of the first respondent since 2004. Earlier, in the year 2004, for acts of waste committed by the petitioner, she was directed to vacate the canteen and it was challenged by her in WP No. 18603 of 2014 and this Court granted an interim stay. By virtue of the interim stay, the petitioner continued the canteen business.

6. As far as the impugned order dated 14.07.2021 is concerned, it is evident that the first respondent has only cited the prevalence of Covid-19 Pandemic for eviction of the petitioner. In the order dated 14.07.2021, no other reason has been mentioned by the first respondent. However, in the counter affidavit of the first respondent, reference has been made to the effect that the petitioner has encroached and occupied more area than what was allotted to her etc., But those averments are absent in the impugned order. According to the petitioner, after receipt of the order dated 14.07.2021, directing her to vacate the canteen, she has submitted a representation dated 19.07.2021 for allotment of temporary place but it was not considered by the respondents.

7. In the light of the above, without expressing any opinion on merits as regards the validity or otherwise of the order dated 14.07.2021 of the first respondent, the first respondent is directed to consider the representation dated 19.07.2021 of the petitioner for providing an alternative place to run the Canteen within the precincts of the first respondent hospital temporarily till the Covid-19 Pandemic subside and pass orders on merits and in accordance with law, after affording an opportunity of hearing to the petitioner, within a period of week from the date of receipt of a copy of this order.

8. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

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To

1. The Dean,
The Government Mohan Kumaramangalam,
Medical College Hospital,
Salem - 1.

2. The Assistant Executive Engineer,
Public Work Department,
Building (ka & pa) Sub Division Hospital Works,
Salem - 7.

+1CC to Mr.M.Guruprasad, Advocate, SR.No. 43968

+1CC to The Government Pleader, SR.No. 43939

WP No. 17654 of 2021

PM(CO)
B.VC (24/09/2021)