



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2021

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THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P(MD)No.11589 of 2021

Bhuvaneshwari

... Petitioner

Vs.

1.The Commissioner,
Madurai Corporation,
Madurai.

2.The Assistant Engineer,
South Zone,
Madurai Corporation,
Madurai.

3.The General Manager,
A-1301, Madurai District Co-operative Milk Producer Union Ltd.,
Sathamangalam,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent to take appropriate action against the second respondent and direct the first respondent to restore the basement constructed by the petitioner near West Masi Street, Pillayar Temple, Madurai or direct first respondent to permit the petitioner to reconstruct the basement by paying adequate compensation by considering the representation of the petitioner dated 06.07.2021.

For Petitioner : Mr.M.Prabhakaran
For R1 and R2 : Mr.Prabhu Ramachandran,
Standing Counsel.
For R3 : Mr.K.S.Selva Ganesan,
Counsel for State.

ORDER

The petitioner seeks a direction to the first respondent to take appropriate action against the second respondent and for a direction to restore the basement constructed by the petitioner in connection with an Aavin milk booth.

2. The petitioner states that he applied for and was appointed as an agent by the third respondent under proceedings bearing Na.Ka.No.43/Virpanai 1/2020 dated 15.06.2021. By virtue thereof, the petitioner was permitted to sell milk and related



products at Pillayar Temple, North Masi Street, Madurai.

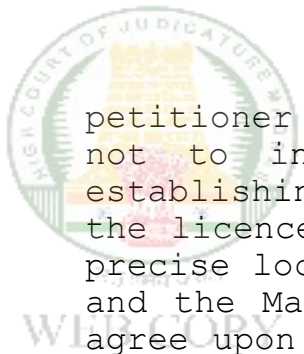
3. For such purpose, the petitioner was permitted to erect an Aavin booth near the West Masi Street, Pillayar Temple measuring 48 Square feet. As a condition for setting up the said Aavin milk booth, the petitioner was required to remit a sum of Rs.50,000/- (Rupees Fifty Thousand only) as a non-refundable deposit. Accordingly, the petitioner paid a sum of Rs.50,111/- (Rupees Fifty Thousand One Hundred and Eleven only) to the third respondent on 04.06.2021. The licence was granted upon fulfilment of this condition.

4. The petitioner states that he incurred expenditure of more than Rs.10,000/- (Rupees Ten Thousand only) to lay the foundation or platform for the Aavin booth. However, to his shock, the second respondent destroyed and cleared the preliminary construction of the petitioner on 06.07.2021. Therefore, the petitioner made a representation to the first respondent on 06.07.2021 and has filed the present Writ Petition.

5. Mr.Prabhu Ramachandran, learned Standing Counsel for the Madurai Corporation, submits, on instructions, that the impugned action was taken because the Madurai Corporation did not receive the non-refundable deposit of Rs.50,000/- (Rupees Fifty Thousand only). On the other hand, the third respondent submits that a sum of Rs.6,00,000/- (Rupees Six Lakhs only) is due and payable to the third respondent by the Madurai Corporation and, therefore, the sum of Rs.50,000/- (Rupees Fifty Thousand only), which was paid by the petitioner, was adjusted against amounts due and payable by the Madurai Corporation to the third respondent.

6. From the submissions of the parties to the present dispute, it is abundantly clear that the petitioner has paid the price for the claims and counter claims of the Madurai Corporation and the third respondent. In other words, the admitted position is that the petitioner remitted the sum of Rs.50,000/- (Rupees Fifty Thousand only) to the third respondent, but the third respondent did not make such payment to the Madurai Corporation in view of the amounts due and payable from the Madurai Corporation to the third respondent. Instead, the third respondent issued a communication dated 11.08.2021 to the Madurai Corporation, whereby it sought to adjust the amount remitted by the petitioner. There is little doubt that the petitioner cannot be made to suffer on account of the tussle between the Madurai Corporation and the third respondent. Hence, the petitioner should be permitted to put up the Aavin booth in accordance with the terms of the licence granted in such regard without facing any further disturbance or harassment from the Madurai Corporation.

7. For reasons set out above, W.P.(MD).No.11589 of 2021 is directed directing the respondents herein to permit the



petitioner to set up the Aavin milk booth at the allotted space and not to interfere with or otherwise disturb the petitioner in establishing and running such Aavin milk booth in accordance with the licence granted in such regard. For purposes of earmarking the precise location for setting up the Aavin milk booth, the petitioner and the Madurai Corporation shall jointly inspect the location and agree upon the precise location for establishment of the Aavin milk booth. This exercise shall be completed within a period of one (1) week from the date of receipt of a copy of this order. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg/LM

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

- 1.The Commissioner,
Madurai Corporation,
Madurai.
- 2.The Assistant Engineer,
South Zone,
Madurai Corporation,
Madurai.
- 3.The General Manager,
A-1301, Madurai District Co-operative Milk Producer Union Ltd.,
Sathamangalam,
Madurai.

+1 CC to M/s.R.PRABU RAMACHANDRAN, Advocate (SR-30179[F] dated 24/09/2021)

W.P (MD) No.11589 of 2021
23.09.2021

DJ(CO)

KB(01.10.2021) 3P 5C

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