



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) No.20370 of 2021

and

W.M.P. (MD) Nos.17021 and 17022 of 2021

WEB COPY

Apple Traders (People Help
Line Service) Kumbakonam (Regd. Firm)
By its Partner, I.Irfan,
S/o.Ibraham,
No.75, Pachaiyappan Street,
Kumbakonam,
Thanjavur District.

... Petitioner

vs.

The Kumbakonam,
its Executive Authority,
The Commissioner,
Kumbakonam Municipal Buildings,
Kumbakonam-Thiruvudaimaruthur Road,
Kumbakonam-612 001.

... Respondent

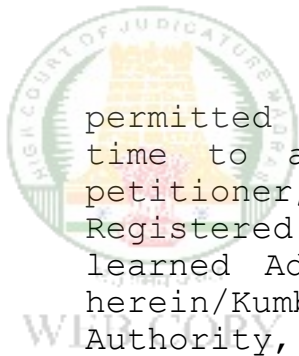
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records from the respondent, pertaining to the proceedings in Na.Ka.No.1888/2021/A7, dated 08.10.2021 in respect of Na.Ka.No.14589/2017/A7 dated 17.07.2020 and 08.02.2021 and to quash the same as illegal and contrary to Law and consequently restraining the respondent from in any way implementing the auction proceedings dated 28.10.2021 stipulated in Na.Ka.No.1888/2021/A7 dated 08.10.2021 by an order of injunction and also direct the respondent to permit the petitioner to collect the fees as per the order dated 21.02.2021 and as per auction conditions 2021-2024 and thereby order the status-qup as on 05.10.2021 to be continue till auction conditions date of 31.03.2024.

For Petitioner : Mr.M.V.Santharaman
For Respondent : Mr.M.Rajarajan
Standing Counsel

O R D E R

Heard Mr.V.Santharaman, learned counsel appearing for the petitioner and Mr.M.Rajarajan, learned Standing Counsel appearing on behalf of the respondent.

2.When the matter came up for hearing, my first impression was to give an opportunity to the respondent to file a counter. Since the learned counsel for the petitioner insisted that he should be

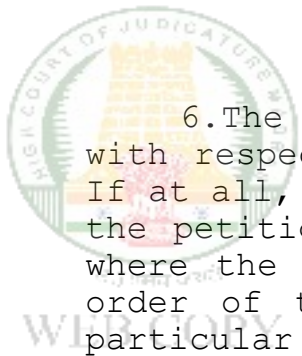


permitted to argue, this Court had given him more than sufficient time to argue. I am quite disturbed by the facts that the petitioner, Apple Trader (People Help Line Service) Kumbakonam, Registered Firm had filed a suit in O.S.No.310 of 2021 before the learned Additional Sub Judge, Kumbakonam, against the respondent herein/Kumbakonam Municipality represented by the Executive Authority, The Commissioner, Kumbakonam, seeking a relief of declaration that an impugned notice dated 04.10.2021 in Na.Ka.No.14589/2017/A7 issued by the defendant with respect to the premises license dated 26.06.2018, is against the provisions of common law and against the provisions of G.O.Ms.No.92, dated 03.07.2007 and for consequential injunction for implementing the said notice. Further relief was also asked that the lease-cum-license period initially given by the proceedings on 26.06.2018, which is said to be valid for a period of nine years should be continued to be in force for the said period of nine years, namely, till 2027.

3.This required examination of the said notice, dated 04.10.2021. The notice was also considered by the learned Additional Sub Judge. In the notice dated 04.10.2021, issued by the respondent herein, it has been stated that rights were granted to the petitioner to collect license and thereafter, owing to the code of conduct coming into force owing to declaration of the elections, the license period was extended and thereafter, the respondent had taken a policy decision to cancel the said license. That particular notice was challenged in the suit.

4.The learned counsel for the petitioner stated that the learned Additional Sub Judge, after hearing both sides, had granted a relief of temporary injunction in I.A.No.250 of 2021, restraining the respondent, namely, the Kumbakonam Municipality from interfering with the right of the petitioner to collect the license fees till 31.03.2022. In effect, the petitioner has obtained an order of interim injunction. Any violation of that order by the respondent would naturally have to be examined once again by the learned Additional Sub Judge, who had granted the order of interim injunction. A complaint can be given by the petitioner herein regarding violation.

5.The violation, according to the learned counsel for the petitioner is that notwithstanding the order of interim injunction, the respondent appears to have continued to proceed with conducting an auction with respect to the license fees to be collected for the purpose of which the petitioner had an existing right. The license fees is to be collected for maintaining the public toilet for male members and also a separate rest room for mothers and pregnant woman. The petitioner had been collecting license fees and it had been shared between the petitioner and the Municipality. I am informed that the latest ratio of such share is 50:50.



6.The respondent had taken a decision to conduct an auction with respect to the collection of license fees for further period. If at all, the petitioner has any grievance, the proper approach for the petitioner is to complain to the learned Additional Sub Judge, where the suit is pending that there is a direct violation of the order of temporary injunction. The petitioner may take up that particular avenue. The petitioner has however been advised to file a separate writ petition. I do not think that it would be prudent on the part of this Court to exercise its mind over the same issue, when it is already pending before the competent civil Court.

7.Let the learned Additional Sub Judge decide the issue raised by the petitioner in the present writ petition. Filing multiplicity of petitions would not come to the help of the petitioner herein. The petitioner had approached the civil Court. Let them proceed further seeking any further relief before the said Court.

8.In view of the views expressed by me, it is not possible to grant the relief sought for by the petitioner herein. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Sji

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.

+2 CC to M/s.T.R. SUBRAMANIAN, Advocate (SR-34476[F] dated 15/11/2021)

+1 CC to M/s.M. RAJARAJAN, Advocate (SR-34695[F] dated 16/11/2021)

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RD(06.12.2021) 3P 4C