BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.14589 of 2010
and
WMP(MD)No.1 of 2010

P.Rajangam ...Petitioner

Vs.

1.The Commissioner of Prohibition
and Excise,
Chepauk, Chennai-5.

2.The Assistant Commissioner (Excise),
Madurai.

3.The Divisional Excise Officer,
Madurai Division,
Madurai. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of certiorarified mandamus calling for the records of the 3rd respodent herein Na.Ka.No.108/1986, dated 03.11.2009 and Na.Ka.No.108/1986 dated 19.04.2010 and the proceedings of the 2nd respondent herein Na.Ka.no. 113112/1988/Prohibitions, 3 dated 16.11.2010 in respect of Arrack Shop No.8/1983-84, Madurai South Taluk, Madurai District and quash the same and consequently or recovering the said amount by resorting the to Revenue Recovery proceedings as against the assets of the petitioner herein.

For Petitioner : Mr.C.Mahendran,
For M/s.AL.Gandhimathi

For Respondent : Mr.S.Saji Bino,
Special Government Pleader

ORDER

This writ petition is filed as against the proceedings of the 3rd respondent / The Divisional Excise Officer, Madurai dated 03.11.2009 and 19.04.2010 and the proceedings of the second respondent / The Assistant Commissioner (Excise) in Na.Ka.No.108/1986 dated 16.11.2010.

2.The impugned notices were issued as a demand notice calling upon the petitioner to pay a sum of Rs.10,16,900/- as the arrears of kist/rent for the Arrack shop No.8/83-83 at Ismailpuram, Madurai South.

3.The Excise Department has conducted a public auction for the Arrack shop for the excise year 16.07.1983 to 15.07.1984. The auction was conducted on 03.06.1983. The petitioner had participated in the auction and made a bid for the Arrack Shop No.8/83-84 at Ismailpuram, Madurai South for Rs.1,33,000/- as kist / rent. The auction was confirmed on 15.06.1983 and as per the terms of tender notice, the auction purchaser should remit the rent in advance as required under Rule 16 of Tamil Nadu Toddy and Arrack Shops (Disposal in Auction) Rules, 1981 and should select an unobjectionable site as required under the Tamil Nadu Arrack (Retail Shops) Rules, 1981. The petitioner has identified a shop in Door No.78, East Mart Street, Madurai and applied for license in Form No.II. However the same was not accepted by the Revenue Divisional Officer, Madurai that the shop does not satisfy the distant rule in respect of a private hospital. As against the same the petitioner had earlier filed a writ petition before this court in WP.No.8241 of 1983 and this court had entertained the writ petition and granted an order of interim stay on 14.09.1983 and directed the respondents to issue temporary license to the petitioner to run the Arrack Shop at No.78, East Mart Street, Madurai. Pursuant to the order of this court a temporary license was granted to the petitioner by the respondents on 27.10.1983. However, the same was challenged by a Doctor by a way of Writ Appeal in WA.No.1011 of 1983 and a Hon'ble Division Bench of this court granted an order of interim injunction. The Revenue Divisional Officer by order dated 19.11.1983 cancelled the license issued to the petitioner and that was challenged by way an appeal before the Commissioner. The Commissioner rejected the appeal preferred by the petitioner by order dated 04.02.1984. As against the same the the petitioner filed a writ petition in WP.No.1543 of 1984 and the same was also dismissed and challenging the same, the petitioner filed an appeal in WA.Nos.208 and 209 of 1984, wherein the Hon'ble Division Bench of this court by order dated 01.03.1984 directed the authorities to issue license within a week and thereafter a license was granted to the petitioner from the period 01.03.1984. The petitioner paid the kist amount for the said period. While so the 3rd respondent by his proceedings dated 19.07.1994 issued a demand notice for a sum of Rs.10,16,900/- as arrears of kist for the period from 15.07.1983 to

1.03.1984. The petitioner challenged the same in WP.No.15972 of 1994 and it was allowed by this Court by order dated 19.06.2001 and directed the authorities to consider the objections of this petitioner. The respondents after providing opportunity passed the impugned demand orders reiterating the earlier demand dated 19.07.1994. Therefore the petitioner once again approached this court as against the demand notices.

4.The learned Senior counsel appearing for the petitioner submits that the liability of payment of kist/rent cannot be fastened on the petitioner for the period prior to the date on which the license was actually granted. Though the auction is for the year 1983 to 1984 and the period commences from 16.07.1983 to 15.07.1984. The request of this petitioner in Form II was rejected by the Revenue Divisional Officer and at the instance of one Doctor, injunction was granted as against the petitioner restraining him from running the shop and this petitioner was issued with the license to run the shop based on the orders of the Hon'ble Division Bench in WA.Nos.208 and 209 of 1984 only with effect from 01.03.1984 till 15.07.1984 and this petitioner has already paid the amount for this relevant period for which the petitioner was permitted to run the shop. The learned Senior Counsel further submits that Rule 17(2) of the Arrack Shop Disposal in Auction Rule 1981 was amended only on 15.07.1984 to the effect that if the auction purchaser does not choose an unobjectionable site or building satisfying Rule 6 of Tamil Nadu Arrack (Retail Shops) Rules 1981, then the liability for paying kist will commence from the commencement of the excise year. Such Amendment was made only on 15.07.1984. In 1985, WLR 569, a Hon'ble Division Bench of this Court held that amended rule 17(2) of the Tamil Nadu Toddy and Arrack Shops (Disposal in Auction) Rules will be applicable only for the auctions conducted after 15.07.1984 and will not be applicable to the auctions which were conducted earlier.

5.Adding to it, the learned Senior Counsel also submits that the first demand itself was made only on 19.07.1994 after 10 years and that impugned order was also quashed by this court in WP.No.15972 of 1994 and these subsequent demands have been made in the year 2009 and 2010 after 19 years. Therefore on this ground also the impugned orders are liable to set aside.

6.The learned Special Government Pleader appearing for the respondents submits that as per the tender condition, the auction purchaser is expected to remit the Kist (equivalent to 2-1/2 times) the monthly rent as required under Rule 16 of the Tamil Nadu Toddy and Arrack Shop (Disposal in Auction) Rules 1981. It is also the duty of the auction purchaser to identify the unobjectionable side for the location of shops in conformity with the rules. The place identified by this petitioner was an objectionable place, which located near a hospital and therefore his request under Form II was rejected and subsequently pursuant to the order of the Hon'ble Division bench the license has been issued. With regard to the orders passed by this court in WP.No. 15972 of 1992, the learned Special Government Pleader submits that this court has set aside the earlier demand notice dated 19.07.1994 that the petitioner's objections were not considered and liberty was granted to the third respondent to consider the objections of this petitioner and to pass a fresh order. Accordingly the petitioner was provided an opportunity of personal hearing and thereafter the impugned demand notices were passed. The petitioner has participated in the tender and taken a bid for one year, failed to comply with the required conditions and the rules for running the shops and therefore he is liable to pay the kist amount for the entire excise year commencing from 15.07.1983. The writ petitioner is evading the payment from 1983 and it is the responsibility of the State to ensure the physical stability and sustainable by achieving sufficient revenue by reducing the ratio of fiscal deficit.

7.This court considered the rival submissions made and also perused the materials placed on record.

8.The petitioner has participated in the auction conducted by the respondents for a Arrack shop. The place identified by the petitioner was not accepted by the authorities that it is not in conformity with the Tamil Nadu Arrack (Retail Shops) Rules, 1981. This court on the earlier occasion directed the authorities to issue a temporary license to the petitioner and that was also challenged by one Doctor and an interim injunction was granted as against the order of the temporary license. While so, the Revenue Divisional Officer, Madurai by order dated 19.11.1983 cancelled the temporary license granted to the petitioner. However relief was granted to the petitioner in WA.Nos. 208 and 209 of 1984 directing the authorities to grant license to the petitioner and accordingly licence was issued to the petitioner with effect from 01.03.1984 to 15.07.1984 to run the shop till 15.07.1984. The petitioner has paid the rent for the relevant period and it is not disputed. The impugned demand dated 19.07.1994 has made based on an audit objection for the entire excise period from 15.07.1983 to 15.07.1984. A similar issue in J.M. & Company v. Collector of Madras [1984 SCC OnLine Mad 440], a Hon'ble Division Bench of this Court has held as follows:

> *"15. In view of this revisional jurisdiction ot the State Government, it is permissible for an auction purchaser to challenge the view or the licensing authority with regard to the site being objectionable, and the question as to whether the site is objectionable or not is subject to determination by the authorities under the Act, including the State Government, who can decide this question in the exercise of its revisional jurisdiction. Therefore, on the mere ground that the auction purchaser has not mentioned a site which the authority considers unobjectionable, it cannot be held that the application for licence was not made within a period of one week as provided by R. 17(2). Consequently we are unable to agree with the view taken by the learned Judge that it was necessary, prior to the making of new R. 17(2) and (3), that the auction purchaser should specify*

the site, which, according to the excise authorities would be unobjectionable. In the view which we have taken, so far as W.A. Nos. 226 to 233 are concerned, these appeals will have to be allowed, the order of dismissal of W.P. Nos. 7980 to 7987 of 1983. is set aside, and a ***writ of mandamus will issue restraining the authorities from claiming rental for the period prior to the date of issue of the licence to the respective petitioners.*** *"*

17. ... ... Therefore, notwithstanding the express provision under R.17(3) that the liability will commence from the date of expiry of the period of one week from the date of confirmation, on the facts of the present case, it is obvious, that the liability of the petitioners could not have commenced prior to the 03.08.1983. The Excise authorities were therefore, not justified in demanding rental for a month of August 1983."

9.Applying the ratio laid down by the Hon'ble Apex Court in the decision supra, the liability of the petitioner for paying kist / rent will arise only from the date of issuing the license, i.e., from 01.03.1984 and as such the petitioner had already paid kist /rent amount for the period from 01.03.1984 to 15.07.1984. The impugned demands are set aside and the writ petition is allowed. No costs. Consequently connected miscellaneous petition is also closed.

28.04.2023

dsk

To

1.The Commissioner of Prohibition
and Excise,
Chepauk, Chennai-5.

2.The Assistant Commissioner (Excise),
Madurai.

3.The Divisional Excise Officer,
Madurai Division,
Madurai.

B.PUGALENDHI, J.

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ORDER MADE IN
WP(MD)No.14589 of 2010

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