



W.P.(MD) No.12187 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2023

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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD) No.12187 of 2014

S.Arumugam

... Petitioner

/vs./

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Commissioner,
Kadayanallur Municipality,
Tenkasi Taluk,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent No.2 to pay a sum of Rs. 6,87,565/- as damages/compensation with 12% interest from the date of this petition till payment.

For Petitioner

: Mr.T.S.R.Venkataramana Senior Counsel
for Mr.A.Parameswaran

For R1

: Mr.M.Prakash
Additional Government Pleader



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For R2

: Mr.J.Parekh kumar

ORDER

The writ petition has been filed for a Mandamus to direct the second respondent to pay a sum of Rs.6,87,565/- as damages/compensation with 12% interest from the date of this petition till payment.

2.Heard Mr.T.S.R.Venkataramana Senior Counsel for Mr.A.Parameswaran, learned counsel for the petitioner, Mr.M.Prakash, learned Additional Government Pleader for the first respondent and Mr.J.Parekh kumar, learned counsel for the second respondent.

3.Mr.T.S.R.Venkataramana, learned Senior Counsel for Mr.A.Parameswaran, learned counsel for the petitioner would submit that the second respondent Municipality owns Periyar Market, wherein they conduct daily market for six days and weekly market on Thursday. He would submit that the petitioner was a successful bidder for the weekly market for 3 years starting from the year 2011-2012 to 2013-2014. He would further submit that a third party had bid for auction for the daily market. But however, he started to put up shutters for



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the open markets and gave it for the monthly lease to various parties. The said successful bidder did not close the shop as mandated under the leased documents, thereby a huge revenue loss has been caused to the petitioner. Therefore, he had been complaining of the violations committed by such third party. In spite of repeated representations, the second respondent had permitted such violator to carry on his business. Therefore, a loss to a sum of Rs.6,87,565/- had occurred to the petitioner. Therefore, he had come up with the writ petition seeking for a direction to the second respondent to pay the aforesaid amount.

4.Countering his arguments, Mr.J.Parekh Kumar, learned counsel for the second respondent would submit that pursuant to the complaint made by the petitioner, a show cause notice has been issued to such third party and his lease has also been cancelled. He would also submit that the third party did not conduct any market on Thursday. He would also submit that the petitioner had been conducting the market on Thursday by leasing out the properties to various third parties and he is now trying to claim unjust enrichment. He would further submit that these are the disputed question of facts, which cannot be gone into in this writ petition. Utmost the petitioner ought to have filed a civil suit for



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substantiating that there was a loss to the petitioner. Therefore, he would pray this Court to dismiss the claim of the petitioner.

5.I have considered the rival submissions made by the learned counsels appearing on either side.

6.What is sought in this writ petition is damages/compensations for the inaction on the part of the second respondent to allow a third party to operate market on all 7 days including Thursday, on which day, the market should be closed. The petitioner had not disputed that he was not permitted to operate the market on Thursday. Neither it is the case in the writ petition that he was not able to run the market. The contention that has been raised is that in view of the operation of the daily market even on Thursday, the petitioner had suffered a huge loss. This, in my view, cannot be gone into in a writ petition.

7.Since first what is to be assessed is what is the monetary loss that has been caused to the petitioner. This could be only dealt with in an appropriate civil proceedings. Hence, I do not find any merits in this writ petition. However, liberty



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is granted to the petitioner to approach the appropriate civil Court and when the petitioner approaches the appropriate civil Court, while calculating the period of limitation, the period, namely, the date of filing of this writ petition till the date of this order, shall be excluded. This direction is issued in view of Section 14 of the Limitation Act, 1963.

8.In fine, the Writ Petition is dismissed with the aforesaid liberty to the petitioner. However, there shall be no order as to costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

16.02.2023

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To

The District Collector,
Tirunelveli District,
Tirunelveli.



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K.KUMARESH BABU, J.

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