



WEB COPY



WP.No.2648 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.02.2024

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.2648 of 2024
and
WMP.No.2914 of 2024

Shoba Vijayakumar

...

Petitioner

/vs/

1. The Municipal Commissioner,
Udhagamandalam, Municipality,
Udhagamandal,
The Nilgiris District.

2. V.Radhakrishnan,
No.112/D, Lylock House,
Onsiow Road, Bombay Castle,
Udhagamandalam,
Nilgiris District.

...

Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records on the file of the 1st respondent pursuant to the impugned order dated 30-01-2024 in Na.Ka.No.303/2009.A11 and quash the same.

For Petitioner : Mr.S.Karthikeyan



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For Respondents : Mr.P.Srinivas,
Standing Counsel for Municipality

ORDER

By consent, this Writ Petition is disposed at the admission stage itself.

2.This Writ Petition has been filed challenging the auction notice of the first respondent dated 30.01.2024 in Na.Ka.No.303/2009/A11.

3.Heard, Mr.S.Karthikeyan, learned counsel for the petitioner and Mr.P.Srinivas, learned Standing Counsel for the first respondent and perused the material available on record.

4.The learned counsel for the petitioner submitted that he is the license holder of the shop No.3, there is a dispute between himself and the second respondent in whose favour the license in respect of the shop was originally granted. Earlier a Writ Petition has been filed by the second respondent in W.P.No.26894 of 2008 and in which a direction has been given to the first respondent to conduct enquiry with regard to the mutual claim made by the petitioner and the second respondent and to pass orders.

5. The learned counsel for the petitioner submitted that without complying the above order, the first respondent had issued the order to cancel the license on



10.01.2024 and thereby issued the impugned auction notice.

6. However, the learned counsel for the first respondent submitted that in compliance of the order passed in W.P.No.26894 of 2008 dated 20.06.2018, notice has been given to both the petitioner and the second respondent and enquiry has been initiated. The eviction order has been issued only at the culmination of the enquiry and the auction notice has been issued consequent to the eviction notice.

7. On perusal of the order dated 10.01.2024, which has been passed in compliance of the direction given in the Writ Petition in WP.No.26894 of 2008 dated 20.06.2018, it is seen that notice has been given to the petitioner's husband as well as the 2nd respondent. After the demise of the petitioner's husband, the petitioner has also been given with notice and she had also participated in the enquiry. However, the 1st respondent has passed the order stating that the 2nd respondent did not obtain any prior permission before transferring the shop in the name of the petitioner's husband and no objection certificate was obtained from the 1st respondent. Since the licence period has already been expired and the petitioner's husband (after his demise the petitioner) and the 2nd respondent continued to fight for the licence of the shops, the 1st respondent deemed it fit to



evict the petitioner from the shop and conduct a fresh auction.

8. The petitioner cannot have any grievance because, as per the earlier order dated 20.06.2018 in W.P.No.26894 of 2008, the petitioner has been given an opportunity for hearing and furthermore, the licence period itself got expired long back. The petitioner got the advantage of continuing the shop for years together, even after the licence was expired. However, in the order of the first respondent, it has been stated that the auction is scheduled to be held on 07.02.2024. Only in pursuance to the said order, the impugned notice dated 30.01.2024 has been issued by demanding the petitioner to vacate the shop immediately and hand over possession.

9. However, it is learnt that the 1st respondent has collected the licence fee from the petitioner until March 2024. The receipt has been produced by the petitioner and it is learnt that the licence fee was paid on 10.01.2024. Having passed the order on 10.01.2024 by setting the auction date on 07.02.2024, if the 1st respondent had collected licence fee till the month of March 2024, then it has to be presumed that the 1st respondent has allowed the petitioner to be in possession till such time.

10. In fact, the impugned demand notice itself does not deny that the



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licence fee has been collected until March 2024 by the 1st respondent. In that case, it is appropriate to extend the time to vacate the shop by the petitioner until March 31, 2024, and schedule the auction thereafter. If the petitioner continues to remain in possession even after 31.03.2024, then she cannot expect any further notice from the 1st respondent and she will be vacated from the shop in accordance with the procedure contemplated under the Tamil Nadu Urban Local Bodies Act.

11. In view of the above discussion, this Writ Petition is **disposed**, by directing the first respondent is to wait till 31st March 2024 and schedule the public auction subsequently. No costs. Consequently, the connected miscellaneous petition is closed.

06.02.2024

Index : Yes/No
Internet : Yes/No
Speaking/ Non-speaking
Neutral: Yes/No
jrs



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R.N.MANJULA, J.

jrs

- To
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