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W.P.No.24877 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.24877 of 2021
and W.M.P.Nos.26186 and 26188 of 2021**

R.Chitra

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep.by its Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai.
- 2.The Executive Engineer,
Public Works Department,
Buildings (Construction and Maintenance) Division,
District Collectorate Campus,
Dharmapuri-636 705.
- 3.The Assistant Executive Engineer,
Public Works Department,
Buildings (Maintenance) Sub-Division,
Dharmapuri.
- 4.The Assistant Engineer,
Public Works Department,
Buildings Maintenance Section,
Dharmapuri.



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5.The Dean,
Government Dharmapuri Medical College Hospital,
Dharmapuri.

6.The General Manager,
Dharmapuri District Co-operative
Milk Producers Union Limited,
107/30F, Vattara Valarchi Colony,
Krishnagiri Main Road,
Dharmapuri.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned order dated 03.11.2021 in proceedings Ka.No.Ko.404/2021/Oo.Po.(Ma.Pa.) passed by the fourth respondent herein and quash the same and consequently direct the respondents herein to permit the petitioner to continue to run Aavin Milk Parlour in the fifth respondent's Hospital Campus, as per G.O.Ms.No.231, Health and Family Welfare (J1) Department, dated 16.08.2010.

For Petitioner : Mr.L.Mouli

For Respondents : Mr.E.Sundaram
Government Advocate
for R1 & R5
Mr.LSM.Hasan Fisal
Additional Government Pleader
for R2 to R4
Mr.U.Baranidharan
Standing Counsel for R6

O R D E R



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This Writ Petition has been filed challenging the impugned order dated 03.11.2021 passed by the fourth respondent herein vide proceedings in Ka.No.Ko.404/2021/Oo.Po.(Ma.Pa.) and for a consequential direction to the respondents herein to permit the petitioner to continue to run Aavin Milk Parlour in the fifth respondent Hospital, as per G.O.Ms.No.231, Health and Family Welfare (J1) Department, dated 16.08.2010.

2. The learned counsel appearing for the petitioner submits that the petitioner, who is a widow, has made an application before the first respondent seeking permission to run Aavin Milk Parlour in the fifth respondent Hospital Campus. The first respondent, after getting necessary opinion from the fifth respondent, had issued G.O.Ms.No.231, Health and Family Welfare (J1) Department dated 16.08.2010, granting permission to run Aavin Milk Parlour in the fifth respondent Hospital Campus and the sixth respondent has passed an order dated 30.09.2009 vide proceedings in Na.Ka.No.12946/Sales/2/2000 granting licence to operate as Sales Representative and the second respondent has also granted permission vide



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order dated 18.11.2010 with certain conditions with regard to extension of Milk Parlour shed and fixed monthly rent of Rs.125/-. In pursuance of the same, the fifth respondent has also permitted the petitioner to run Aavin Milk Parlour in their Campus.

3. While so, the fourth respondent, vide communication dated 26.04.2021, has directed the petitioner to get No Objection Certificate from the fifth respondent for the purpose of re-fixing the monthly rent and issued another communication dated 01.09.2021 directing the petitioner to get No Objection Certificate from the fifth respondent, failing which, she will be evicted from the premises. However, there is no necessity for getting No-Objection Certificate to re-fix the monthly rent, in view of G.O.Ms.No.231, Health and Family Welfare (J1) Department dated 16.08.2010. In the month of September 2021, the fifth respondent without issuing any notice orally directed the petitioner to close Aavin Milk Parlour. Thereafter, the petitioner came to know through a communication dated 13.10.2021 sent by the fifth respondent to the second respondent that



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on 02.09.2021, she was evicted from the premises and despite the same, she has been running the Aavin Milk Parlour from 08.10.2021. However, no such eviction proceedings were initiated and the petitioner has been paying the rent regularly to the respondents 2 to 4 and the second respondent has also extended the licence till 03.03.2022 vide order dated 09.08.2021. Without conducting proper enquiry, the fourth respondent has passed the impugned order dated 03.11.2021 directing the petitioner to remove Aavin Milk Parlour from the fifth respondent Hospital campus on the ground that she does not have necessary permission to run Aavin Milk Parlour.

4. He would further submit that the first respondent has granted necessary permission to the petitioner to run Aavin Milk Parlour in the fifth respondent Hospital Campus vide G.O.Ms.No.231, Health and Family Welfare (J1) Department dated 16.08.2010, and the impugned order was passed by the fourth respondent contrary to the above Government Order, without conducting proper enquiry.

5. The learned Additional Government Pleader appearing for the



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respondents 2 to 4 fairly submits that the first respondent has granted permission to the petitioner to run Aavin Milk Parlour in the fifth respondent Hospital Campus vide G.O.Ms.No.231, Health and Family Welfare (J1) Department dated 16.08.2010, and the fourth respondent, being a Subordinate Officer, has no power to pass the impugned order and hence, this Court may quash the impugned order passed by the fourth respondent.

6. Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondent Nos.1 and 5, the learned Additional Government Pleader appearing for the respondent Nos.2 to 4 and the learned Standing Counsel appearing for the sixth respondent.

7. When the first respondent, namely, the Government of Tamil Nadu, represented by its Secretary, Health and Family Welfare Department, has granted permission to the petitioner to run Aavin Milk Parlour in the fifth respondent Hospital Campus vide G.O.Ms.No.231, Health and Family Welfare (J1) Department dated 16.08.2010, the fourth



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respondent, who is the Subordinate Officer of the first respondent, cannot pass the impugned order dated 03.11.2021 directing the petitioner to remove Aavin Milk Parlour from the fifth respondent Hospital Campus. An order passed by a Superior Authority cannot be set at naught by a Subordinate Authority, more so, without conducting proper enquiry. Hence, the impugned order dated 03.11.2021 passed in Ka.No.Ko404/2021/Oo.Po.(Ma.Pa.) by the fourth respondent herein is quashed.

8. Accordingly, this Writ Petition is allowed. There shall be no order as to costs. Connected miscellaneous petitions are closed.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb

To

1.The Government of Tamil Nadu,
Rep.by its Secretary,



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Fort St.George, Chennai.

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District Collectorate Campus,
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- 3.The Assistant Executive Engineer,
Public Works Department,
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- 4.The Assistant Engineer,
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Buildings Maintenance Section,
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- 5.The Dean,
Government Dharmapuri Medical College Hospital,
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M.DHANDAPANI, J.

ssb



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