



W.P.(MD) No.23414 of 2015

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

**W.P.(MD) No.23414 of 2015
and
M.P.(MD) Nos.1 and 2 of 2015**

L.Arulsagayaraja

... Petitioner

/vs./

1.The Secretary to Government,
Government of Tamil Nadu,
Public Health and Family Welfare Department,
Secretariat,
Chennai.

2.The Director of Medical Education,
Keelpauk, Chennai.

3.The Dean,
Thanjavur Medical College Hospital,
Thanjavur.

4.The Assistant Engineer,
PWD Buildings Maintenance Division,
Medical Services,
Thanjavur.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned order bearing Na.Ka.No.4287/Thi(ma)va/2015 dated 16.07.2015 and order bearing Na.Ka.No.4297/Thi(ma)va/2015 dated 15.12.2015 issued by the 3rd respondent and quash the same.

For Petitioner : Mr.S.Anwar Sameem
For Respondents : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The writ petition had been filed challenging the order passed by the third respondent calling upon the petitioner to vacate and hand over the possession of the petty shop.

2. The learned counsel for the petitioner would submit that the petitioner had been granted with the permission for running a petty shop, considering the fact that he is a differently abled person by exercising its power under G.O.Ms.No.59, Public Health and Family Welfare Department, dated 20.03.2003 by orders of the first respondent herein. He would submit that the petitioner being a differently abled person has been affected with 80% disability, the petty shop being run by the petitioner is the only source of income for him to eek out his



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livelihood. Without any notice to the petitioner, the third respondent had now issued the order calling upon the petitioner to vacate the shop on a particular day. He would further submit that when the Government had recognized his disability and had directed the allotment of a place to the petitioner to run a petty shop, the third respondent did not have the authority to direct the petitioner to vacate. Hence, he would seek interference with the orders passed by the third respondent.

3. Countering his arguments, Mr.N.Ramesh Aarumugam, learned Government Advocate for the respondents would submit that the Government Order issued in favour of the petitioner was made in exercise of the policy decision taken by the Government in G.O.Ms.No.59, Public Health and Family Welfare Department, dated 20.03.2003. However, the said Government Order had been superseded further by G.O.Ms.No.93, Public Health and Family Welfare Department, dated 25.03.2015.

4. The said Government Order was also superseded vide G.O.Ms.No.194. Once the Government Order had been issued in G.O.Ms.No.194 varying earlier policy by only to lease such shops based upon the tender, the petitioner would not



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be entitled for grant of any relief. Therefore, he would submit that if the petitioner vacates and if the respondent decides to allot the shop, the same would be allotted only by following the tender process and the petitioner can always participate in the tender process.

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

6. Admittedly, the petitioner is a differently abled person and has been given a disability certificate of 80%. The Government considering the condition of the petitioner had made a recommendation to the fifth respondent for allotment of a place to enable the petitioner to run a petty shop. The Government Order in G.O.Ms.No.59, Public Health and Family Welfare Department, dated 20.03.2003 also provides for granting of such shop to such differently abled persons. In that context, it is to be noted that Section 37 of the Rights of Persons with Disabilities Act, 2016 provides a duty for appropriate Government/local authorities to make schemes in favour of persons with benchmark disabilities.

7. When a mandatory provision has been made for the Government to make schemes for such disabled persons and the Government have already taken a



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policy decision in favour of the petitioner to grant him a place to run a petty shop, the present impugned order passed by the third respondent is without considering the object of which such allotment was given to the petitioner.

8. Even though the impugned order had been made even before coming into force of the said Act, for the reasons indicated above, I am inclined to set aside the order impugned made by the third respondent and further to direct the first respondent to consider the case of the petitioner in reference to Section 37 of the Rights of Persons with Disabilities Act, 2016 and take appropriate decision in accordance with law. Till such decision is taken, the petitioner shall not be disturbed.

9. The Writ Petition stands disposed of, with the aforesaid directions. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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K.KUMARESH BABU, J.

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