

(2011) 12 MAD CK 0031

In the Madras High Court

Case No : Writ Petition (MD) No's. 11405 of 2005, 1059 and 3211 of 2006 and 7093 of 2007 and Connected M.P.s

E. Thangasamy Raja

APPELLANT

Vs

Executive Officer, Ettayapuram Special Village Panchayat,
Ettayapuram

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(6), 226, 243G, 300A

Tamil Nadu District Municipalities Act, 1920 — Section 229(2), 262, 262(1), 262(3), 264

Tamil Nadu Panchayats (Opening and Maintenance of Market) Rules, 2000 — Rule 11, 4(3), 7, 8, 8(1)

Tamil Nadu Panchayats Act, 1994 — Section 147(2), 148, 148(1), 148(2), 148(5)

Citation : (2012) 2 MLJ 43

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : M. Ajmal Khan, for the Appellant; S. Srimathy for S.M.S. Johny Basha, for the Respondent

Judgement

D. Hariparanthaman, J.—The right of the petitioner to conduct private market in his property at Ettayapuram on every Saturday had been the subject matter of various writ proceedings and the matter has also reached the Honourable Supreme Court twice. While the previous round of litigations were before the Principal seat of this Court, these batch of writ petitions were filed before the Madurai Bench of this Court, as the litigations continued after the formation of Madurai Bench of this Court in July 2004. From the observations made by this Court in several previous litigations, the undisputed fact is that the petitioner and his ancestors had been running a private weekly market on Saturdays and the people bought and sold Sheeps and Goats at their place at Ettayapuram in Tuticorin District for more than 40 years. The petitioner made an application dated 19.2.1997 seeking renewal of licence for conducting private market for the period commencing from 1.4.1997 to 31.3.1998 and the same was rejected by

the respondent vide order dated 27.2.1997.

2. The petitioner filed a writ petition in W.P. No. 4131 of 1997 before this Court questioning the order dated 27.2.1997 of the respondent. Learned single Judge of this Court allowed the said writ petition on 2.9.1997 with cost and issued positive direction to the respondent to renew the licence of the petitioner for conducting private weekly market.

3. Against the order dated 2.9.1997 of this Court in W.P. No. 4131 of 1997, the respondent preferred an appeal in W.A. No. 1169 of 1997. A Division Bench of this Court, while dismissing the writ appeal, modified the order of the learned single Judge by directing the respondent to consider the petitioner's application for renewal of licence and pass appropriate orders.

4. The respondent, after making some inspection, rejected the petitioner's application for renewal on 21.11.1997, by indicating certain defects.

5. The petitioner, again approached this Court by filing writ petition in W.P. No. 18910 of 1997. Learned single, after considering at length the various objections and after the report of the Advocate Commissioner appointed by this Court, observed that the rejection of renewal application was not justified. Accordingly, the respondent was directed to consider the request of the petitioner and pass fresh orders within a period of ten days, without raising any other issues.

6. Against the said order in W.P. No. 18910 of 1997, an appeal was filed in W.A. No. 1535 of 1998 by the respondent and the same was dismissed on 24.8.1999.

7. In the meantime, the petitioner made another application dated 26.2.1999 for renewal of licence and the said application was also rejected on the plea that writ appeal was pending.

8. The said order dated 26.2.1999 was put to challenge in W.P. No. 7092 of 1999 and this Court, by an order dated 4.10.1999 directed the respondent to consider the application for renewal in terms of Section 262(3) of the Tamil Nadu District Municipalities Act, 1920 (shortly "the Municipalities Act").

9. The respondent took the matter to the Honourable Supreme Court by filing SLP No. 19090 of 1999 against the order dated 24.8.2009 in W.A. No. 1535 of 1998 which was rejected on 20.4.2000.

10. In these circumstances, after all the aforesaid proceedings and particularly after the Honourable Supreme Court rejected the S.L.P., after exchange of several correspondence, the respondent by proceedings dated 17.9.2001 granted renewal of licence, for conducting weekly market, on every Wednesday, instead of Saturdays, by imposing certain conditions.

11. The petitioner, possibly being tired by the repeated sojourns to the High Court, conducted weekly market on every Wednesday, even though he was holding market on Saturdays.

12. Thereafter, the petitioner filed an application dated 27.2.2002 seeking to renew the licence and also sought permission to hold market on Saturdays, as he was doing earlier. The said application was rejected by the respondent vide order dated 27.5.2002. The reason for rejection was that the respondent was conducting market on Saturdays through bidder and law and order situation would arise, if the petitioner is granted licence, for holding the weekly market on Saturdays.

13. Challenging the said order dated 27.5.2002, the petitioner filed a writ petition in W.P. No. 40814 of 2002. Learned single Judge of this Court allowed the writ petition on 31.3.2004 with cost and directed the respondent to consider the application for renewal in the light of the observations made therein. This Court categorically held that the petitioner has the priority in right to hold the market on Saturdays and if the respondent is of the opinion that weekly market cannot be held at two different places on the very same day, one by the petitioner and the other by the respondent, the respondent do very well shift its market to any other suitable day.

14. The respondent filed W.A. No. 3518 of 2004. However, the respondent withdrew the appeal and hence, the same was dismissed as withdrawn on 29.9.2004.

15. Since the respondent failed to comply with the directions issued in W.P. No. 40814 of 2002, the petitioner initiated contempt proceedings in C.P. No. 196 of 2005, before this Court. This Court ordered statutory notice to the respondent.

16. While so, one of the Councilors representing the respondent Panchayat and another person alleged to be a resident in the area, filed a Public Interest Litigation in W.P. No. 5070 of 2005 before the Madurai Bench of this Court, objecting for granting licence to the petitioner, to conduct private market on Saturdays. A Division Bench of this Court, which heard the said writ petition, dismissed the same on 21.7.2005.

17. While so, since the contempt petition in C.P. No. 196 of 2005 was listed before this Court on 28.10.2005, the Director of Special Village Panchayats, issued a proceedings dated 17.10.2005 relating to renewal of licence to the petitioner with certain conditions. Accordingly, the respondent passed an order dated 25.10.2005 relating to renewal of licence and the same was produced before this Court on 28.10.2005 and based on the same, the contempt petition in C.P. No. 196 of 2005 was closed.

18. In these circumstances, the respondent issued an order dated 9.11.2005 granting licence to the petitioner for conducting weekly market on Saturdays, in the property of the petitioner at Ettayapuram. The licence was valid upto 31.3.2006.

19. Against the said order dated 21.7.2005, SLP was preferred by those persons and the same was dismissed on 18.10.2005. While dismissing the S.L.P., the

Honourable Supreme Court made it clear that any application for renewal of licence by the petitioner, shall be considered by the respondent on its merits uninfluenced by the judgment of this Court that was impugned in S.L.P.

20. However, the said order dated 9.11.2005 granting licence was cancelled by the respondent by an order dated 8.12.2005, u/s 148(2)(c) and Section 148(5) of the Tamil Nadu Panchayats Act, 1994. It is stated that the cancellation was due to some administrative reasons.

21. Challenging the aforesaid order dated 8.12.2005, the petitioner filed a writ petition in W.P. (MD) No. 11405 of 2005. While admitting the said writ petition on 16.12.2005, this Court granted interim stay.

22. The respondent also issued a proceedings in Na.Ka. No. 406 of 2006 dated 11.11.2005 stating that the petitioner has no right to conduct private weekly market in his property and that they alone has power to conduct private market. The proceedings dated 11.31.2005 was issued based on the Land Acquisition Act and the same was published in Tuticorin District Gazette on 8.12.2005.

23. The said proceedings dated 11.11.2005 that was published in if the Tuticorin District Gazette on 8.12.2005 was challenged by the petitioner in W.P. (MD) No. 1059 of 2006. While admitting the said writ petition on 1.3.2006, this Court granted interim stay.

24. The petitioner filed an application dated 27.2.2006 seeking renewal of licence for the year 2006-2007 as the licence granted on 9.11.2005 was to expire on 31.3.2006 and the same was rejected by the respondent by an order dated 24.3.2006. The reason for rejection was that the respondent took a decision on 27.1.2006 that they alone could conduct the weekly market exclusively for Sheeps/Goats. It is also stated that the respondent would get more income by conducting the said market by themselves.

25. Against the said order dated 24.3.2006 of the respondent, the petitioner filed W.P. (MD) No. 3211 of 2006. While admitting the writ petition on 5.4.2006, this Court granted interim injunction.

26. The petitioner filed another application dated 19.6.2007 seeking renewal of licence for conducting private market for the year 2007-2008. The said application was rejected by the respondent by an order dated 23.7.2007 on the ground that the earlier application of the petitioner seeking renewal of licence for the year 2006-07 was already rejected and consequently, the renewal application for the year 2007-2008 is rejected.

27. The petitioner filed a writ petition in W.P. (MD) No. 7093 of 2007 questioning the aforesaid order dated 23.7.2007 of the respondent.

28. The respondent filed counter affidavits in all these writ petitions refuting the allegations made by the petitioner.

29. In the counter affidavit filed in W.P. (MD) No. 11405 of 2005, it is averred by

the respondent that the order dated 9.11.2005 of the respondent granting licence to the petitioner for conducting private market, was contrary to Section 148 of the Tamil Nadu Panchayats Act, 1994 (shortly "the Panchayats Act") and Rule 8(1) of the Tamil Nadu Panchayats (Opening and Maintenance Market) Rules 2000 (shortly "the Market Rules") and that the Executive Officer of the respondent failed to place the proposal before the Village Panchayat for granting / renewing the licence. Hence, the District Collector as Inspector of Panchayats, Tuticorin, vide proceedings dated 6.12.2005, directed the respondent to cancel the licence granted to the petitioner. Accordingly, the impugned order dated 8.12.2005 was issued by the respondent. However, the order dated 6.12.2005 of the District Collector was not put to challenge and the consequential order dated 8.12.2005 of the respondent alone was put to challenge. Thus, the respondent sought for dismissal of the writ petition in W.P. (MD) No. 11405 of 2005.

30. In the counter affidavit filed in W.P. (MD) No. 1059 of 2006, it is averred that the petitioner misconceived the notification published in the District Gazette, as if it is a notification u/s 153 of the Panchayats Act and it is only a publication of bye-law and not initiation of any proceedings u/s 153 of the Panchayats Act. It is stated that the said notification has been issued under Rules 3 and 5 of the Tamil Nadu Panchayats (Framing of Bye-Laws) Rules, 1999 (shortly "the Panchayats Bye-Laws Rules") in public interest and also in order to augment revenue of the Panchayat. The bye-law empowers the respondent to initiate land acquisition proceedings. It is also stated that the respondent did not intend to acquire the estate of the petitioner and that acquisition could be made only when there is vested right. It is further stated that the petitioner had only tenured right that expired due to efflux of time, as licence was granted for one year, under Rule 7 of the Market Rules. Thus, the respondent sought for dismissal of the writ petition in W.P. (MD) No. 1059 of 2006.

31. In the counter affidavit filed in W.P. (MD) No. 3211 of 2006, it is stated that since the very validity of the licence was the subject matter of the earlier writ petitions, the petitioner could not seek for renewal of licence, until there was a complete adjudication of the earlier writ petitions filed by him and thus, the respondent sought for dismissal of the Writ petition in W.P. (MD) No. 3211 of 2006.

32. In the counter affidavit filed in W.P. (MD) No. 7093 of 2007 also, it is stated that the petitioner has no vested right for grant or renewal of licence under the Panchayats Act and that the judgments rendered by this Court were in relation to the Municipalities Act. Further it is stated that the respondent auctioned the market and received a sum of ` 15,00,000/-, whereas the petitioner was paying a paltry sum of ` 8,175/- only. Thus, the respondent sought for dismissal of the writ petition in W.P. (MD) No. 7093 of 2007.

33. Heard the submissions made on either side. The learned counsel on either side filed their written arguments also.

34. The learned counsel for the petitioner submitted that the petitioner's right to carry on private market was deprived in violation of Articles 19(1)(g) and 300A of the Constitution of India, as there was no law empowering the respondent to deprive the same. It was sub-mitted that earlier, the Municipalities Act was applicable to the respondent, until the Town Panchayats were downgraded as Special Village Panchayats, by Tamil Nadu Act 39 of 2004. The Tamil Nadu Act 39 of 2004 made the respondent as Special Village Panchayat after 14.6.2004 and the Panchayats Act was applicable in respect of the Special Village Panchayats and the Municipalities Act was applicable only in respect of certain matters. Again from 14.7.2006, by the Tamil Nadu Act 17 of 2006, the respondent became Town Panchayat and thus, the Municipalities Act is applicable. All the impugned orders were passed in between 14.6.2004 and 14.7.2006, when Panchayats Act was applicable to the respondent. There is no provision in the Panchayats Act, similar to Section 267A of the Municipalities Act granting powers to the respondent to acquire the rights of persons to hold private markets. Section 153 of the Panchayats Act grants power only to Panchayat Union Council and not for Village Panchayats/Special Village Panchayats. Hence, the respondent has no power to refuse to renew the licence to hold private market on Saturdays, when he has been enjoying the same for a long time. It was also submitted that Section 148 of the Panchayats Act mandates renewal of licence like Section 262 of the Municipalities Act and therefore, the respondent ought to have renewed the licence. It was also submitted that the impugned order dated 8.12.2005 cancelling the licence of the petitioner was passed, without hearing the petitioner and in blatant violations of principles of natural justice. The proceedings dated 11.11.2005 of the respondent that was notified in the District Gazette dated 8.12.2005 was issued without any authority. If the petitioner is entitled for renewal of licence u/s 148 of the Panchayats Act, the impugned orders that were the subject matter in W.P. (MD) Nos. 3211 of 2006 and 7903 of 2007 are also liable to be set aside.

35. The learned counsel for the petitioner heavily relied on the judgments dated 2.9.1997 of this Court in W.P. No. 4131 of 1997) E. Thangasamy Raja v. The Executive Officer, Ettayapuram Selection Grade Town Panchayat, Ettayapuram and the judgment dated 31.3.2004 in W.P. No. 40814 of 2002 (E. Thangasamy Raja v. The Executive Officer, Ettayapuram Selection Grade Town Panchayat, Ettayapuram). It was submitted that since Section 148 of the Panchayats Act is in panmateria with Section 262 of the Municipalities Act, the afore said judgments are binding on the respondent and all the writ petitions are liable to be allowed based on the aforesaid judgments in the earlier round of litigations between the petitioner and the respondent. The learned counsel for the petitioner also relied on a number of decisions of the Honourable Supreme Court.

36. In the other hand, the learned counsel for the respondent submitted that while the petitioner has absolute right for renewal of licence for conducting private market u/s 262 of the Municipalities Act, there was no such right granted to the petitioner u/s 148 of the Panchayats Act. According to her, there is no

similar provision in Section 148 of the Panchayats Act as contained in Section 262(3) of the Municipalities Act.

37. The learned counsel for the respondent also relied on Rule 8 of the Market Rules in support of her submission. The Constitution (73rd Amendment Act 1992) has granted more power to Panchayats and was to strengthen the Panchayat institutions. Thus, the action of the respondent questioned in these writ petitions, are in terms of the Constitution (73rd Amendment Act, 1992) and more particularly, Article 243G of the Constitution of India. It was also submitted that from 1997 onwards, when the respondent had its own market, they earned a huge income and therefore, the impugned orders were passed to augment more income to the respondent Panchayat. Thus, this Court need not interfere with the action taken by the respondent in the interest of public. In fine, the learned counsel for the respondent sought for dismissal of all these writ petitions.

38. I have considered the submissions made on either side and perused the entire materials available on record.

39. The respondent was governed by the Municipalities Act until 14.6.2004. After 14.6.2004, the respondent is governed by the Panchayats Act in respect of private markets. Again from 14.7.2006, the respondent is governed by the Municipalities Act.

40. It is not in dispute that the petitioner was conducting a private weekly market on Saturdays in his place at Ettayapuram for the past 41 years and the public in general, used to sell/buy their Sheeps/Goats in the said market. The private market had been conducted by the petitioner for the past 40 years, when the respondent refused to renew the licence for the market by an order dated 27.2.1997 for the period from 1.4.1997 to 31.3.1998.

41. The said order dated 27.2.1997 was challenged by the petitioner in W.P. No. 4131 of 1997. Section 262 of the Municipalities Act governed the issue relating to licence for conducting private market. This Court, in W.P. No. 4131 of 1997, on 2.9.1997, quashed the said order dated 27.2.1997 of the respondent on the ground that the same was passed without, hearing the petitioner and in blatant violations of principles of natural justice. This Court also held that the respondent rejected the petitioner's application for renewal in order to conduct the same business by themselves. Further, it has been held that the petitioner has got fundamental right to carry on a trade and that merely because there would be a competition and consequential loss to one person, that could not be a ground for refusing to renew/grant licence. It was also held that the reason for refusing to renew the licence was for the respondent themselves to conduct the same business to the exclusion of others, that would amount to the respondent monopolizing the entire business and in those circumstances, the respondent should have been little more fair, when the respondent being the licensing authority themselves indulge in the same business and deprives another man of his livelihood.

42. The respondent filed writ appeal in W.A. No. 1169 of 1997 against the said judgment dated 2.9.1997 in W.P. No. 4131 of 1997. While dismissing the writ appeal, the Division Bench of this Court directed the respondent to consider the petitioner's application for renewal of licence and pass appropriate orders, while the learned single Judge gave a positive direction to the respondent to renew licence. In view of such a direction by the Division Bench, the respondent made some inspection and rejected the application for renewal, by an order dated 21.11.1997, pointing out that there were certain defects.

43. The petitioner again filed writ petition in W.P. No. 18910 of 1997. This Court appointed an advocate Commissioner to ascertain the alleged defects pointed out in the impugned order of rejection dated 21.11.1997. After considering the report of the advocate Commissioner, learned single Judge of this Court held that the rejection was not justified and the respondent was directed to consider and pass orders afresh, based on the renewal application. It was held that the respondent should not raise other issues for refusing to grant licence.

44. This time also, the respondent filed writ appeal in W.A. No. 1535 of 1998 against the judgment in W.P. No. 18910 of 1997. The Division Bench rejected the writ appeal.

45. Thereafter, the respondent took up the matter before the Honourable Supreme Court by filing SLP. No. 19090 of 1999, which was rejected on 20.4.2000.

46. Only in those circumstances, the respondent, by the proceedings dated 17.9.2001, granted renewal of licence, for conducting weekly market on every Wednesday instead of Saturdays.

47. The petitioner filed an application to renew the licence and sought to hold the market on Saturdays, as he was doing earlier for decades. His request to conduct market on Saturdays was rejected by the respondent by an order dated 27.5.2002.

48. The petitioner challenged the said order dated 27.5.2002 by filing W.P. No. 40814 of 2002. This Court considered the issue in detail, in the light of Section 262(3) of the Municipalities Act, and quashed the said order dated 27.5.2002, by its judgment dated 31.3.2004. While quashing the said order dated 27.5.2002, Section 262(3) of the Municipalities Act was interpreted by this Court, holding that insofar as the existing markets are concerned, the respondent shall renew the licence and there was no option for the respondent to refuse to renew the licence. At the most, it was held that the respondent could impose conditions, but could not deprive the petitioner the right to hold the private market, as he was doing it for the past 40 years. In this regard, paras 6, 7 and 8 of the said judgment are extracted hereunder:

6. A perusal of the aforesaid provision makes it clear that for opening a new private market or continuing to keep open a private market licence is required

from the authorities. Sub-Section (2) relates to procedure for making such application. Sub-Section (3) relates to substantive power of the authority. A bare reading of sub-section (3) makes it clear that in respect of private market, which has been already established, the authority is bound to renew such licence. Discretion is given to the authorities so far as any new private market is concerned, but there is no such direction regarding an existing market. This is clear from the expression "The council shall, as regards private markets already lawfully established.....grant the licence applied for....."

7. The relevant provision of sub-section (3) is to the effect "The Council shall, as regards private markets already lawfully established grant the licence applied....."The expression used in respect of new market is ".....The council.....may at its discretion as regards new private markets, grant the licence applied for....."A comparison of the language used so far as the "existing market"" vis-a-vis "new market" is concerned, while the Council has got discretion with regard to "new market"", there is no such discretion with regard to the market already established. It is of course true that under sub-section (3), the Council may include the conditions relating to sanitation, drainage, water supply, width of paths and ways, weights and measures to be used, and rents and fees to be charged in such market.

The use of the expression ".....or the Council may refuse to grant for any new private market" also further strengthens the conclusion that so far as the existing market is concerned, the Council does not have any discretion to refuse renewal, but it can impose conditions as contemplated in sub-section (3). Similarly, the Council may suspend or cancel any licence in breach of any condition. However, there is no power to refuse renewal of licence so far as the existing market is concerned. In the present case, it is apparent-from various earlier orders passed by the High Court in several litigations that the petitioner has been holding the market at least for 40 years.

8. From the materials on record, it is apparent that the petitioner had been carrying on the market on Saturdays. Subsequently, while refusing to renew licence to the petitioner, when the litigations were pending, the respondent has started conducting weekly market on Saturdays. The present impugned order indicates that since the respondent Panchayat was holding market on Saturdays through its bidder, it may give rise to law and order situation if the petitioner is permitted to have the weekly market on the very same day. If the Panchayat is not in a position to control the law and order situation if both the markets are held on Saturday, that would not justify the Panchayat to refuse to grant the licence of the petitioner for Saturdays. The Panchayat can very well shift the holding of the market on any other day convenient to it. Merely because it is a Panchayat, it does not have any priority for holding the market on a particular day. The fact that the petitioner was holding the market on Saturdays for a long period means that the petitioner has priority to hold the market on that day.

49. This Court also held that if the respondent wants to acquire the rights of the

petitioner to hold the weekly market on Saturdays, they could take recourse to Section 267A of the Municipalities Act. But they could not refuse to renew the licence. In this regard, para 9 of the said judgment is extracted hereunder:

9. It is also to be noted that Section 267A of the Tamil Nadu District Municipalities Act empowers the Council to acquire the rights of any person to hold private market and such acquisition, shall be made under the Land Acquisition Act, 1894. Therefore, if the Panchayat wants to acquire the rights of the petitioner to hold the weekly market on Saturday, it has to take recourse to Section 267A, if the circumstances so warrant. However, its action in refusing to renew the licence on the pretext that it will give rise to law and order situation appears to be hollow, thoroughly illegal, capricious and arbitrary. It is obvious that the very fact that the petitioner has been fighting to exercise his right by filing several writ petitions in the High Court has apparently enraged the respondent, which seems to be bent upon in refusing the application filed by the petitioner for renewal on some pretext or the other.

50. While this Court in the order dated 2.9.1997 in W.P. No. 4131 of 1997 held that the respondent could not pass an order refusing to renew the licence, without hearing the petitioner, in W.P. No. 40814 of 2002, this Court has held that the respondent shall renew the licence u/s 262(3) of the Municipalities Act. Of course, the respondent could impose certain conditions for renewing the licence.

51. Even after the judgment dated 31.3.2004 in W.P. No. 40814 of 2002, the respondent failed to pass orders granting renewal of licence. This forced the petitioner to file a contempt petition in C.P. No. 196 of 2005 before the Principal Seat of this Court.

52. In the meantime, while the contempt petition was pending, one of the Panchayat Councilors and Another person alleged to be a resident in the area, filed writ petition in W.P. No. 5070 of 2005 objecting for grant of licence to the petitioner, for conducting private market on Saturdays. The said writ petition was filed as Public Interest Litigation and the same was dismissed by a Division Bench of this Court on 21.7.2005, taking note of the fact that a similar issue was decided by this Court in W.P. No. 40814 of 2002 and an appeal in W.A. No. 3518 of 2004 was filed and the same was dismissed as withdrawn by a Division Bench of this Court on 29.9.2004. As the petitioners therein have come forward raising the same issue, the Division Bench of this Court was not inclined to entertain the writ petition in W.P. No. 5070 of 2005.

53. Subsequently, the petitioners in W.P. No. 5070 of 2005 took up the matter before the Honourable Supreme Court, by filing SLP No. 20096 of 2005 and the same was dismissed on 18.10.2005. The order of the Honourable Supreme Court dated 18.10.2005 passed in SLP No. 20096 of 2005 is extracted hereunder:

ORDER

The Special Leave Petitions are dismissed. However, we make it clear that any application for renewal of license by the respondent No. 2 made hereafter shall be considered by the Panchayat on its own merits uninfluenced by the judgment of the High Court impugned herein.

54. While so, since the contempt petition in C.P. No. 196 of 2005 was listed before this Court on 28.10.2005, the Director of Special Village Panchayats, issued a proceedings dated 17.10.2005 relating to renewal of licence to the petitioner with certain conditions. Accordingly, the respondent passed an order dated 25.10.2005 relating to renewal of licence and the same was produced before this Court on 28.10.2005 and based on the same, the contempt petition in C.P. No. 196 of 2005 was closed.

55. The respondent issued a proceedings in Na.Ka. No. 379 of 2005 dated 31.10.2005 directing the petitioner to make an application for renewal of licence, in order to comply with the directions issued in the judgment dated 31.3.2004 passed in W.P. No. 40814 of 2002. It is stated that the licence could be valid up to 31.3.2006. The said proceedings in Na.Ka. No. 379 of 2005 dated 31.10.2005 of the respondent also refers to the proceedings dated 17.10.2005 of the Director of Special Town Panchayats and also the order passed by the respondent in the proceedings dated 25.10.2005 deciding to grant renewal of licence based on the said proceedings dated 17.10.2005 and also the closure of contempt petition on 28.10.2005. Based on the same, the petitioner, though initially stated that he already made an application, again made an application dated 31.10.2005, based on which, the respondent passed the order dated 9.11.2005 granting licence to the petitioner, to conduct weekly market on Saturdays. After the said order dated 9.11.2005, the petitioner started conducting weekly market on Saturdays, until the order dated 8.12.2005 was passed cancelling the earlier order dated 9.11.2005.

56. The said order dated 8.12.2005 was challenged in W.P. (MD) No. 11405 of 2005. This Court, while admitting the writ petition, granted interim stay.

57. In my view, the outcome of the writ petition in W.P. (MD) No. 11405 of 2005 is crucial, as the same would decide the fate of other two writ petitions viz., W.P. (MD) Nos. 3211 of 2006 and 7093 of 2007. The impugned order dated 8.12.2005 of the respondent cancelling the earlier order dated 9.11.2005 granting renewal of licence is extracted hereunder:

according to the petitioner, the said order was passed in blatant violations of principles of natural justice. In this regard, ground (iii) in W.P. (MD) No. 11405 of 2005 is extracted hereunder in this regard:

(iii) The impugned order issued by the respondent cancelling the license issued to the petitioner without giving an opportunity to the petitioner to put forth his case if any is in clear violation of the Principles of Natural Justice.

However, the counter affidavit filed by the respondent in W.P. (MD) No. 11405 of

2005 does not deal with this ground.

58. On the other hand, the contention of the respondent is that the order dated 9.11.2005 granting renewal of licence was passed in violation of Section 148 of the Panchayats Act and Rule 8(1) of the Market Rules, since the proposal to grant licence was not placed before the Village Panchayat and the order of the Executive Officer of the respondent Panchayat granting renewal suffers from incurable procedural formalities.

59. In my view, on the simple ground that the impugned order was passed without hearing the petitioner and in blatant violations of principles of natural justice, the writ petition in W.P. (MD) No. 11405 of 2005 has to be allowed.

60. At this juncture, it is relevant to take note of paras 5 to 15 in the judgment dated 2.9.1997 in W.P. No. 4131 of 1997. Though the said judgment arose u/s 262 of the Municipalities Act, the same would apply in so far as the issue relating to the compliance of principles of natural justice, while granting/refusing licence, whether the respondent is governed by the Panchayats Act or Municipalities Act. Paras 5 to 15 of the judgment in W.P. No. 4131 of 1997 are extracted hereunder:

5. Chapter XII of the Tamil Nadu District Municipalities Act deals with licences and Fees", and Section 262 of the said Act deals with licence for private market" sub Section (1) and (3) of Section 262 read thus :

No person shall open a new private market or continue to keep open a private market unless he obtains from the Council a licence to do so (sub-section (1))

The council shall, as regards private markets already lawfully established and may, at its discretion as regards new private markets, grant the licence applied for subject to such regulations as to supervision and inspection and to such conditions as to sanitation, drainage, water-supply, width of paths and ways, weights and measures to be used, and rents and fees to be charged in such market as the council may think proper; or the council may refuse to grant any such licence for any new private market. The council may, however, at any time, for breach of the conditions thereof, suspend or cancel any licence which has been granted under this Section. The council may also modify the conditions of the licence to take effect from a specified date. (Sub-section (3)).

Sub-section (4) deals with the procedure when a licence is granted, refused, suspended, cancelled or modified. Sub-section (5) says that "Every licence granted under this Section shall expire at the end of the year. Section 264 enables the Council to require the own occupier, or farmer of any private market to provide certain amenities or facilities. Section 265 further states that if, in it spite of notice given by the Council to carry out certain works, the owner or occupier fails to do so, it may suspend the licence or may refuse to grant licence until such works have been completed. So far as this writ petition is concerned, the above are the relevant provisions that require consideration.

6. Under Article 19(1)(g) of the Constitution of India, the petitioner has sot a

fundamental right to his business or trade, and respondent can regulate the same by issuing licence. To regulate" means, the licence is to be granted subject to certain conditions. But the refusal to grant the same is only the exception.

7. In *Saghir Ahmad Vs. The State of U.P. and Others*, though their Lordships did not express any final opinion whether restrictions includes extinction, they were of the view that the word restriction under Article 19(6) is used only in the sense limitations or reasonable restrictions, and any legislation which totally deprives a individual to do his lawful trade or business is violative of the fundamental rights.

8. In this case, it is not disputed by respondent that the petitioner is doing the very same business for the last 40 years, and for the year 1997-98 also he sought renewal of licence. He had to apply for renewal of licence only in view of Section 262 of the District Municipalities Act. The complaint of the petitioner that while considering renewal of the licence, the same was rejected by the respondent, without hearing him and there by his livelihood is affected. The said contention is answered by the respondent on the ground that whether to grant or not to grant a licence is with the discretion of the respondent, and, for the said purpose, Article 226 of the Constitution of India can be invoked. It is the case of the respondent that long as the petitioner had the licence, he has enjoyed the benefit.

9. I do not think the contention of the respondent can be accepted for a moment. Being a public authority there must be valid reasons for refusal of a licence, and it also settled law that a public authority has to act in fairness.

10. Before rejecting the application for renewal, it is also the bounden duty of the respondent to hear the petitioner about its proposed action. In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, their Lordships said that even in respect of administrative actions, if certain adverse civil consequences follow the order could be passed consistently with the principles of natural justice. Of course, in that case, the question that came for consideration was regarding the retirement of a Government servant. In paragraph 9 of the said judgment, their Lordships said thus:

.....The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial Tribunals and bodies of persons invested with authority to adjudicate upon " matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

11. In *A.K. Kraipak v. Union of India*, AIR 1970 SCI 50: (1962) 2 SCC 262, the earlier decision was followed. In paragraph 20 of the judgment, their Lordships held thus:

20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (*Nemo debet esse iudex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent" miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George v. University of Kerala* the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to, a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case." Following the earlier two decisions mentioned above, in *Purshottam Bahel v. A.C. Baruah*, AIR 1971 Assam and Nagaland 173, a Division Bench of that High Court held that these principles apply in the case of rejection of renewal of licence. That is a case where the proprietor of a hotel was asked to close down his business under the Assam Municipalities Act, by refusing to renew the licence. While considering the case, in paragraph 14 of the judgment, their Lordships said that the Board is a statutory authority constituted under the Act. In refusing renewal of a licence or with holding a licence, u/s 229(2) of the Act it exercises a statutory power affecting the right of a citizen to carry on trade or business. When the Board directs a person to close down his established hotel and restaurant, refusing

renewal of license on grounds mentioned in Section 229(2), such an order certainly involves civil consequences. Even though the Board's order may be administrative in character, it has to be made consistently with the principles of natural justice, inasmuch as it involves civil consequences so far as the affected citizen is concerned. Their Lordships held that since there was violation of principles of natural justice, notice is invalid.

12. In *Raj Restaurant and Another Vs. Municipal Corporation of Delhi*, their lordships held thus:

Where, in order to carry on business a licence is required, obviously refusal to give licence or cancellation or revocation of licence would be visited with both civil and pecuniary consequences and as the business cannot be carried on without the licence it would also affect the livelihood of the person. In such a situation before either refusing to renew the licence or cancelling or revoking the same, the minimum principle of natural justice of notice and opportunity to represent one's case is a must.....

Thereafter, their Lordships said that in that particular case on hand, no opportunity was given and, therefore, the order was quashed.

13. The same principle was reiterated by the Patna, High Court in the decision *Paras Nath Prasad Vs. State of Bihar and Another*,

14. In "Treatise On Administrative Law" by M.P. Jain - Edition 1996 - Volume 1, at page 267, the learned Author has said thus:

For refusing to renew a licence, the Courts usually insist on natural justice being afforded to the licensee, as the effect of this is no less drastic on the licensee than that of cancellation. Thus, it has been ruled that a municipality is to observe natural justice while refusing to renew a licence for running restaurant by an individual. In this context, reference may be made to an English case, *R. v. Gaming Board, ex parte Benaim*, where Lord Denning insisted that while refusing to renew the licence of a gaming club, the licensing authority (Gaming Board in this case) is bound to give a hearing to the licensee gaming club in the name of fairness.....

Learned Author has further stated thus:

The grant of a licence for acquisition and possession of firearms under the Arms Act has been held to be nothing more than a privilege. But the same cannot be said of cancellation or refusal to renew such a licence. Such an action entails civil consequence to the licensee and, therefore, he has a right to be heard when such action is contemplated. If, for some reasons, an action has to be taken immediately, then the licensee ought to be heard after the provisional action, but before final action, of cancellation of the licence.

15. In D.D. Basics "Administrative Law" - Fourth Edition (1996) at page 605, the learned Author has said thus:

Where the function of licensing related to a fundamental right, e.g., to carry on the business of public transport, it must be held to be quasi-judicial, even though the statute did not provide for a hearing of interested objectors. Even if dealing in liquor has been brought under this category.

It is now practically settled that the refusal, cancellation or revocation of a licence to carry on a business must comply with the minimum requirements of natural justice i.e., notice and opportunity to represent against the proposed order), because such order visits the person in question with civil and pecuniary injury.

61. However, it was sought to be argued that while the petitioner has vested right u/s 262(3) of the Municipalities Act for renewal of licence, with regard to private market, the petitioner has no such right u/s 148 of the Panchayats Act. Hence, I am inclined to render my findings on the said issue also.

62. Section 262 of the Municipalities Act and Section 148 of the Panchayats Act are extracted hereunder:

Section 262 of the Tamil Nadu District Municipalities Act, 1920

262. Licence for private market. (1) No person shall open a new private market or continue to keep open a private market unless he obtains from the council a licence to do so.

(2) Application for such licence shall be made by the owner of the place in respect of which the licence is sought [not less than thirty and not more than ninety days before such place is opened as a market, or the commencement of the year for which the licence is sought to be renewed], as the case may be.

(3) The council shall, as regards private markets already lawfully established and may, at its discretion as regards new private markets, grant the licence applied for subject to such regulations as to supervision and inspection and to such conditions as to sanitation, drainage, (water-supply), width of paths and ways, weights and measures to be used, and rents and fees to be charged in such market as the council may think proper; or the council may refuse to grant any such licence for any new private market. The council may, however, at any time, for breach of the conditions thereof, suspend or cancel any licence which has been granted under this Section. The council may also modify the conditions of the licence to take effect from a specified date.

(4) When a licence is granted, refused, suspended, cancelled or modified under this Section, the council shall cause a notice of such grant, refusal, suspension, cancellation or modification in English and (in a regional language) of the district to be pasted in some conspicuous place at or near the entrance to the place in respect of which the licence was sought or had been obtained.

(5) Every licence granted under this Section shall expire at the end of the year.

Section 148 of the Panchayats Act

148. Licensing of private markets.- (1) No person shall open a new private market or continue to keep open a private market unless he has obtained a licence from the Village Panchayat or Panchayat Union Council, as the case may be, to do so. Such licence shall be renewed every year.

(2)(a) The Village Panchayat or Panchayat Union Council, as the case may be, shall grant the licence applied for subject to such conditions as it may think fit as to supervision and inspection, sanitation, weights and measures to be used, rents and fees to be charged and such other matters as may be prescribed.

(b) The Village Panchayat or Panchayat Union Council, as the case may be, may modify the conditions of licence to take effect from a specified date.

(c) The Village Panchayat or Panchayat Union Council, as the case may be, may at any time, suspend or cancel any licence granted under clause (a) for breach of the conditions thereof.

(d) Any person aggrieved by an order of the Village Panchayat or Panchayat Union Council under Clauses (a), (b) or (c) may appeal against such order to the Inspector who may, if he thinks fit, suspend the execution of the order pending the disposal of the appeal.

(3)(a) Any person claiming to levy in a private market lawfully established prior to the coming into force of the Madras Local Boards Act, 1884 (Madras Act 5 of 1884) fees of the nature specified in sub-section (2) of Section 147, shall apply to the Inspector for a certificate recognising his right in that behalf; and the Inspector shall pass orders on such application after giving due notice to the Village Panchayat or Panchayat Union Council, as the case may be, and considering any representation made by it.

(b) Any person aggrieved by an order of the Inspector refusing to grant a certificate under Clause (a) may, within six months from the date of communication of such order, institute a suit to establish the right claimed by him, and subject to the result of such suit, the Inspector's order shall be final.

(4) When a licence granted under sub-section (2) does not permit the levy of any fee, it shall be granted free of charges; but when such permission is given, a fee not exceeding fifteen percent of the gross income of the owner from the market in the preceding year shall be charged by the Village Panchayat or Panchayat Union Council, as the case may be, for such licence.

(5) The Village Panchayat or Panchayat Union Council, as the case may be, or any officer duly authorised by it may, close a private market which is unlicensed or the licence for which has been suspended or cancelled, or which is held or kept open contrary to the provisions of this Act.

63. While the learned counsel for the petitioner relied on the judgment dated 31.3.2004 passed in W.P. No. 40814 of 2002, the learned counsel for the respondent distinguished the same stating that the said judgment arose u/s 262

of the Municipalities Act.

64. According to the learned counsel for the petitioner, "such licence shall be renewed every year " that appears in Section 148(1) of the Panchayats Act uses the word "shall", as the word "shall" is used in Section 262(3) of the Municipalities Act.

65. In my view, the said submission of the learned counsel for the petitioner is well founded. As stated above, in the judgment in W.P. No. 40814 of 2002, this Court interpreted Section 262(3) of the Municipalities Act by holding that the Municipalities are bound to renew the licence, in view of the usage of the word "shall" in Section 262(3) of the Municipalities Act. Therefore, the judgment dated 31.3.2004 in W.P. No. 40814 of 2002 is also applicable, even if the parties are governed by the Panchayats Act. Hence, I am of the view that the respondent is bound to renew the licence, even if it is an application u/s 148 of the Panchayats Act.

66. Furthermore, the petitioner was conducting the private market for more than 40 years. When the respondent passed the order dated 27.2.1997 refusing to renew licence, the same was questioned in W.P. No. 4131 of 1997. The respondent filed counter affidavit therein stating that the respondent decided to conduct the market by themselves and that was the one of the reasons for rejecting the petitioner's application seeking renewal of licence. The said contention was dealt with by this Court in the order dated 2.9.1997 in W.P. No. 4131 of 1997 and para 17 of the said judgment in this regard, is extracted hereunder:

17. One of the main reasons that is stated in the counter for refusing the licence is that the respondent who is the licensing Authority itself wants to conduct the same business. In the last sentence in para 4 of the counter, it is said that if a licence is granted to the petitioner, the Panchayat will continue to suffer great loss. This clearly shows the mala fide intention on the part of the panchayat in rejecting the petitioner's application. When the Petitioner has got a fundamental right to carry on a trade, if he is permitted to continue the business, he becomes a competitor. Merely because there will be competition and consequently loss to one person that cannot be a ground for re-fusing the licence. If the reason stated in the counter affidavit is to be accepted, then it follows that the Panchayat alone has got a monopoly in doing the business. When the licensing authority itself indulges in such a business and deprives another man of his livelihood, it should have been a little more fair. When the licensing authority is in the position of a Trustee to the members of the public, it should not exploit the power of issuing licence, to its own advantage.

67. Therefore, the respondent thought of conducting market by themselves after 1997. This Court in the order dated 31.3.2004, in W.P. No. 40814 of 2002 held in para 9 that the course open to the then respondent Municipality was to proceed u/s 267A of the Municipalities Act by acquiring the rights of the petitioner to run

private market by initiating proceedings under the Land Acquisition Act, 1894 and by s paying due compensation under the said At. Till such time, the respondent is bound to renew the licence.

68. Thereafter, fore, in 2004, the respondent became Village Panchayat (Special Village Panchayat) governed by the Panchayats Act from 14.6.2004, by virtue of the Tamil Nadu Act 39 of 2004. The Market Rules were framed u/s 147(2), 148(2) and 242 (2) (xxxvii) of the Panchayats Act. Rule 4 of the Market Rules is relating to opening and maintenance of public market by the Village Panchayats. Rule 4(3) of the Market Rules is relevant and the same is extracted hereunder:

4. Opening and maintenance of public market by the village panchayat.

(1).....

(2).....

(3) Notwithstanding anything contained in these rules, no new market shall be permitted, if it will affect the commercial viability of the already existing market either private or public, situated within 5 kilometre radium from the proposed place.

69. Therefore, the respondent Panchayat, when it was governed by the Panchayats Act after 14.6.2004, could not open a public market, in view of Rule 4(3) of the Market Rules.

70. The learned counsel for the respondent heavily relied on Rule 8(1) of the Market Rules and Section 148 of the Panchayats Act and submitted that the petitioner has no vested right for renewal of licence. Rule 8(1) of the Market Rules is extracted hereunder:

8. Grant or refuse of licence. (1) The executive authority or the commissioner, as the case may be, on receipt of an application in a complete shape in all respects after scrutinising the application shall inspect the site and after satisfying himself about its possibilities of not affecting any public market of the village panchayat or the panchayat union council, if any, functioning within a reasonable radius of 10 kilometre shall place of the proposal before the village panchayat or the panchayat union council within ten days of its receipt, along with his remarks on the precaution, for a decision on the proposal. If the village panchayat or the panchayat union council does not agree the proposal, it may reject it, after giving the applicant a reasonable opportunity to make his representation. The executive authority or the Commissioner, as the case may be shall communicate the decision of rejection of the proposal in writing to the applicant.

71. In my view, Rule 8(1) of the Market Rules is not applicable in the case of the petitioner, as it relates to making an application for grant of licence for conducting new market. Rule 8(1) of the Market Rules shall be read along with Rule 4(3). Rule 8(1) deals with the application for establishing a new market and the same is not applicable in the case of the existing market. In the case of

existing market, the renewal of licence is governed by Rule 11 of the Market Rules and Rule 11 is extracted hereunder:

11. Renewal of licence.- The licensee, shall apply for the renewal of licence at least thirty days prior to the date of expiry of the existing licence period with prepayment of one hundred and twenty-five per cent of the previous year licence fees subject to the finalisation of actual licence fees to be collected after finalising the, accounts of the private market for the previous year for ascertaining the correct income and either refunding excess fees collected or collect the shortfall fees from the licensee.

Therefore, Section 148 shall be read along with Rule 11 and if it is done, the statute contemplates that renewal shall be granted in the case of existing markets. Hence, the petitioner is entitled to renewal of licence.

72. In view of my aforesaid conclusion, I have not dealt with the other judgments relied on by the learned counsel for the respondent at the time of hearing these writ petitions.

73. The other submission made by the learned counsel for the respondent that the petitioner failed to question the proceedings dated 6.12.2005 of the District Collector, Tuticorin and the petitioner questioned only the consequential order dated 8.12.2005 of the respondent in. W.P. No. 11405 of 2005. In the said proceedings dated 6.12.2005, the District Collector, Tuticorin directed the Executive Officer of the respondent Panchayat to cancel his earlier order dated 9.11.2005 granting renewal of licence to the petitioner as the same was done without getting orders from the Panchayat, and the Executive Officer was directed to take steps for the Panchayat to conduct public market by themselves.

74. In my view, the submission of the learned counsel for the respondent has no substance, since the proceedings dated 6.12.2005 was an internal communication to the Executive Officer of the respondent Panchayat. The same was not served on the petitioner.

75. Furthermore, though a reference was made in the order dated 8.12.2005 of the Executive Officer of the respondent cancelling his earlier order dated 9.11.2005, the reading of the order nowhere suggests that the said order was passed pursuant to the direction issued by the District Collector, Tuticorin. On the other hand, the order dated 8.12.2005 that is extracted above, states that the same was passed due to some administrative reasons.

76. Furthermore, the order dated 8.12.2005 refers to Section 148(2)(c) and 148 (5) of the Panchayats Act. A close reading of Section 148 (2)(c) and 148(5) of the Panchayats Act make it clear that the said provisions could not be applied. Section 148(2)(c) of the Panchayats Act could be invoked to suspend/cancel the licence, if the licensee committed breach of the conditions imposed for the grant of licence. Therefore, in my view, Section 148(2)(c) of the Panchayats Act could not be applied, as the cancellation was not for violation of any conditions by the

petitioner.

77. Section 148(5) of the Panchayats Act is relating to a closure of the market after an order is passed u/s 148(2)(c) or if the market is an unlicensed one. Hence, Section 148(5) of the Panchayats Act also could not be attracted in this case.

78. Furthermore, the proceedings dated 6.12.2005 of the District Collector, Tuticorin is contrary to Rule 4(3) and Rule 11 of the Market Rules and the District Collector, Tuticorin failed to take note of those rules, while passing the order dated 6.12.2005.

79. In any event, when the District Collector, Tuticorin directed the Executive Officer of the respondent Panchayat to cancel the licence, the Executive Officer could not cancel the licence, without hearing the petitioner and without furnishing the copies of the proceedings of the District Collector, based on which, the order dated 8.12.2005 was issued. Hence, I have no hesitation to come to the conclusion that the impugned order dated 8.12.2005 has no legs to stand.

80. This Court in para 9 of the judgment dated 31.3.2004 in W.P. No. 40814 of 2002 observed that it is obvious that the very fact that the petitioner has been fighting to exercise his right by filing several writ petitions before this Court has apparently enraged the respondent, which seems to be bent upon in refusing the application filed by the petitioner for renewal on some pretext or the other and the same applies to these cases also.

81. In the said circumstances, I have no hesitation to quash the order dated 8.12.2005 of the respondent Municipality and accordingly, the same is quashed and the writ petition in W.P. (MD) No. 11405 of 2005 is allowed and the respondent is directed to consider the petitioner's application for renewal of licence for conducting private weekly market in his place on Saturdays, in the light of the observations made above, with a period of two weeks from the date of receipt of a copy of this order.

82. Since the writ petition in W.P. (MD) No. 11405 of 2005 is allowed, the impugned orders in other two writ petitions viz., W.P. (MD) Nos. 3211 of 2006 and 7093 of 2007 are quashed and the writ petitions are allowed.

83. In the writ petition in W.P. (MD) No. 1059 of 2006, the petitioner has challenged the proceedings dated 11.11.2005 published in the District Gazette dated 8.12.2005. The said proceedings dated 11.11.2005 is extracted hereunder:

84. In para 9 of the counter affidavit filed by the respondent in W.P. (MD) No. 1059 of 2006, it is stated that the proceedings dated 11.11.2005 has nothing to do with Section 153 of the Panchayats Act and it is only a bye- law under Rule 3 and Rule 5 of the Panchayat Bye-laws Rules. It is stated that the bye-law empowers the respondent to initiate land acquisition proceedings. In this regard, para 9 of the counter affidavit is extracted hereunder:

9. I respectfully submit the petitioner has misconceived the notification in the District Gazette as if it is a notification u/s 153. It is only a publication of byelaw and not initiation of any proceedings u/s 153. This notification has been issued under Rule 3 and 5 of the Tamil Nadu Panchayat (Framing of Byelaws) Rules, 1999 in Public Interest and also in order to augment the revenue of the Panchayat. The bye law only empowers this respondent to initiate land acquisition proceedings.

85. The Panchayats Bye-Laws Rules is framed u/s 242(1) of the Panchayats Act. Section 242(1) of the Panchayats Act is extracted hereunder:

242. Power of Government to make rules. -(1) The Government shall in addition to the rule making powers conferred on them by any other provision contained in this Act, have power to make rules generally to carry out the purposes of this Act.

86. Rule 3 of the Panchayats Bye-Laws Rules states that a Panchayat may frame bye-laws not inconsistent with the Act or rules made thereunder on matters enumerated thereunder and also on such other matters required for implementing the provisions of the Act or any other law.

87. I have gone through the matters provided under Rule 3 of the Panchayats Bye-Laws Rules. In my view, Rule 3(f) of the Bye-Laws Rules alone has some relevance relating to private market and the same is extracted hereunder:

3. Power of the Panchayat to frame bye-law. - A panchayat may frame bye-laws not inconsistent with the Act or rules made thereunder on matters enumerated below and also on such other matters required for implementing the provisions of the Act or any other law, to provide, for

(a).....

(b).....

(c).....

(d).....

(e).....

(f) the inspection of public and private markets and staff and other places therein, including the regulation of their use and the control of their sanitary conditions;

88. A close reading of Rule 3 of the Panchayats Bye-Laws Rules makes it clear that the rule does not empower the respondent Panchayat to initiate acquisition proceedings. On the other hand, it is Section 153 that grants power to Panchayat Union Council alone to initiate proceedings and the power of acquisition u/s 153 could not be exercised by the Panchayats. When Section 153 does not grant power to Panchayats for acquisition of rights of the petitioner to conduct private market, the respondent could not do the same by framing a bye-law under Rule 3 of the Bye-Laws Rules. The bye-law that is framed under Rule 3 of the Bye-

Laws Rules that is issued in the proceedings dated 11.11.2005 of the respondent is beyond the power and jurisdiction of the respondent. The proceedings states that the petitioner has no right to conduct private market and the respondent alone could conduct the market. No such bye-law could be issued under Rule 3 of the Bye-Laws Rules. Therefore, the bye-law is inconsistent with Sections 148, 153 of the Panchayats Act and Rule 4(3) of the Market Rules. Hence, the impugned proceedings dated 11.11.2005 that was published in the Tuticorin District Gazette dated 8.12.2005 is liable to be quashed and accordingly, the same is quashed.

89. Even now, the respondent is not left without any remedy. After 14.7.2006, the respondent is governed by the Municipalities Act. They could very well proceed u/s 267A of the Municipalities Act for acquisition of the rights of the petitioner to conduct private weekly market. In fact, this Court held so in para 9 of the judgment dated 31.3.2004 in W.P. No. 40814 of 2002, which is extracted above.

90. In the result, all the impugned orders are quashed. The respondent is directed to consider the petitioner's application for renewal of licence for conducting private weekly market in his place on Saturdays, in the light of the observations made above, and pass orders within a period of two weeks from the date of receipt of a copy of this order. The writ petitions are allowed with the above observations and directions. No costs. Consequently, connected miscellaneous petitions are closed.