

(1995) 01 MAD CK 0107
In the Madras High Court
Case No : W.A. No 23 of 1995

N. Thennarasu

APPELLANT

Vs

District Collector, Revenue Divisional Officer and Excise
Tahsildar

RESPONDENT

Date of Decision : 27-01-1995

Acts Referred:

Citation : (1995) 01 MAD CK 0107

Hon'ble Judges : Srinivasan, J;S.S. Subramani, J

Bench : Division Bench

Advocate : G. Rajan, for the Appellant;

Final Decision : Dismissed

Judgement

Srinivasan, J.—The appeal is against the dismissal of a Writ Petition filed by the father of the Appellant herein. After the disposal of the Writ

Petition, the original Petitioner in the Writ Petition died and his son has preferred this appeal with the leave of the Court.

2. The father of the Appellant was the successful bidder in the auction for the privilege of selling arrack in Arrack shop No. 9 at Thittai Village,

Thanjavur Taluk for the Excise year 1983-84. The auction was held on 10.6.83. The monthly rental/kist was Rs. 9400/-. The sale was confirmed

in favour of the Appellant's father by the District Collector, Thanjavur, by order dated 13.6.83. The order was served on him on 17.6.83. The

Appellant's father filed an application in Form No. 2 for issue of a licence on 16.7.83 for running the shop in R.S. No. 194/18 belonging to one

Thangaraja Naicker of Thittai Village. That was an objectionable site as it contravened the distance Rules. Hence, that application was rejected.

Thereafter, the Appellant's father selected a site in the serving area at Thottakkadu village and made an application. He was directed by the

authorities to select a site in the notified area itself and not in the serving area. Ultimately, by an order dated 16.12.1983 the order of confirmation

in favour of the Appellant's father was cancelled as he did not select a site in the notified area and a resale was ordered. That order was

challenged in W.P. No. 204 of 1984. In W.M.P. No. 311 of 1984, pending that writ petition, on 9.1.84 this Court granted injunction till

18.1.1984 on condition that the Petitioner therein should select an unobjectionable site in the notified area in Thittai village on or before 11.1.84.

The Authority was directed to pass an order on the very next day after the application i.e., 12.1.84. But, the writ Petitioner did not file any

application within the time stipulated. However, he filed application requesting to grant licence to run the shop in the very same R.S. No. 194/18.

Ultimately, an order, was passed in the said W.M.P. on 9.2.1984 for selection of a suitable site by both the parties for the location of the shop

within the notified area without any further loss of time. Thereafter, the writ Petitioner selected a site and a licence was issued to him on 9.3.1984.

He did not pay the kist for the months of April to June 1984 and consequently, no arrack was supplied to him. Since the delay for issuance of

licence was attributable to the lapses on the part of the writ Petitioner, the balance of rental for the Excise year commencing from 16.7.83 and

ending with 15.7.84 calculated at the rate of Rs. 9400 per month was demanded from him, after giving due credit to the sum already paid by him.

Thus, a demand was made for payment of Rs. 72,925.80. The said proceeding was challenged by the Appellant's father in the present writ

petition, viz., W.P. No. 8499 of 1984.

3. The learned judge has held that the delay in issuing licence was entirely due to the fault of the writ Petitioner and there was no error on the part

of the authorities concerned. Consequently, the learned judge held that the writ Petitioner was the only person to be blamed and he was bound to

comply with the demand of the department for the amount claimed.

4. It is that order which is challenged in the appeal. Learned Counsel for the Appellant contends that the Government issued a circular on 11.7.83

permitting the successful bidders to select a site within the serving area, if it is

not possible to select a suitable site within the notified area.

According to Learned Counsel, when the Government Circular was passed on 11.7.83 and when the Writ Petitioner had filed the application on

16.7.83 itself, the authorities ought to have accepted the site selected by him and the delay in issue of licence was entirely due to the fault of the

authorities concerned.

5. We are unable to accept this contention. As pointed out already, even the application filed on 16.7.83 was very much beyond the time

prescribed by the Rules. Under the Rules, the application ought to have been filed within one week from the date of receipt of order of

confirmation. The Appellant's father had taken nearly one month for making that application. Even in that application, the site selected by him was

an objectionable one as it contravened the distance Rules. Therefore, the authorities were justified in rejecting that application. It is only thereafter,

the Appellant's father proceeded to select some other site. That was also not in the notified area but in a serving area. Even in the interim order

passed by this Court in W.M.P. No. 311 of 1984 time was granted to the Appellant's father to select a site on or before 11.1.84. There is a

specific condition in that order that he should select an objectionable site in the notified area. In those circumstances, there is no merit whatever in

the contention of Learned Counsel that the authorities ought to have accepted the application when the Appellant's father applied for locating the

shop in the serving area.

6. Learned Counsel places reliance on the judgment of a Division Bench of this Court in J.M. & Company v. Collector of Madras 1985 W.L.R.

569. In that case, the Bench has clearly held that if an application is made within one week from the date of receipt of confirmation of sale, then the

successful bidder is liable to pay the kist only after the licence is issued by the authorities. The ruling will not in by way help the Appellant in this

case, as the Appellant's father did not make an application within one week from the date of receipt of the order of confirmation of sale.

7. We are entirely in agreement with the reasoning adopted by the learned single judge and the appeal is dismissed.