

(2001) 03 MAD CK 0091

In the Madras High Court

Case No : Writ Petition No. 7627 of 2000 and W.M.P No's. 11242 and 23733 of 2000

S. Raja

APPELLANT

Vs

The Dharmapuri Municipality and Others

RESPONDENT

Date of Decision : 19-03-2001

Acts Referred:

Citation : (2001) 03 MAD CK 0091

Hon'ble Judges : N.K. Jain, C.J;K. Sampath, J

Bench : Division Bench

Advocate : R. Subramanian, for the Appellant; V.R. Rajasekaran, for Respondents 1 and 4, K. Elango, Government Advocate for Respondents 2 and 3 and G. Ravishankar, for Respondent 5, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, C.J.—The Petitioner claiming to be a Councillor representing Ward No. 3 out of 33 Municipal Councilors of the Municipality of Dharmapuri has filed this writ petition with the allegation that there is one retail kerosene outlet situated in Ward No. 8 which is on the northern side of the Municipal area. It is also alleged that on 25.5.1998, the Municipal Council passed a resolution for locating the depot either at the Municipal lorry stand or at a site in Vattara Valarchi Colony, both of which lie in Ward 9 on the southern side of the Dharmapuri Municipal Area. It is stated that the grievance of the Petitioner is that first Respondent is taking emergent steps to locate the kerosene retail outlet on the east of the Railway line near Pennagaram Road instead of at the place mentioned in the resolution and it will cause hardship to the people to reach the depot. Hence, he has filed this petition for a direction to forbear the Respondents from locating the second retail kerosene depot in a place other than the site approved by the Dharmapuri Municipal Council in its resolution dated 25.5.1998.

2. Respondents 1 to 5 have filed their counters. The first Respondent has filed a counter denying the allegations made in the petition. It is submitted that the

Petitioner has misconstrued that the outlet was proposed to be located at Pennagaram Road as per the Council Resolution dated 25.5.1998. It is stated that apart from the two retail outlets as permitted in the Council resolution, the Managing Director of the Dharmapuri District Consumers Co-operative Wholesale Market Society has taken steps to open another retail outlet in Pennagaram Road, and the same is being opened. It is also submitted that the Municipality has not passed any resolution with reference to the opening of the above outlet by the above Cooperative Society. It is submitted that the Municipality is in no way connected with the initiative taken by the Dharmapuri District Consumers Co-operative Wholesale Market Society for opening retail outlet. The first Respondent further prayed that the interim order dated 27.4.2000 be vacated and the writ petition be dismissed.

3. The Joint Registrar of Co-operative Societies, Dharmapuri. the second Respondent has filed a counter denying the allegations in the petition and stating that the writ petition is not maintainable. It is stated that the south end of Dharmapuri Town is catering to the need of 8677 cardholders residing in 15 municipal wards within a radius of maximum 1 km. Hence, when the second bunk was sanctioned, for catering to the need of 7293 cardholders in the remaining 18 wards, utmost care was taken in locating the bunk. It is also alleged that installation of the second bunk could not be done immediately for want of getting proposals and further delayed on account of the interim order. It is also submitted that supply of kerosene through the retail kerosene bunk is vested with the Dharmapuri District Consumers, Cooperative Wholesale Stores and it was for the Stores to decide the location of the kerosene bunk, as to which will be more advantageous to the public as per the guidelines issued by the Registrar after appropriate study and investigation through local Tahsildar and also the supply officer incharge of the P.D.S. in the District. The first bunk is situate in the south of the town at Municipal Lorry Stand Dharmapuri whereas the present location is in the west. The first bunk was installed as per N.O.C. of the Municipal Lorry Stand, Dharmapuri and the second location was not opened there when a more apt place was found. It is also submitted that the location of the area has been duly considered by the society and in the public interest, the present location has been selected and this writ petition is liable to be dismissed and the interim direction dated 14.6.2000 is to be modified so that the second kerosene bunk can be opened at Pennagaram road in S. No. 314/1 where already a building had been constructed at the cost of R.S.4 1/2 lakhs and ready for occupation.

4. The Chairman of the Dharmapuri District Consumer Co-operative Wholesales Stores Limited. Dharmapuri, was also made a party on 3.11.2000. He filed an affidavit stating that in pursuance of the order of the Registrar dated 22.6.1998, the second kerosene distribution bunk was located catering to the needs of 8000 to 10,000 family cardholders. It is submitted that the place was selected after investigation by the local Tahsildar under the direction of the District Collector, who is the Supply Officer, and the Registrar has sanctioned the bunk shop. The

stores has spent a sum of Rs. 4 1/2. lakhs and without impleading them, the writ Petitioner has filed the petition for his own interest and therefore, the interim order is liable to be set aside and the writ petition is liable to be dismissed with costs.

5. Notice of motion was ordered in the writ petition by a learned single Judge of this Court on 27.4.2000. It was referred to the Division Bench by order dated 12.10.2000.

6. The matter has been placed before us. The Learned Counsel submits that the Respondents have not followed the resolution of the council dated 25.5.1998, so far as the second retail outlet is concerned and they have selected a place other than the one mentioned in the resolution. In reply to this argument, it is stated that passing of the resolution by the Council has nothing to do with the establishment of the retail outlet and the Municipality is only to ask where they should supply. Otherwise, the Joint Registrar is the only competent authority. It is also submitted that this outlet has nothing to do with the present place selected by the Registrar.

7. We have heard the Learned Counsel for the parties and perused the materials on record. No doubt, in an appropriate case, on matters shocking the conscience of the Court, this Court can issue directions in Public Interest Litigations. But at the same time, P.I.L. cannot be issued for one's personal gain or for publicity. Considering the arguments and keeping the fact situation of the case, the disputed facts are questions of fact and it needs investigation and it cannot be gone into in this writ petition and no direction as sought for can be issued. A writ of mandamus cannot be issued to enforce the guidelines. In the facts of the given case, the Petitioner only agitates that once the site has been decided by the Municipality, the same cannot be cancelled but he has not been able to show that it is within the purview of the Municipality to locate a retail kerosene outlet whereas it is the Registrar of Co-operative Societies, who has the authority to locate it. In the absence of mala fides, extraneous considerations or arbitrariness, this Court cannot go into the alleged facts, which otherwise need investigation, and issue any direction as prayed for. In view of the above, this P.I.L. writ petition is liable to be dismissed and accordingly dismissed. The interim order is vacated." W.M.P. Nos. 11242 and 23733 of 2000 are consequently dismissed. Consequently, W.M.P. Nos. 11242 and 23733 of 2000 are dismissed.