

(2012) 03 MAD CK 0023

In the Madras High Court

Case No : Writ Petition (MD) No. 239 of 2012 and M.P. (MD) No's. 1 and 2 of 2012

Thirumangalam Nagar Vyabarigal Sangam

APPELLANT

Vs

The Commissioner, Thirumangalam Municipality,
Thirumangalam-625706 Madurai District

RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 259, 260, 260(2)

Citation : (2012) 3 CTC 32

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : S.M. Mohan Gandhi, for the Appellant; D. Malaichamy, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—The Notification issued by the Thirumangalam Municipality calling for Public Auction-cum-Tender for grant of licence

to collect fees from the shop owners of seven streets made the Thirumangalam Nagar Vyabarigal Sangam to file this Writ Petition.

Brief Facts:

The members of the Petitioner-Sangam are having shops both as owners and as tenants. There is a market in the Town of Thirumangalam. There

are streets by name Chinnakadai Veethi, Thelungar Street, Gurunathan Koil Street, Valayalkara Street, Uthandan Street, Mappillai Vinayagar Koil

Street and Market Street, adjacent to the public market. The members of the Petitioner-Sangam are carrying on trading activities from their shops

situated near the market. The Petitioner earlier filed a Suit in O.S. No. 119 of 1978 before the District Munsif Court, Thirumangalam challenging

the resolution passed by the Municipality to collect licence fees for the goods purchased and brought by the members to their shops. The Suit was

decreed as prayed for as per judgment and decree dated 04th November, 1978. The Petitioner has filed another Writ Petition in W.P.(MD) No.

8250 of 2009, challenging the proposal to collect charges from the members of Sangam. The immediate provocation for filing this Writ Petition

was the issuance of tender Notification on 21st November, 2011 calling for tenders to grant the privilege to collect fees from the shop owners of

the above said streets.

2. According to the Petitioner, the streets in question were not declared as public market and as such, the local body has no jurisdiction to collect

licence fees from the traders. It is their further contention that the members of the Petitioner-Sangam are not doing business from the public market

and their business is confined to their respective shops. Therefore, they challenge the very right of the Municipality to collect licence fees.

3. The Commissioner, Thirumangalam Municipality filed a detailed Counter-Affidavit in answer to the contentions raised in the Affidavit filed in

support of the Writ Petition. According to the Commissioner, the local body has constructed a market complex just about 300 metres away from

the said streets. The members of the Petitioner-Sangam refused to occupy the market and as such, the market is now kept idle. The majority of the

members are carrying out trade in vegetables, banana leaves, fruits, flower and groceries and they are dumping the waste in the public road. The

Municipality has improved the streets by concreting the streets and by laying paver blocks. The local body has provided public convenience in

Chinnakadai Street and the same is being maintained. Two bore wells have been sunk and sintex water tanks were provided for taking water for

the traders. Sufficient street lights have been provided in all these streets and the garbage of the market waste are being cleared by the employees

of the Municipality. The members of the Petitioner Sangam have been using the public streets as market. The Municipality has to incur the

expenses for maintaining the streets. The Municipality earlier took a decision to treat this as market and the same was challenged in W.P. (MD)

No. 1498 of 2007. The Writ Petition was dismissed on 13th June, 2007. Therefore, the Petitioner cannot maintain a second Writ Petition on the

very same cause of action. The Municipality has specifically contended that the streets in question are used as market and as such, the local body has every right to collect fees by passing necessary resolution.

Submission in Nutshell :

4. The learned Counsel for the Petitioner contended that the streets in question were not declared as public market within the meaning of Section 259 of the Tamil Nadu District Municipalities Act, 1920 [hereinafter referred to as "the Act"]. Therefore, the Municipality was not correct in their contention that it is open to them to collect market fee. According to the learned Counsel, the members of the Petitioner-Sangam are not using the public streets for the purpose of trading activity. They are doing business from their shops. Therefore, the Municipality has no right to levy fee from the shop owners. The Municipality earlier made an attempt to collect fees from the traders. The said step was, subsequently, withdrawn. Now, once again, the Municipality is proposing to collect fees from the traders, who are doing business from their own shops. Therefore, the impugned Notification is liable to be set aside.

5. The learned Standing Counsel for the Thirumangalam Municipality, by placing reliance on the earlier resolution passed by the Municipal Council and the statement made by the Commissioner in the Counter-Affidavit, contended that the Municipality was well within their powers to collect licence fee. It is the contention of the learned Standing Counsel that the Municipality has no intention of collecting fees from the shop owners. It is only when they do business in the streets, which are now declared as a market, fee would be collected. Therefore, there is no basis in the contention raised by the Petitioner.

Discussion:

6. The Municipality now proposes to collect licence fees from the traders who are using the streets for the purpose of their business. The core question is whether the Municipality was justified in issuing the Notification with regard to collection of licence fee from the traders who are using the market place in question.

7. Section 259 of the Tamil Nadu District Municipalities Act, 1920 [hereinafter referred to as "the Act"] defines public markets as all markets

which are acquired, constructed, repaired or maintained out of the municipal fund.

8. Section 260 of the Act permits the Municipal Council to provide places for use as public markets. Section 260(2) permits the Council to levy

any one or more of the fees for the purpose of using the public market. For the purpose of better appreciation. Section 260 is extracted below:

260. Power in respect of public markets,-- (1) The Council may provide places for use as public markets.

(2) The council may in any public market levy any one or more of the following fees at such rates and may place the collection of such fees under

the management of such persons as may appear to it proper or may farm out such fees for any period not exceeding three years at a time and on

such terms and subject to such conditions as it may deem fit:

(a) fees for the use of or, for the right to expose goods for sale in, such markets;

(b) fees for the use of shops, stalls, pens or stands in such markets;

(c) fees on vehicles or pack-animals carrying, or on persons bringing, goods for sale in such markets;

(d) fees on animals brought for sale into, or sold in, such markets; and

(e) licence fees on brokers, commission agents, weigh men and measures practising their calling in such markets;

(3) The council may, within the sanction of the State Government, close any public market or part thereof.

9. The Municipality has taken a decision on 23rd December, 2004, as per resolution No. 307, to include Chinna Kadai Veethi, Telungar Street,

Gurunathan Kovil Street, Valaiyal Kara Street as market area. The Municipality, as per resolution No. 91, dated 29th December, 2006, called for

public auction of 13 items including the right to collect fees in the daily market. It is a matter of record that some of the members of the Petitioner

Sangam themselves took part in the public auction. The Notification dated 19th January, 2007 calling for tenders for the purpose of parting with

the privilege to collect the licence fee was challenged by the Petitioner before this Court in W.P. (MD) No. 1498 of 2007. The Petitioner has

taken up a specific contention that the Municipality has no right to include the streets in question as a market for the purpose of collection of fee.

The learned Judge found that the Municipality never insisted the shop owners to

pay fee. It was only in case they do business from the public street, they are liable to pay the fees. Accordingly, the Writ Petition was dismissed.

10. The Counter-Affidavit filed by the Commissioner clearly shows that the local body has no intention to collect fees from the shops in question.

The liability to pay market fee would arise only in case they are doing business by placing their goods in the streets in question which are declared as market.

11. The Tamil Nadu District Municipalities Act, 1920 gives power to the local body to provide places for use as public markets. The Municipality has taken a decision as early as on 23rd December 2004 to treat these streets as market area. They are having every right to declare the streets as market area, in view of Sections 259 and 260 of the Act. In fact, Section 260(2) permits the Municipality to levy fees, in case the place is used for selling articles, parking vehicles and bringing goods for sale.

12. The question of setting aside the Notification would arise only in case the Municipality collects licence fee from the shop owners treating their shops as one situated in the market area. The Municipality has made it very clear that the shop owners need not pay market fee. They are liable to pay market fee only in case they keep the goods in the streets in question, which is earmarked as a market area. The decision taken by the Municipality has the statutory sanction also.

13. The Municipality is a local self-Government. The Municipality was expected to provide basic amenities to the public. The Municipality requires fund for undertaking various public welfare measures.

14. The Municipal Commissioner, in his Counter-Affidavit, very clearly stated that the Municipality has taken steps to improve the streets in question. Several measures were taken in the interest of the traders and general public. Paver blocks were provided in Chinnakadai Street and cement concrete was laid in the other streets. Public convenience system was also introduced and the same is being maintained by the Municipality.

The Municipality has provided water also to the traders. The local body is collecting the garbage. All these requires considerable amount. The traders, in case they are using the market place, should contribute towards the municipal fund. The licence fee has to be treated necessarily as a fee

for using the market place. So long as the members of the Petitioner-Sangam confine their business in their respective shops, they need not pay

licence fee. However, the moment, they started using the streets in question, declared as the public market, necessarily they are liable to pay the

licence fee. Therefore, while making the position very clear that the shop owners are not liable to pay licence fee, in case they are doing business

from their shops alone, it is also made clear that in case the market place is used for any purpose as indicated in Section 260(2) of the Act,

necessarily, the Municipality is entitled to collect fee.

15. Therefore, I am not inclined to set aside the impugned Notification. The Writ Petition is dismissed with the above clarification. Consequently,

the connected Miscellaneous Petitions are closed. No costs.