

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.27189 of 2016

P. Moorthy

... Petitioner

Vs.

1. The Commissioner,
Udumalpet Municipality,
Udumalpet, Tiruppur District.

2. The Divisional Engineer (C & M),
Highways Department,
Dharapuram,
Tiruppur District.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the 1st respondent to dispose the petitioner's representation dated 20.6.2016 to the District Collector, Tiruppur, forwarded through the 2nd respondent to the 1st respondent in its Letter No.4/2016/A4, dated 23.6.2016 and thereby direct the respondents to restore the TANTEA outlet at Rajendran Road in an original position with the same condition which has been dismantled by the 1st respondent and to pay just, fair, adequate and reasonable compensation to the petitioner by the respondents jointly and severally.

For Petitioner : Mr. P.S.Kothandaraman

For Respondent : Mr. A.S.Thambuswamy for R1
Mr. R.A.S.Senthilvel,
Additional Government Pleader for R2

O R D E R

With the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal.

2. The present writ petition has been filed to direct the first respondent to dispose of the petitioner's representation dated 20.6.2016 to the District Collector, Tiruppur, forwarded through the second respondent to the first respondent in its

Letter No.4/2016/A4, dated 23.6.2016 and thereby direct the respondents to restore the TANTEA outlet at Rajendran Road in the original position with the same condition which has been dismantled by the first respondent and to pay just, fair, adequate and reasonable compensation to the petitioner by the respondents jointly and severally.

3. Heard Mr. P.S.Kothandaraman, learned counsel for the petitioner, Mr. A.S.Thambuswamy, Advocate appearing for the first respondent and Mr.R.A.S.Senthilvel, Additional Government Pleader appearing for the second respondent.

4. The petitioner herein has been given permission to run the TANTEA outlet booth apparently for one year from December 2015-2016. Earlier there was an agreement entered into between the petitioner and the TANTEA, appointing him as a whole sale dealer for a period of two years on 24.07.2015. Thereafter, the allotment order was passed by the second respondent on 11.9.2015, temporarily subject to the condition mentioned therein.

5. A notice was issued by the second respondent, dated 01.03.2016, asking the petitioner to remove the outlet booth. In the said notice, it has been stated that no prior permission has been obtained from the first respondent and there is a violation of condition imposed by the second respondent, as per the allotment order dated 11.09.2015 in as much as the petitioner is running evening food stall, apart from selling other food items.

6. Though the said notice was dated 01.03.2016, the actual removal took place only on 06.06.2016, after giving sufficient time to the petitioner and thereafter, the present writ petition has been filed by the petitioner primarily contending that there is violation of principles of natural justice in not giving an opportunity of being heard.

7. The learned counsel for the petitioner would submit that admittedly no notice has been given to the petitioner to put forth his contentions and such an action on the part of the first respondent would violate Article 21 of the Constitution of India. Hence, the petitioner will have to be put back in the original position.

8. Learned counsel for the respondent would submit that the petitioner has violated the conditions of licence, and he has also sublet the premises to the third party. He has not renewed the licence. As such eviction was carried on after the expiry of the period.

9. What has been given to the petitioner is only a license. Secondly the order passed by the first respondent has not been put into challenge. The TANTEA, which appointed the petitioner as a whole sale dealer has also not been impleaded as a party. The fact that the petitioner has given sufficient time to vacate, is not in dispute. He has also not chosen to give reply to the notice dated 01.03.2016, though the same cannot be termed as a show cause notice. Even assuming that there is a dispossession contrary to law, the same will not give an automatic right for repossession.

10. For the foregoing reasons, the Writ Petition stands dismissed. However, this will not stand in the way of the petitioner in approaching before the authority for appropriate relief, if so advised, in which case, the matter will have to be decided on its own merits. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

pbn/ms

To

1. The Commissioner,
Udumalpet Municipality,
Udumalpet, Tiruppur District.
2. The Divisional Engineer (C & M),
Highways Department,
Dharapuram,
Tiruppur District.

+lcc to Mr.P.S.Kothandaraman, sr.no.40513
+lcc to Government Pleader in sr.no.40368
+lcc to Mr.A.S.Thambuswamy in sr.no.40134

W.P.No.27189 of 2016

VGI (CO)
NR 23/06/2017