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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:28.04.2017

CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.A. (MD) No.468 of 2017 &
C.M.P. (MD) .No.4179 and 4180 of 2017

S.Lazar
S/o.Singarayan,
Proprietor,
M/s.Rathi Petroleum,
Indian Oil Dealers, Thuckalay,
Kanyakumari District.

...Petitioner/Appellant

Vs.

- 1.The District Collector,
Kanyakumari District,
At Nagercoil.
- 2.The District Revenue Officer,
Kanyakumari District,
At Nagercoil.
- 3.The Senior Divisional Retail Sales Manager,
Indian Oil Corporation Ltd.,
No.2, Race Course Road,
Chokkikulam,
Madurai-2.

... Respondents/ Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order in W.P.(MD).No.3716 of 2017, dated 02.03.2017.

Prayer in WP(MD). 3716/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd respondent in Roc.No. C1/14043/2016 dated 14.02.2017, quash the same and consequently direct the respondents herein to allow the petitioners lawful business in terms of letter of appointment dated 16.03.2016.

For Appellant :Mr.A.Rajkumar Sen

For Respondents :Mr.V.Muruganantham for R1 and R2
Additional Government Pleader

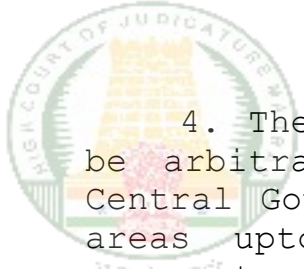
**JUDGMENT**

[Judgment of the Court was delivered by **T. S. SIVAGNANAM, J**]

Heard Mr.A.Rajkumar Sen, learned counsel for the appellant and Mr.V.Muruganantham, learned Additional Government Pleader, who accepts notice for the respondents 1 and 2.

2. The appellant is aggrieved by the order in W.P.(MD).No.3716 of 2017, dated 02.03.2017. The appellant owns a piece of land in Thuckalay Village and it appears that the land was suitable for establishing a petroleum outlet by the Indian Oil Corporation (IOC), and an application was filed by the Corporation for grant of NOC which was considered and NOC was granted by the second respondent vide proceedings dated 16.02.2016. Thereafter, it appears that the Department of Archaeology, Government of Kerala sent a letter to the second respondent on 15.04.2016 stating that the proposed petroleum outlet would be very near to the Padmanabhapuram Palace, which is under the control of Archaeology Survey of India (ASI), and therefore stating that establishing a petroleum outlet would be a risk factor. Pursuant to which, an enquiry was conducted by the second respondent by issuing a notice under Section 151(1) of the Petroleum Rules, 1976 in which the respondent, Indian Oil Corporation submitted that the Central Government had declared areas upto 100 meters as protected limits of all protected monument and that this protected monument is located about 340 meters away from the outlet and there are other shops, hotels etc., near the monument and there is no news of any fire incident in the vicinity and therefore, requested that NOC should not be cancelled.

3. Objections of the Department of Archaeology, Government of Kerala were also taken into consideration and the second respondent cancelled the NOC issued in favour of IOC. This order was put to challenge by the appellant. The Writ Court was of the view that the appellant has no *locus standi*, because no objection was granted in favour of IOC. It may be true that the petroleum outlet was to be located in the land owned by the appellant, therefore to that extent the appellant would be justified in raising objections as against the order passed by the second respondent. However, no independent right occurs in favour of the appellant. Nevertheless, we have considered the merits of the matter and we find from the order passed by the second respondent, dated 14.02.2017 that the authority was convinced that since the Palace was a wooden palace and it is included in the tentative list of World Heritage list of UNESCO and it is an identity of the erstwhile Travancore Kingdom and it stands as a remarkable tradition/heritage of the nation and security and safety of the palace has to be safe guarded and it cannot be regained, if any damage or incidents happened to the wooden palace and cancelled the license.



4. The decision of the second respondent cannot be stated to be arbitrary or unreasonable. Though it may be true that the Central Government might have issued a notification declaring the areas upto 100 meters as protected limits of all protected monuments has been prohibited there for the purpose of mining operations and constructions and that the appellant's property is about 340 meters away from the palace, the factors which have to be borne in mind is to ensure security and safety of a monument of a national importance under the control of Archaeology Survey of India, as it is best left to the decision of the second respondent. This Court exercising jurisdiction under Article 226 of the Constitution of India cannot act as an appellate authority over the decision of the second respondent especially when there is no error in the decision making process nor it can be stated that the decision is arbitrary or unreasonable.

5. Thus for the above reasons, we are not inclined to entertain the appeal and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1.The District Collector,
Kanyakumari District,
At Nagercoil.

2.The District Revenue Officer,
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At Nagercoil.

3.The Senior Divisional Retail Sales Manager,
Indian Oil Corporation Ltd.,
No.2, Race Course Road,
Chokkikulam,
Madurai-2.

+1cc to Mr.A.Rajkumar sen, Advocate, SR.No.55055

+1cc to M/S THE SPECIAL GOVERNMENT PLEADER, SR.NO. 55473

W.A.(MD) No.468 of 2017 &
C.M.P.(MD).No.4179 and 4180 of 2017
28.04.2017

JIKR

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