

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.30987 of 2017

V.Gowtham

... Petitioner

vs.

1. The Assistant Divisional Engineer (C & M),
State Highways,
South Sub-division,
Coimbatore - 18.
 2. The District Collector,
Collectorate Building,
Gopalapuram,
Coimbatore - 641 018.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorarified mandamus, to call for the records relating to the order passed by the 1st Respondent in Memo No.502/2017/A by order dated 21.11.2017 and quash the same and direct the 1st Respondent to grant renewal of permission to carry on the business of the Petitioner.

For Petitioner : M/s.Mathuwanthy Mathavan

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

Heard Ms.Mathuwanthy Mathavan, Learned Counsel for the Petitioner and Mr.A.N.Thambidurai, Learned Special Government Pleader appearing for the Respondents.

2. According to the Petitioner, Tamil Nadu Tea Plantation Corporation Limited (in short 'TANTEA') is a Government of Tamil Nadu undertaking and is one of the largest producers of quality tea in South India. To facilitate availability of quality tea at reasonable prices to common people and to publicize the health benefits of pure tea, TANTEA opened outlets in places where large number of people gather and they obtained permission

from the State Highways to establish shops to run small TANTEA bunks/shops at Highways.

3. Learned Counsel for the Petitioner submits that the Petitioner was granted permission to sell and distribute tea from TANTEA Corporation Ltd. on 30.07.2014 and entered into an Agreement with the TANTEA Corporation to run tea bunk shop at Ramanathapuram-Chettipalayam State Highways Road, KI.Mi.11/762, Sriram Nagar in Coimbatore and has been systematically renewed till 21.07.2018. Also, No Objection Certificate from the Police and permission from the Deputy Engineer, State Highways was obtained and conditional permission was granted by the State Highways till 31.12.2015.

4. It comes to be known that the Petitioner had applied for renewal of permission from the Deputy Engineer, State Highways as early as 23.12.2015 before the expiry of the permission period. As a matter of fact, the 1st Respondent/Assistant Divisional Engineer (C & M), State Highways, South Sub-division, Coimbatore-18, gave a reply on 15.02.2016 stating that the request for renewal of permission would be granted on receiving 'No Objection Certificate' from the Police Commissioner and on sending the documents to the 1st Respondent. Indeed the Petitioner renewed the Bunk Agreement with TANTEA Corporation and obtained NOC from the Police Commissioner and sent all the documents to the 1st Respondent.

5. Learned Counsel for the Petitioner proceeded to point out that the Petitioner received the order from the 1st Respondent duly signed on 19.05.2017, directing him to vacate the Shop within seven days, i.e. by 05.06.2017 or it will be vacated by the State Highway authorities on 15.06.2017. The reason assigned was that the permission was granted only till 31.12.2015 and no extension was granted and in fact, the Shop is an encroachment on the State Highways.

6. It transpires that the Petitioner on an earlier occasion filed W.P.No.15219 of 2017 before this Court and the said Writ Petition was disposed of with a direction to the Petitioner to approach the 1st Respondent with an explanation and three weeks' time was granted to the 1st Respondent to pass orders on merits.

7. It appears that the Petitioner had addressed a letter of explanation to the 1st Respondent as directed by this Court. However, the grievance of the Petitioner is that, in spite of considering his case on merits, the 1st Respondent through Letters dated 27.06.2017, 06.07.2017 and 19.07.2017, respectively, directed him to obtain permission from the 2nd

Respondent/District Collector, Coimbatore for grant of renewal/permission. An application was also submitted by the Petitioner seeking necessary permission being granted by the 2nd Respondent and his application is pending. He replied to the 1st Respondent on 01.08.2017 stating that his application with the 2nd Respondent is pending and he would submit the same at the earliest.

8. Also, the Petitioner learnt from another TANTEA shop owner at the Highways that such permissions were not given by the 2nd Respondent/District Collector, Coimbatore and that the Collector had specifically communicated to the 1st Respondent not to involve the District Collector Office for grant of such permissions. Under these circumstances, the Petitioner had received an order dated 21.11.2017 from the 1st Respondent directing him to vacate the premises immediately without any further delay. The reason ascribed thereto being that the Petitioner had not provided the documents pertaining to the permission obtained from the 2nd Respondent/District Collector, as requested in the letters of the 1st Respondent, dated 27.06.2017, 06.07.2017 and 19.07.2017, respectively. Hence, the Petitioner has filed the present Writ Petition stating that the impugned order of the 1st Respondent, dated 21.11.2017 is perverse, arbitrary and therefore, the same is liable to be quashed in the eye of law. Further, he has sought for passing of an order by this Court in directing the 1st Respondent/Assistant Divisional Engineer (C & M), State Highways, South Sub-division, Coimbatore-18, for grant of renewal of permission to carry out his business.

9. Per contra, it is the submission of the Learned Special Government Pleader appearing for Respondents 1 and 2 that the Highways Department had granted temporary permission on 30.07.2014 for a period of one year from 13.01.2015 to run TANTEA shop at km 11/762 on the left side of North Coimbatore - Ramanathapuram - Chettipalayam road (State Highways 182) running mostly on urban stretches of Coimbatore City.

10. The Learned Counsel for the Respondents takes a plea that the Petitioner made a request for renewal of permission on 23.12.2015 and submitted 'No Objection Certificate' from the City Police Commissioner, Coimbatore and that the Petitioner had forwarded an incomplete application for renewal, and further the Highways Division in Coimbatore City, had taken cognizance of the fact that too many parlours may pose danger to the free flow of traffic and in order to invigorate the system, the Highways authority has taken a policy decision that granting new parlours/renewal is put on hold. However, there is a continuous and persistent effort to scrutinize such renewal applications based on merits of each case.

11. The Learned Special Government Pleader adds to state that the Petitioner's case was disposed of on merits and the 1st Respondent, indeed had issued continuous reminders to facilitate the Petitioner to satisfy the conditions within the stipulated time. The Petitioner had not seriously pursued his case before the District authorities and had merely quoted the reason that another TANTEA shop owner was denied permission by the District Collector. Also that the Petitioner had not provided details of his application for follow up action before the District/Revenue authorities.

12. The Learned Special Government Pleader brings to the notice of this Court that as per Section 26(2) of the Tamil Nadu Highways Act, notwithstanding anything contained in sub-section (1), the Highways authority, may with the concurrence of the Collector and with due regard to the safety and convenience of traffic and subject to such conditions and on payment of such rent or other charges as may be prescribed, grant permission of a temporary nature to any person and only on that basis and on merits of the case, such permission was granted to the Petitioner for a period of one year from 13.01.2015 to 31.12.2015, as the proposed shop being approved by the State Government undertaking TANTEA Corporation. Therefore, according to the Respondents, the concurrence of the 2nd Respondent/District Collector, Coimbatore is mandatory to accord permission for any such temporary structure on the Highways land.

13. The pith and substance of the contentions advanced on behalf of the Respondents is that the permission granted to and in favour of the Petitioner was only on transitory basis and that too for a period of one year based on the conditions viz.,

(i) The temporary bunk shop should not pose any hurdle to the Highways traffic and the drainage part of the Highway;

(ii) Such permission will be removed whenever there is any construction on the concerned Highway;

(iii) Such construction in any way shall not exceed the limits granted by the authority and shall not be used for any other purpose;

(iv) Such construction shall be removed and cleared from the Highways land, once the tenure of such permission is void;

(v) The allottee shall not approach the Court for any such reasons.

and that there is a proposal mooted by the Coimbatore City Corporation for a comprehensive Bus Stand on the same road, which lies very close to the Petitioner's shop and hence, this stretch is proposed to be widened to four lane, as the road connects NH 47 (New NH 544) on one side and NH 67 (New NH 181)

on the other side. Also, that the stretch will be an extremely important connecting facility. Hence, the Writ Petition is liable to be dismissed.

14. It is to be pointed out that the Petitioner was granted permission, which is transitory in nature and that too only for a period of one year from 13.01.2015 to 13.12.2015 and with certain conditions as pointed supra and when the Petitioner's tenure in respect of the shop in question had expired, then the Petitioner has no indefeasible right to claim any renewal in regard to carrying on his business in the temporary bunk shop and soon after the expiry of the licence/lease period, the rights are reserved and vested with the Highways authority either to grant renewal or not grant renewal after taking into account the effects of traffic/development of Highways and also after considering the entire facts and circumstances of the case, which float on the surface.

15. Moreover, consequent to the proposal projected by the Corporation for comprehensive Bus Stand in close proximity to the shop and certain violations observed in regard to the conditions, it is natural that the Petitioner has no manner of any right in law to seek the claim in regard to the running of a temporary Bunk shop after the expiry of the lease period in question. In this connection, this Court, on going through the impugned order dated 21.11.2017 of the 1st Respondent/Assistant Divisional Engineer (C & M), State Highways, South Sub-division, Coimbatore-18, is of the considered view that the bunk shop of the Petitioner put up by him and the approval of lease of 100 sq. ft. for the year 2014-15 only was issued by the competent authority. It is not out of place for this Court to make a pertinent mention that even though the permission in respect of running of the temporary bunk shop was for only one year from 13.01.2015 to 13.12.2015, the Petitioner had enjoyed the benefit of continuing there and running the business thereafter for a period of more than two years till the impugned order is passed.

16. In the absence of subsequent renewal made by the Petitioner and also incidentally, there being a proposal for widening approach to the ROB at km 10/6 of the road and also, as the land is very much required for the purpose of widening the Bus Stand, this Court, without any haziness or hesitation, comes to the irresistible conclusion that the impugned order requiring the Petitioner to vacate the premises with immediate effect, whereby and whereunder, it was mentioned that the Petitioner in spite of the Letters, dated 27.06.2017, 06.07.2017 and 19.07.2017 being addressed by the 1st Respondent's Office, to submit the records addressed to him, had not produced the records and also that the Petitioner in spite of his assurance vide Letter dated 01.08.2017 to submit relevant records, had not

availed those opportunities provided by the 1st Respondent, does not suffer from any material irregularities or patent illegalities in the eye of law. Thus, it cannot be stated that there is a negation of principles of natural justice.

17. At this stage, this Court aptly points out that for widening of the road in question, the place is required by the Respondents and in this regard, the individual interest will have to give way to that of public interest/Society's interest at large, which is undoubtedly paramount besides being sacrosanct and sacred.

This Writ Petition is dismissed with the above observation (s). No costs. Consequently, connected W.M.P.No.33951 and 33952 of 2017 are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

(aeb)

To:

1. The Assistant Divisional Engineer (C & M),
State Highways,
South Sub-division,
Coimbatore - 18.
2. The District Collector,
Collectorate Building,
Gopalapuram,
Coimbatore - 641 018.

+1cc to Government Pleader in sr.no.16308

Order in
W.P.No.30987 of 2017

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