



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2018

CORAM :

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**THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY**

W.P(MD)No.1130 of 2018
and
W.M.P(MD)No.1209 of 2018

P.Manojkumar

... Petitioner

vs.

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The National Highways Authority of India,
Madurai Zone, Madurai.

3. The Deputy General Manager cum Project Director,
National Highways Authority of India,
plot No.3, Suriya Towers II Floor
1st East Street, K.K.Nagar, Madurai.

4. L.P.Arumugasamy

... Respondents

(4th respondent has been impleaded
vide order dated 09.03.2018 in WMP No.4824/2018)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 3rd respondent in connection with the impugned order of eviction passed by him vide his proceedings Ref. NHAI/MDU/NH-7/2017/67 dated 11.01.2018 and quash the same as illegal, arbitrary and against the larger interest of the people and consequently direct the respondents to accord permission to run Aavin Booth situated near Bus stop, Four Way Track, Thayilpatti Junction, Sattur based on the letter of the General Manager Virudhunagar Cooperative Milk Producers Union Ltd., Srivilliputhur dated 26.12.2016.

For Petitioner

: Mr.G.Thalaimutharasu

For Respondents

: Mr.VR.Shanmuganathan for R1

Special Government Pleader

Mr.Arul Vadivel @ Sekar for R2 & R3

Ms.Mahalakshmi for R4

**O R D E R****(Order of the Court was made by T.RAJA, J.)**

WEB COPY This writ petition is directed against the impugned order dated 11.01.2018 issued by the third respondent Deputy General Manager cum Project Director, National Highways Authority of India, directing the petitioner herein to remove the unauthorised occupation within ten days from the date of receipt of the impugned letter, failing which, the third respondent has indicated therein that the unauthorised occupation would be removed and the cost of expenses also would be recovered from the petitioner.

2. The learned counsel for the petitioner, assailing the impugned order, would submit that the petitioner has completed his 10th standard in the year 2007. In the year 2016, the Virudhunagar Cooperative Milk Producers Union Ltd., Srivilliputhur invited eligible candidates for appointment of agents for the distribution of Aavin Milk to the people of different area of Virudhunagar District. After noticing the said advertisement, the petitioner applied for the same and after scrutinising his application and eligibility criteria, the General Manager, Virudhunagar District Cooperative Milk Producers Union Ltd., vide his proceedings dated 24.08.2016 appointed the petitioner as agent for the year 2016-2017 at bus stop, four way track, Thayilpatti Junction, Sattur to distribute Aavin Milk to the inhabitants in and around the said area. Subsequently, the agency for distribution of Aavin Milk was also renewed by the General Manager by renewal order, dated 14.06.2017. When the matter stands as above, the third respondent served an eviction order directing the petitioner to remove the Aavin Booth situated at Thayilpatti Junction road area, Sattur by citing the order passed by this Court in W.P.(MD) No.21300/2017 dated 20.11.2017, in which, the third respondent has been directed to consider the representation given by the fourth respondent therein/petitioner herein alleging that the petitioner has encroached the four way track of national highway by running a Aavin tea shop and thereby causing hindrance to the traffic. When the petitioner has not encroached any four way track of National Highway and the fourth respondent herein is not even residing in the said address lying next to the petitioner's Aavin booth, the said Aavin booth set up by the petitioner nearby a bus shelter is no way hindrance to anybody, hence the impugned order ought not to have been issued against the petitioner.

3. It is also stated that when this Court has passed an order dated 20.11.2017 in W.P.No.21300/2017 giving a specific direction to the third respondent to conduct an enquiry and pass a speaking order, after providing an opportunity of hearing to the



petitioner, without conducting any enquiry or affording any opportunity, straightaway the third respondent has passed the eviction notice on 05.12.2017.

4. Aggrieved by the said order, the petitioner filed a writ petition No.22562/2017 and this Court, by order dated 08.12.2017, directed the third respondent to look into the grievance of the petitioner. Pursuant thereto, the present impugned order has been passed. Therefore, the act of the third respondent is not only violation of due process of law, but also against the principles of natural justice, it is pleaded.

5. Adding further, the learned counsel for the petitioner, would submit that the third respondent, while passing the impugned order could have seen that the General Manager, Virudhunagar District Cooperative Milk Producers Union Ltd, has given permission to establish Aavin booth in the place in question on 26.12.2016 and the request of the petitioner for his appointment as agent for distribution of Aavin milk to the people of different area of Virudhunagar District has been accepted. When the petitioner was given the agency for distribution of Aavin Milk by the Virudhunagar District Cooperative Milk Producers Union Ltd., after inviting applications from the eligible candidate for appointment of agents for distribution of milk to the people, the third respondent, without being influenced by the complaints made by the fourth respondent, should have allowed the petitioner by granting permission, as he is not even selling any other articles except Aavin related eatable items.

6. A detailed counter affidavit has been filed by the third respondent.

7. The learned counsel for the third respondent, supporting the impugned order, submitted that since the Government of India have proposed to form four way lane from Kashmir to Kanyakumari, connecting all important major cities throughout the Country under Golden Quadrilateral Scheme for the formation of four lane from Madurai-Kanyakumari section of NH-7, this has been entrusted to the Project Director, Project Implementation Unit, the National Highway Unit, the third respondent herein, while so, the General Manager, Virudhunagar has sent an application dated 26.12.2016 requesting the third respondent to form an Aavin booth to sell Aavin milk and milk produces in NH7 Sattur and the said application was received by the office of the third respondent on 08.02.2017. In the meanwhile, one L.P.Arumugasamy of Sattur Taluk, the fourth respondent herein filed W.P.(MD) No.21300/2017 praying for a writ of mandamus directing the District Collector, Virudhunagar and the Deputy General Manager cum Project Director, NHAI, Madurai, the third respondent herein to remove the encroachment made by the petitioner in the National Highways



(Service Road) in front of the building owned by the fourth respondent therein. This Court, while entertaining the writ petition, by its order dated 20.11.2017, directed the third respondent herein to consider the representations dated 23.11.2016 and 09.10.2017 of the fourth respondent herein. Finally, a notice was issued on 05.12.2017 under Section 26(2) of the provisions of the Control of National Highways (Land and Traffic) Act 2002 (hereinafter referred to as 'the Act') calling upon the petitioner to appear and to give his explanation. Immediately, the petitioner filed W.P.(MD) No.22562/2017 before this Court challenging the eviction notice dated 05.12.2017. This Court, after taking note of the fact that the notice dated 05.12.2017 was issued by the third respondent, pursuant to the order dated 20.11.2017 issued by this Court in W.P.(MD) No.21300/2017 filed by the fourth respondent disposing of the representations, directed the petitioner to appear before the third respondent and offer his explanation. After complying the formalities and direction made by this Court in the aforementioned order, the third respondent, considering the legal aspect as adumbrated under Sections 24, 25 and 26 of the Act, has passed the impugned order. Therefore, there is no illegality or infirmity in the impugned order, he contended.

8. Adding further, the learned counsel for the third respondent would submit that a combined reading of Sections 24 to 26 of the Act clearly shows that no person shall occupy any Highway land and if the highway administration or the officer authorised by such administration is of the opinion that it is necessary in the interest of traffic safety or convenient to traffic under sub section 2 of Section 24 of the Act, it may, after recording the reasons in writing, cancel such permit in terms of Sections 24 and 26 of the Act. As the petitioner was found an encroacher of the land belonging to the third respondent he was issued with only agency for running the Aavin milk booth on the land belonging to the third respondent, without even taking prior approval from the third respondent, hence the impugned order has been rightly passed refusing to grant any permission to run the Aavin milk booth. Therefore, he contended that the impugned order does not call for any interference.

9. One another counter affidavit has been filed by the fourth respondent.

10. Learned counsel for the fourth respondent would submit that the third respondent has rightly passed the impugned order stating that if there is any land belonging to the Virudhunagar District Cooperative Milk Producers Union Ltd., an order can be issued to form an Aavin booth. But, in the present case, the General Manager of Virudhunagar District Cooperative Milk Producers Union Ltd., without even taking prior approval or permission from the third respondent, has appointed the petitioner



to run the Aavin Milk Booth in the land belonging to the third respondent. Moreover, the place, where the petitioner has set up his Aavin milk booth is also causing all sort of nuisance, as he has encroached upon the service road of the National Highways unlawfully for the purpose of selling aavin milk products.

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11. On the other hand, the petitioner, while selling aavin milk products, selling tea, coffee and other eatables in an unhygienic manner. Moreover, he is also selling cigarettes, which are not permissible, as per the order of appointment issued by the General Manager, Virudhunagar District Cooperative Milk Producers Union Ltd., and the petitioner has also obtained electricity service connection from the Tamil Nadu Electricity Board without showing that the third respondent has allotted the place in question to run the Aavin milk booth. Taking shelter under the order of appointment, the petitioner has been making attempt to cause huge public nuisance and the fourth respondent's house is also situated just behind the milk booth unlawfully set up by the petitioner and hence, the fourth respondent has approached this Court with W.P.(MD) No.21300/2017 to remove the encroachment made by the petitioner.

12. After hearing the parties, this Court, in its detailed order dated 20.11.2017 directed the Deputy General Manager cum Project Director, third respondent herein, to consider the case of the petitioner and the fourth respondent. Moreover, the petitioner also came to this Court with W.P.(MD) No.22562/2017, challenging the notice issued by the third respondent. After entertaining the writ petition, this Court, again, in W.P.(MD) No.22562/2017 filed by the petitioner, directed the third respondent to consider the plea of the petitioner and only after considering the objections of the petitioner and other parties, the impugned order has been passed making it clear that General Manager, Virudhunagar District Cooperative Milk Producers Union Ltd., without any authority whatsoever, has issued the order appointing the petitioner as agent of Aavin booth. For all these reasons, the impugned order does not warrant any interference, she submitted.

13. We also find justification on the part of the third respondent for passing the impugned order. When the General Manager, Virudhunagar District Cooperative Milk Producers Union Ltd., has issued the Advertisement dated 26.12.2016 inviting applications from eligible candidates for appointment of agents for distribution of Aavin Milk to the people of different area of Virudhunagar District, no doubt, the petitioner applied for the same and after scrutinising his application and eligibility criteria, the General Manager, Virudhunagar District Cooperative Milk Producers Union Ltd., in his proceedings dated 24.08.2016 appointed him as agent for the year 2016-2017 vide order dated



24.08.2016 and that was also further renewed by another dated 14.06.2017. However, before renewal, the General Manager, Virudhunagar District Cooperative Milk Producers Union Ltd., has also sent a communication dated 26.12.2016 to the third respondent requesting permission to run Aavin Milk Booth. The mistake committed by the General Manager of Virudhunagar District Cooperative Milk Producers Union Ltd., Srivilliputhur shows that before issuing the order dated 24.08.2016 appointing the petitioner as agent for the year 2016-2017 for the bus stop, four way track, Thayilpatti junction, Sattur to distribute Aavin milk to the inhabitants in that area and other consumers, in our considered opinion, ought to have obtained prior permission from the third respondent, since Aavin booth is going to be established only in the land belonging to the third respondent.

14. We could have also appreciated the appointment order dated 24.08.2016, had it been issued to set up the aavin booth in the land belonging to Virudhunagar District Cooperative Milk Producers Union Ltd. However, that also has not been properly done by the General Manager, Virudhunagar District Cooperative Milk Producers Union Ltd. Therefore, when the General Manager, Virudhunagar District Cooperative Milk Producers Union Ltd., blindly has issued the appointment order giving permission to the petitioner to set up the Aavin booth in the land, which is not belonging to the Virudhunagar District Cooperative Milk Producers Union Ltd., whereas, it belongs to the third respondent, rightly, the fourth respondent approached this Court complaining some public nuisance, as the said Aavin booth set up by the petitioner just in front of the land belonging to the fourth respondent.

15. This Court while entertaining the first writ petition in W.P.(MD) No.21300 of 2017 filed by the fourth respondent directed the third respondent to look into this matter, after issuance of notice on the basis of the order passed by this Court in the aforementioned writ petition. Again, the petitioner also rushed to this Court with another writ petition. However, taking note of the fact that after issuing notice, the petitioner filed second Writ Petition and that while disposing of the said writ petition, this Court again reminded the third respondent to consider the case of both the petitioner and the fourth respondent. Finally, the third respondent has passed the impugned order making it clear that the General Manager, Virudhunagar District Cooperative Milk Producers Union Ltd., is not the legal authority to issue any order appointing the petitioner to set up milk booth in the land belonging to the third respondent and rightly rejected the case of the petitioner vide impugned order.

16. We are not able to see any infirmity in the impugned order. Therefore, the writ petition fails and the same is accordingly dismissed. It is made clear that if the third



respondent considers the request of the petitioner and also the petitioner, this order shall not stand in their way. No costs. Consequently connected Miscellaneous Petition is also dismissed.

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Sd/-
Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The National Highways Authority of India,
Madurai Zone, Madurai.
3. The Deputy General Manager cum Project Director,
National Highways Authority of India,
plot No.3, Suriya Towers II Floor
1st East Street, K.K.Nagar
Madurai.

- + 1 CC TO Mr.THALAIMUTHARASU, ADVOCATE IN SR No. 78696
- + 1 CC TO M/s.S.MAHALAKSHMI, ADVOCATE IN SR No. 78668
- + 1 CC TO Mr.C.ARUL VADIVEL @ SEKAR, ADVOCATE IN SR No. 78656
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 78933 & 79114

RR

TE/SV/SAR-4 : 10/10/2018 : 7P/8C

W.P(MD)No.1130 of 2018 and
W.M.P(MD)No.1209 of 2018
14.08.2018