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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH
W.P. (MD) No.481 of 2018
and
W.M.P (MD) No.481 of 2018

G.Varatharajan

... Petitioner

vs.

1. The District Collector
Madurai District
Madurai.
2. The Tahsildhar
Madurai North Taluk
Madurai District.
3. The Commissioner
Madurai Corporation
Madurai
4. The Divisional Engineer
Highways Department
Construction and Maintenance
Madurai- 02
5. The Managing Director
Tamil Nadu Tea Corporation Limited
TANTEA Complex, Coonoor,
Nilgiri District.
6. R.Rajeshwari

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to implement the order passed by the fourth respondent vide his letter No.2274/2017EVAA-2/ dated 04.12.2017 and to take immediate action to remove the petty shop put up by the sixth respondent herein on the basis of the representation given by the petitioner on 02.01.2018.

For Petitioner : Mr.Niranjan.S.Kumar

For Respondents:Mr. J.Gunaseelan Muthiah

RR1 ,2 and 4 Additional Government Pleader

RR 3 : Mr. R.Murali

RR5 : No appearance

<https://hcservices.mca.gov.in/hcservices/> : M/s.P.Pushpavalli



O R D E R

Pursuant to the license granted by the fourth respondent by the Tamil Nadu Tea Plantation Corporation Limited, (TANTEA) outlet, the petitioner had given several representations to the fifth respondent seeking for implementation of the said order and in view of the non-implementation of the order, the present Writ Petition has been filed.

2. The grievance of the petitioner is that in view of the illegal construction put up by the sixth respondent in the site allotted to the petitioner, he is unable to put up the shop.

3. According to the learned counsel for the petitioner , the sixth respondent does not have any valid or legal right to put up the shop in the subject land.

4. The learned counsel for the sixth respondent submitted that he had earlier filed Writ Petition in W.P.(MD)No.22759 of 2017 and this Court, by an order dated 12.12.2017 had passed an order directing the respondents therein to consider his representation for grant of licence to put up petty shop. Since the respondents have not considered her representation till date, she objected the plea raised by the petitioner herein.

5. The learned Additional Government Pleader, on instructions, submitted that the land in question belongs to the Highways Department and pursuant to the order of this Court dated 12.12.2017 passed in W.P.(MD) No.22759 of 2017, the third respondent herein had complied with the direction of this Court by considering the petitioner's representation and observing that the land belongs to the Highways Department and therefore the sixth respondent should remove the temporary structure put up in the subject land. He further submitted that the since the sixth respondent had not taken any steps to remove the structure, the Highways Department has also issued notice to the sixth respondent directing her to remove the illegal encroachment.

6. At this juncture, the learned counsel for the sixth respondent submitted that she has not received any such communication from the third respondent and that her application seeking for allotment of licence to put up the shop was made on the ground that she has running a shop therein for many years and thereafter made a plea that a sympathetic consideration should be extended to her.

7. It is not in dispute that the petitioner herein was granted licence to run the TANTEA outlet at left hand side on 1/6km of Madurai High way, Nearby 'Madurai Flower Market ' inside measuring 8 feet X 8 feet area.



8. It is further seen that the Writ Petition filed by the sixth respondent herein has also been disposed of on 12.12.2017 and pursuant to the direction of this Court, the Corporation had also considered the sixth respondent's representation and passed appropriate orders on 10.01.2018 itself rejecting the sixth respondent's request for granting licence to run petty shop therein. As such, the sixth respondent may not be justified in continuing to retain the temporary structure put up in the said subject land. Hence it would be appropriate that the petitioner herein is permitted to enjoy the benefits of the allotment order since the sixth respondent has no legal right to retain the temporary structure in the land.

9. It would not be out of place to mention here that the grievance of the sixth respondent is that she had been running petty business in the site and thereafter has been making representations seeking for allotment of shops on sympathetic ground. Though the sixth respondent alleges of having running the shop in the said site for a considerable time, the same would not give any legal right to her in claiming allotment. However, it is always open to the third respondent to make a sympathetic approach and consider the request of the sixth respondent, if any such application is made in this regard in future.

10. In the light of the above observation made, I am of the view that the petitioner is entitled to succeed in the present Writ Petition. Consequently, the fourth respondent herein is directed to remove any encroachment found in the place allotted to the petitioner for putting up shops namely the site at 1/6km of Madurai- Natham High way, Nearby "Madurai Flower Market" within a period of seven days from the date of receipt of a copy of this order and on such removal the petitioner is at liberty to put up shop pursuant to the licence granted on 04.12.2017 by the fourth respondent subject to the terms and conditions mentioned in the said licence.

11. With the above direction, this writ petition is allowed No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To
1. The District Collector,
Madurai.



2. The Tahsildhar,
Madurai North Taluk,
Madurai District.

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3. The Divisional Engineer,
Highways Department,
Construction and Maintenance,
Madurai- 02.

+1cc to Mr.R.MURALI, Advocate, SR.No. 66898
+1cc to Mr.NIRANJAN S.KUMAR, Advocate, SR.No. 66600
+1cc to Mr.M.MARAN, Advocate, SR.No. 66663
+1cc to M/s.Special Government Pleader, SR.No. 66818

W.P. (MD) No.481 of 2018
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