

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.9193 of 2020
and
W.M.P.Nos.11213 and 11214 of 2020

S.Mariappan

...Petitioner

-Versus-

- 1.The District Collector,
Erode District, Erode.
- 2.The Managing Director,
Tamil Nadu State Marketing Corporation Limited,
4th Floor, Thalamuthu Natarajan Maaligai,
Egmore, Chennai 600008.
- 3.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Limited,
Housing Unit, Kavundampalayam,
Coimbatore.
- 4.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
Erode.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Certiorari calling for the records relating to the impugned order (summon) passed by the 4th respondent in her proceedings No.Na.Ka.257/2020/R6, dated 01.07.2020 and to quash the same.

For Petitioner

Mr.C.Prakasam

For Respondents

Mr.G.K.Muthukumar, Spl.
Govt. Pleader for R1

Mr.K.Sathishkumar, Standing
Counsel for RR2 to 4

ORDER

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

This writ petition has been filed by the petitioner challenging the impugned order passed by the 4th respondent, which is nothing but a memo calling upon the petitioner and the owner of the building, who has not been arrayed as a party before us for enquiry.

2. On the earlier round of litigation, this Court was pleased to pass the following order in W.P.No.7616 of 2020 on 13.05.2020:-

"5. The learned Government Pleader states that the fourth respondent-District Manager, TASMAL, Erode, is the competent officer to consider such representations and the petitioner may be directed to approach the fourth respondent in this regard.

6. Heard the learned counsels on either side and perused the materials placed before us.

7. As the representations of the petitioner dated 23.03.2020 and 27.04.2020 are with the respondents, in particular, the fourth respondent, the same may be considered by the said officer, after affording an opportunity of personal hearing, as may be possible on account of COVID-19 situation, and appropriate orders may be passed on such representations on merits and in accordance with law. The said exercise shall be completed within a period of four weeks from today.

8. With the above directions, this writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed."

3. Thereafter, the petitioner sent a communication, for which, a reply was given by the 4th respondent in Na.Ka257/2020/R6 dated 12.06.2020 to the effect that the proposal has not been sent since, it appears that the proposed shop is situated within the prohibitory distance and therefore, it has been kept in abeyance temporarily. It is needless to say that this is only a communication sent to the petitioner and that is the reason why neither a copy is marked to the owner of the building nor she has been heard. Thereafter, in compliance with the order passed by the Division Bench of this Court in W.P.No.7616 of 2020, a memo was sent to both the petitioner and the owner of the building asking them to appear on the appointed date i.e., on 09.07.2020 for enquiry. This memo also states

that a measurement will be made in their presence. This memo is sought to be challenged before us.

4. The learned counsel appearing for the petitioner submitted that as a decision has already been taken in the communication dated 12.06.2020, the subsequent memo cannot be sustained in the eye of law.

5. The learned counsel appearing for the 4th respondent submitted that the earlier communication dated 12.06.2020 is only an intimation to the petitioner and a decision will be taken only after due enquiry with both the petitioner and the owner of the building.

6. Upon hearing the submissions, we do not find any merit in the writ petition. What is sought to be challenged is only a memo. As rightly stated, the communication dated 12.06.2020 is merely a reply to the petitioner. That is the reason why the owner of the building has not been heard nor a copy has been marked to her. We may note that the owner of the building has not been added as party respondent in this proceedings also. Thus, looking from any perspective, we do not find any merit in the writ petition. The order of the Division Bench of this Court is very clear that a due enquiry will have to be conducted after affording an opportunity of personal hearing to the interested persons. In fact, the owner of the building viz., Parimala Devi has been issued with the notice in the impugned memo itself would show that she is an interested person. Therefore, the petitioner, who challenges the abovesaid memo is duty bound to make her as party respondent to the proceedings. Be that as it may, in as much as enquiry is yet to be conducted, we do not wish to state anything on merit. It is suffice to state that the 4th respondent shall conclude the enquiry within a period of four weeks from the date of receipt of a copy of this order in tune with the order of the Division Bench of this Court dated 13.05.2020 made in W.P.No.7616 of 2020. If the petitioner is aggrieved by the decision taken, it is well open to him to challenge it in the manner known to law.

7. In the result, this writ petition is dismissed with the above directions. No costs. Consequently, connected WMPs are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

raa/kmk

To

- 1.The District Collector,
Erode District, Erode.
- 2.The Managing Director,
Tamil Nadu State Marketing Corporation Limited,
4th Floor, Thalamuthu Natarajan Maaligai,
Egmore, Chennai 600008.
- 3.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Limited,
Housing Unit, Kavundampalayam, Coimbatore.
- 4.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
Erode.

W.P.No.9193 of 2020

SSV(CO)
KKV/02/09/2020



WEB COPY