

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

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THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Writ Petition No.23658 of 2017
and W.M.P. No.24832 of 2017

M/s.Confluence Petroleum India Ltd.
represented by its Sales Manager
N.Murugan

... Petitioner

Vs

1.The Secretary to Government of Tamilnadu,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.

2.The Regional Deputy Commissioner (Central),
Greater Chennai Corporation,
Enforcement Department,
Chennai - 600 003.

3.The Executive Engineer,
T.P.Enforcement,
Regional Office - Central,
Second Cross Street (East),
Pulla Avenue, Shenoy Nagar,
Chennai - 600 030.

4.Arulmigu Somanathaswamy Thirukkoil,
rep. by its Executive Officer,
Having office at Arulmigu Devi Balamman Thirukkoil,
Villivakkam, Chennai - 600 049.

... Respondents

(R4 impleaded as per order dated 18.11.2019
made in W.M.P. No.32554 of 2019 in W.P.
No.23658 of 2017 by MSNJ & NSSJ)

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 2nd and 3rd respondents to desal the premises of the petitioner at M/s.Confluence Petroleum India Ltd. Having Office at S.No.138/6, V.No.65, Sembium - Red Hills Road, Perambur, Chennai - 600 0099 by considering the petitioner's representation dated 24.07.2017.

For Petitioner : Mr.M.A.Gouthaman

For Respondents: Mr.V.Shanmuga Sundar,
Special Government Pleader for R1

Mr.A.Nagarajan for R2 & 3

Mr.D.R.Sivakumar for R4

O R D E R

[Order of this Court was made by R.SUBBIAH, J.]

The writ petition has been filed for Mandamus directing 2nd and 3rd respondents to de-seal the premises of the petitioner at M/s.Confluence Petroleum India Ltd. having Office at S.No.138/6, V.No.65, Sembium - Red Hills Road, Perambur, Chennai - 600 0099 by considering the petitioner's representation dated 24.07.2017.

2.In the affidavit filed in support of the writ petition, it is averred that the petitioner's company was permitted to install Auto LPG Dispensing Station at S.No.138/6, V.No.65, Sembium-Red Hills Road, Perambur, Chennai-99 on 18.11.2013. The Deputy Chief Controller has granted an exclusive licence dated 18.11.2013 to run the Auto LPG dispensing station and that the Fire Department has granted No Objection Certificate on 06.02.2014 to carry on the business. The Commissioner of Police, Chennai has also granted No Objection Certificate dated 06.05.2014 to run the Auto LPG Station subject to the condition that their Fuel Station should not cause any hindrance to the free flow of traffic. After obtaining all the pre-requisite permission from the competent authorities, the petitioner company has started the Auto LPG station by erecting temporary and movable structures. While so, the third respondent issued a Show Cause Notice dated 24.02.2016 under Sections 56, 57 read with 85 of the Tamil Nadu Town and Country Planning Act 1971 stating that the petitioner has to remove unauthorised portion within three days and in the event of failure to do so, the third respondent would initiate action to lock and seal the premises. On receipt of the same, the petitioner has submitted a representation dated 14.03.2016 to the respondents seeking time to file approval of plan. Even before processing the application for approval, the third respondent has issued a notice dated

05.05.2016 to discontinue the occupation of the premises within seven days. On receipt of the said notice, the petitioner had immediately replied on 20.05.2016. But without considering the representation and explanation offered by the petitioner, the third respondent has proceeded with the coercive action of locking and sealing the premises. Thereafter, the petitioner filed an Appeal dated 13.07.2016 under Section 87-A of the Town and Country Planning Act 1971. The first respondent vide letter dated 05.08.2016 directed the Corporation of Chennai/Chennai Metropolitan Development Authority to take appropriate action to de-seal the building. Pursuant to the said letter, the petitioner has requested the second respondent to de-seal the premises in order to run the business. Accordingly, the second respondent has passed an order dated 10.08.2016 to de-seal the premises and directed the petitioner to comply with the orders passed by the first respondent and to obtain necessary planning permission.

3.The grievance of the petitioner is that even though the officials connected to the respondents are fully aware of the order passed by the first respondent and the subsequent event of the petitioner in applying for the approval of plan, the officials of the respondents came twice in the middle of November 2016 under the pretext of sealing the premises. Therefore, the petitioner is before this Court to de-seal the premises.

4.A Counter affidavit has been filed by the third respondent stating that on routine inspection made by the Assistant Engineer, Greater Chennai Corporation, it was found that the petitioner has commenced the construction of Gas Station at No.8/28, Red Hills Road, Kolathur, Chennai. Therefore, immediately a notice dated 24.02.2016 under Sections 56 and 57 read with 85 of the Tamil Nadu Town and Country Planning Act, 1971 was issued to the petitioner for stopping the above construction. As the petitioner has failed to comply with the direction of the above said notice, Demolition Notice for locking and sealing the premises has been issued to the petitioner. In the meantime, the petitioner has filed a Writ Petition in W.P. No.44166 of 2016 forbearing the respondents from taking any coercive action to lock and seal the premises. This Court by order dated 07.02.2017, granted one month's time to obtain the document namely, the title of the predecessor and to re-submit the application within six weeks and directed the respondent authorities to take a decision thereafter. Pursuant to the above order, as the petitioner has submitted an incomplete application, the same has been rejected by the respondents. After rejection of the application submitted by the petitioner, the out-let of the petitioner was locked and sealed on 21.07.2017.

5.A perusal of the counter affidavit filed by the third respondent would show that the petitioner has attended the personal hearing on 21.09.2017 and has submitted only the current ownership title deed of the above premises. Further, the temple fourth respondent herein has filed a Writ Petition in W.P. No.23577 of 2016 seeking a direction to the respondent Corporation not to issue any licence for functioning of any gas station in the petitioner's premises and the same is pending.

6.Moreover, a Civil Suit filed by the temple stating that the land belongs to them was pending and that the petitioner has taken over the property in question on lease from one Athinathan and the petitioner itself claiming that it is a private land.

7.It is submitted by the learned counsel appearing for the petitioner that since the dispute is pending between the parties, a direction may be given to the respondent Corporation to de-seal the premises till the above Civil Suit filed by the Temple is disposed of and now the petitioner is prepared to pay the rent.

8.Since there is a civil dispute over the title of the land and that the petitioner itself claiming that it is a private land, the submission made by the learned counsel for the petitioner cannot be accepted. As the petitioner is only a third party to the property and that the Civil Suit is pending between the original tenant and the temple, this Court is not inclined to entertain the prayer of the petitioner. Accordingly, the writ petition stands dismissed. Consequently, W.M.P. No.24832 of 2017 is closed. No costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vga

To

1.The Secretary to Government of Tamilnadu,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.

2.The Regional Deputy Commissioner (Central),
Greater Chennai Corporation,
Enforcement Department,
Chennai - 600 003.

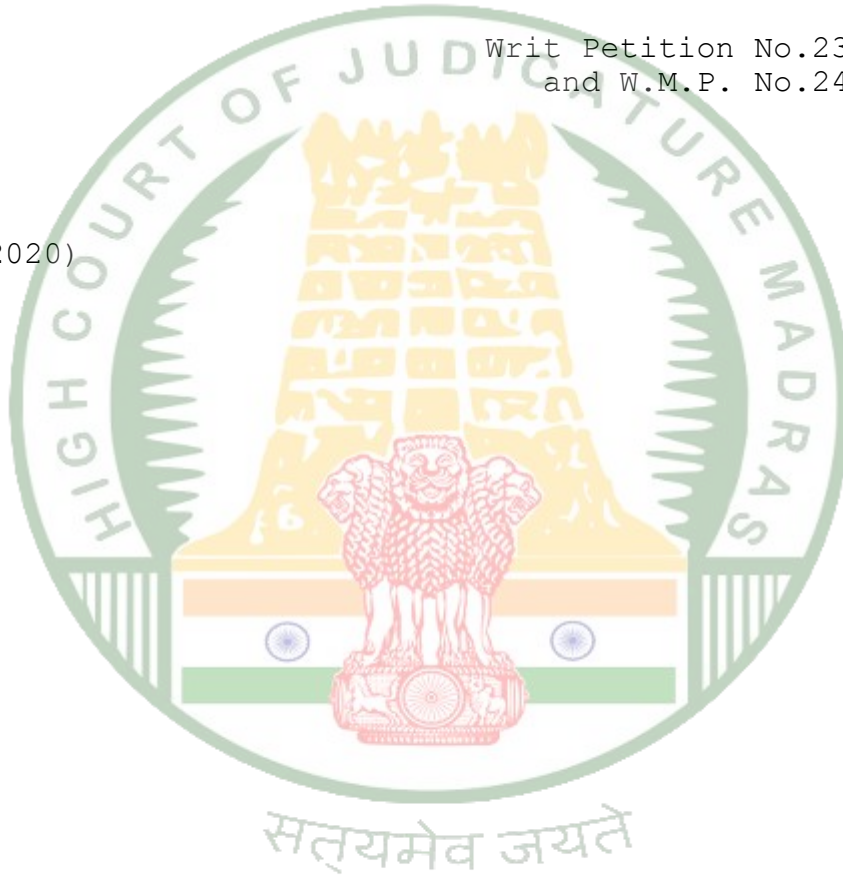
3.The Executive Engineer,
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Chennai - 600 030.

+1 CC to Mr.M.A.Gouthaman, Advocate sr 319.

+1 CC to Mr.S.D. Ramalingam, Advocate sr 590.

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and W.M.P. No.24832 of 2017

RSV(CO)
SP(13/02/2020)



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