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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.NO.16238 OF 2021

AND

WMP.NOS.17178 AND 17179 OF 2021

P.Sabareesh

... Petitioner

Versus

1. The Director,
Health Medical Education and Family Welfare,
No.162, EVR Periyar Salai,
Kilpauk,
Chennai - 600 010.
2. The Dean,
Government Mohan Kumaramangalam
Medical College and Hospital,
Salem - 636 001.
3. BHIM SC/ST Peoples Poverty Eradication Federation,
Salem, Rep by its State President Mr.C.Murugan,
6/383, Shanmuga Nagar, Dhadhagapatti,
Salem - 636 006.

.. Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent in his notice Na.Ka.No.7357/P&D/2019 dated 14.07.2021 and another notice Na.Ka.No.7357/P&D/2019 dated 23.07.2021 and to quash the same as being illegal and unsustainable in law and for a consequential direction to the respondents to allot alternate place inside the second respondent hospital premises to run the tea shop (Sabareesh Canteen) i.e., to near Amma Unavagam situated inside the Government Mohan Kumaramangalam Medical College and Hospital, Salem as per the report of the Executive Engineer/PWD dated 19.02.2021.



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For Petitioners : Mr.R.Ramachandran

For Respondents : Mr.Stalin Abhimanyu
Government Counsel
For RR1 and 2

ORDER

The petitioner has come forward with this writ petition to issue a Writ of Certiorarified Mandamus to quash the notice dated 14.07.2021 and the subsequent notice dated 23.07.2021 issued by the second respondent and for a consequential direction to direct the respondents to allot alternate place inside the second respondent hospital premises to run the tea shop (Sabareesh Canteen) i.e., to near Amma Unavagam situated inside the Government Mohan Kumaramangalam Medical College and Hospital, Salem as per the report of the Executive Engineer/PWD dated 19.02.2021.

2. The petitioner claims that he is running a tea stall within the hospital premises of the second respondent since 2018. According to the petitioner, at the instance of the third respondent, complaining that the tea stall run by the petitioner is causing disturbance to the patients in the hospital, an inspection was conducted by the third respondent. However, the third respondent, in his report dated 19.02.201 has categorically stated that there is no disturbance caused to the patients by reason of the petitioner running the tea stall. In spite of the same, the second respondent has decided to shift the tea stall run by the petitioner to another location within the hospital premises inter alia directing the petitioner not to run the tea stall due to the prevalence of Covid-19 Pandemic. By citing the pandemic situation, the second respondent issued the notice dated 14.07.2021 directing the petitioner to vacate and remove the tea stall within seven days. On receipt of the notice dated 14.07.2021, the petitioner submitted a representation dated 19.07.2021, requesting the second respondent to provide an alternative place to run the business. Instead of considering such bona fide request of the petitioner, the second respondent passed an order dated 23.07.2021, directing the petitioner to vacate the tea shop business, without providing any other alternative place to run the business.

3. The learned counsel for the petitioner would submit that the tea stall business run by the petitioner is the only source for his livelihood. The petitioner has been running the tea shop since 2018 without causing any disturbance, whatsoever, to the patients are their attendants visiting the hospital



premises. While so, by citing the Covid-19 Pandemic situation, the second respondent directed the petitioner to vacate the tea shop business. In any event, the second respondent is not justified in directing the petitioner to vacate the tea stall business, without providing an alternative place for running the business. Therefore, the learned counsel for the petitioner prays this Court to direct the second respondent to provide an alternative place, as requested by the petitioner in his representation dated 28.07.2021.

4. On the above contention, this Court heard the learned Government Counsel appearing for the respondents 1 and 2 and perused the materials placed.

5. It is apparent from the records that the petitioner is running the tea stall business inside the hospital premises of the second respondent since 2018. While so, the second respondent, by the impugned notices, directed the petitioner to vacate the tea shop by citing the prevalence of Covid-19 Pandemic. There is no other reason assigned by the second respondent to direct the petitioner to vacate the tea shop business. According to the petitioner, after receipt of the order dated 23.07.2021, directing him to vacate the tea shop, he has submitted a representation dated 28.07.2021 but it was not considered, till date.

6. In the light of the above, without expressing any opinion on merits as regards the validity or otherwise of the orders dated 14.07.2021 and 23.07.2021 of the second respondent, this Court directs the second respondent to consider the representation dated 28.07.2021 of the petitioner for providing an alternative place to run the tea stall business within the precincts of the second respondent hospital temporarily till the Covid-19 Pandemic subside and pass orders on merits and in accordance with law, after affording an opportunity of hearing to the petitioner, within a period of week from the date of receipt of a copy of this order.

7. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Director,
Health Medical Education and Family Welfare,
No.162, EVR Periyar Salai,
Kilpauk,
Chennai - 600 010.

2. The Dean,
Government Mohan Kumaramangalam
Medical College and Hospital,
Salem - 636 001.

+1cc to Mr.R.Ramachandran, Advocate, S.R.No.44171

W.P.NO.16238 OF 2021

RGN(CO)
PBS/24/09/2021