



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MS.JUSTICE R.N.MANJULA

W.A.No.2887 of 2019
and C.M.P.No.18584 of 2019

1. The District Collector,
Office of the District Collector,
Tiruppur, Tiruppur District.
2. The Divisional Engineer,
Highways Department,
Construction and Operation,
Tiruppur, Tiruppur District.
3. The Assistant Divisional Engineer,
Highways Department,
Construction and Operation,
Tiruppur, Tiruppur District.
4. The Assistant Engineer,
Highways Department,
Construction and Operation,
Tiruppur (South),
Tiruppur District.

.. Appellants

Vs

M. Vijayan

.. Respondent

Appeal filed under Clause 15 of the Letters Patent against the order dated 16.04.2019 made in W.P.No.25599 of 2016.

Prayer in W.P.No.25599/2016:

Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the fourth respondent in Memo No.07/2016/Oou.Po. Dated 12.07.2016 quash the same and consequently direct the respondents 1 to 4 to permit the petitioner to run the teashop.



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For Appellants : Mr.S.John J. Raja Singh
Government Counsel

For Respondent : Mr.C.Venkatesan

JUDGMENT

(Delivered by M.M.SUNDRESH, J.)

This appeal is preferred against the order of the learned Single Judge who by setting aside the memo dated 12.07.2016, incidentally allowed the writ petition.

2. The respondent/writ petitioner was running a tea shop cum Aavin Booth. A licence was granted for a period between 05.02.2016 and 31.03.2016. On the objection made by the traffic police and taking note of the frequent occurrence of accidents, the respondent was accordingly informed that the licence will not be extended. Incidentally, he was asked to vacate the shop. Aggrieved over the same, the writ petition was filed.

3. The learned Single Judge allowed the writ petition on the ground that the respondent being a physically challenged person cannot be asked to vacate the shop. Challenging the same, the present writ appeal has been filed.

4. Learned Government Counsel appearing for the appellants submitted that the licence granted in favour of the respondent has not been renewed and the shop is a hindrance to the public affecting the free flow of the traffic. It is further submitted that factually accidents did take place near the licensed premises. The Apex Court in Union of India v. State of Gujarat & Others C.A.No.8519 of 2006 dated 18.1.2013 has also considered the same issue and held that the State Government shall not grant any permission for structures in public road and sideways and other public utility places. Thus, the order requires interference.

5. Learned counsel appearing for the respondent submitted that the very same police has given no objection certificate and some other persons have been allowed to run shops nearby. As the aforesaid factors have been taken note of by the learned Single Judge coupled with the physical condition of the respondent being a physically challenged person, no interference is required.

6. We do not find any legal right in favour of the respondent. What has been given to him is a mere permission to put up a temporary shop. It is nobody's case that the accident have not taken place and the shop is a hindrance to the free flow of traffic. Though, no objection was given earlier, the traffic police has made an objection stating that the



continuation of the shop is a hindrance to the free flow of the traffic. We have also perused the communication sent by the Inspector of Police, South Traffic Police Station to the Assistant Divisional Engineer, Highways Department dated 05.08.2019. The Apex Court has also held that such shops should not be allowed to continue in the larger public interest. When the appellants are of the view that the temporary tea stall is the hindrance being nearer to the District Collector Office, Tiruppur and L.R.G. Women College leading to accidents, the said view cannot be substituted by the order of the Court. The permission granted to the respondent has also expired as early as 01.04.2016.

7. Thus, in the light of the above and in the absence of any legal right, we are of the view that the order of the learned Single Judge, requires interference and the same is set aside accordingly.

8. The writ appeal stands allowed accordingly. No costs. Consequently, the connected miscellaneous petition is closed. However, taking into consideration the fact that the respondent being a physically challenged person, we direct the appellants to grant alternative place to eke out his livelihood within a period of eight weeks from the date of receipt of a copy of this judgment. Till such time, status quo as on today shall continue.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

mmi/ssm

To

1. The District Collector,
Office of the District Collector,
Tiruppur, Tiruppur District.
2. The Divisional Engineer,
Highways Department,
Construction and Operation,
Tiruppur, Tiruppur District.
3. The Assistant Divisional Engineer,
Highways Department,
Construction and Operation,
Tiruppur, Tiruppur District.



4. The Assistant Engineer,
Highways Department,
Construction and Operation,
Tiruppur (South),
Tiruppur District.

+1 CC to The Government Pleader sr 29193.
+1 CC to Mr.C.Venkatesan, Advocate sr 28953.

W.A.No.2887 of 2019

AKII(CO)
SP(27/07/2021)