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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No. 24750 of 2016

And

W.M.P.Nos. 21153 & 8849 of 2017

M.Sasikumar

... Petitioner

Vs.

1. The District Collector
Tiruppur District.
2. The Divisional Engineer
Highways Department (Construction)
College Road
Tiruppur,
Tiruppur District.
3. The Assistant Divisional Engineer
Highways Department (Construction)
Kumaran Road,
Tiruppur,
Tiruppur District.
4. The Assistant Engineer
(Tiruppur South)
Highways Department (Construction)
College Road,
Tiruppur,
Tiruppur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the fourth respondent in his proceedings Ku.No.10/2016/U.Po./dated 29.06.2016 and quash the same as illegal and consequently to direct the respondents 2 to 4 to extend the permission already granted to the petitioner to run Aavin Milk Parlour at 15/2 km on the Avinashi-Tiruppur-Pollachi-Cochin, Minkarai Road, near Thennampalayam Bus Stop, Tiruppur, continously.



For Petitioner : Mr. N.Manokaran
For Respondents : Mrs. N.Senthilselvi
Government Advocate

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O R D E R

The writ on hand is filed challenging the validity of the order dated 29.06.2016 rejecting the claim of the writ petitioner for extension of license as admittedly the period of license expired on 31.03.2016 itself.

2. The petitioner states that he is a differently able person, having 60% disability. He submitted an application before the District Collector, Tirupur District, for allotment of a petty shop opposite to newly constructed Collectorate. Accordingly, permission was granted to run Aavin Milk Parlour in the subject place. The period of license was 17.11.2015 to 31.03.2016. The petitioner states that he was following the terms and conditions of the license and is paying the rent regularly. Whiles, on expiry of the period of license on 31.03.2016, the petitioner made an application for extension of license. The authorities rejected the application on the ground that as per the Road Accident Management Data System in the subject road, four fatal accident occurred due to traffic congestion on account of Aavin Milk Parlour and further Aavin Milk Parlour is causing traffic hindrance in that locality and accordingly, taken a decision not to extend the license and rejected the application. Thus, the petitioner is constrained to move the present Writ Petition.

3. It is an admitted fact that the petitioner was permitted to run a temporary Aavin Milk Parlour ay 15/2 Km on the Avinashi-Tirupur-Pollachi-Cochin, Minkarai Raod, Thennampalayam bus Stop, Tirupur, from road edge on Highways boundaries for a period upto 31.03.2016. The conditions are already imposed. After sometime, the Road Accident Data Management System maintained by the Police Department reveal that five number of fatal accident occurred in the year 2015 -2016 at the said locality due to traffic congestion caused by the customers surrounded in the temporary Aavin Milk Parlour. Permission was granted to the petitioner for erecting the temporary Aavin Milk Parlour by the Highways Department also lapsed on 31.03.2016. Road which contains heavy traffic since the stretch lies within Tiruppur Municipal Corporation. As per the instructions given by the Divisional Engineer, to evict the temporary Aavin Milk Parlour for the free flow of traffic without any congestion and hindrance to the public, as the



Aavin Milk Parlour is nearer to the District Collector Office, Tiruppur and Thennampalayam Bus Stop. The fourth respondent, Assistant Engineer clearly informed the petitioner that permission could not be extended based on the order issued by the Divisional Engineer and considering the frequent fatal accident occurred reported from the statistics received from Road Accident Data Management System, the Aavin Milk Parlour should be vacated within a period of 7 days. However, the petitioner has not responded to the said order.

4. The respondents relied on the Judgment of the Hon'ble Supreme Court in Special Leave to Appeal (Civil No(s).8519 of 2006, dated 18.01.2013, counsel the Court made the following order in paragraph No.4:

"We further direct that henceforth, State Government shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. "

5. This Court is of the considered opinion that any construction affecting the free flow of traffic in the Highways can cancell all permit even under the Highways Act.

6. In the present case, no doubt, the petitioner obtained permission and was running Aavin Milk Parlour. However, the permission was valid upto 31.03.2016 and thereafter, the petitioner made an application for extension which was rejected and the writ petition filed the present Writ Petition.

7. The Writ Petition is pending for about 5 years and by this time, the traffic congestion will be still more and therefore, the public interest involved and the grounds raised by the respondents that the fatal accidents are occurred frequently on account of Aavin Milk Parlour is also to be considered.

8. As far as the petitioner is concerned, the period of license expired on 31.03.2016 and it was not extended and therefore, the petitioner has no right to continue the Aavin Milk Parlour in that particular place. Pursuant to the interim order granted by this Court, the petitioner is running Aavin Milk Parlour though the respondents have filed a vacate stay petition in the year 2017, but the stay petition is not listed and by virtue of the interim order, the petitioner has further continued the Aavin Milk Parlour.

9. This being the factum, the petitioner is not entitled



for any relief and the petitioner is directed to remove the Aavin Milk Parlour within a period of one week from the date of receipt of a copy of this order, failing which the respondents are directed to remove Aavin Milk Parlour within a period of 48 hours from the date of expiry of one week from the receipt of copy of this order. In the event of removal by the respondents, all necessary charges shall be recovered from the petitioner.

10. With the above said directions, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Vsg

To

1. The District Collector
Tiruppur District.
2. The Divisional Engineer
Highways Department (Construction)
College Road
Tiruppur,
Tiruppur District.
3. The Assistant Divisional Engineer
Highways Department (Construction)
Kumaran Road, Tiruppur,
Tiruppur District.
4. The Assistant Engineer
(Tiruppur South)
Highways Department (Construction)
College Road, Tiruppur,
Tiruppur District.

+1cc to Mr.N.Manoharan, Advocate, S.R.No.6999

+1cc to the Government Pleader, S.R.No.6821

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NMI (CO)
SU(28/02/2022)