



W.P.No.1641 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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M/s.Jayalakshmi Agency,
rep. by its Proprietor J.Kamalakannan,
879, J-Block, 15th Street,
13th Main Road, Anna Nagar,
Chennai-600 040.

.. Petitioner

Vs

- 1.The Divisional Engineer (Highways),
Construction & Maintenance,
Chennai City Road Division,
Chennai-600 015.
- 2.The Assistant Divisional Engineer (Highways),
Construction & Maintenance,
Chennai City Road Sub-Division,
Chennai-600 015.
- 3.The Assistant Engineer (Highways),
Construction & Maintenance,
Chennai City Road Division-II,
Chennai-600 015.



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4.M/s.Bharat Petroleum Corporation Ltd.,
rep. by its Territory Manager (Retail), Chennai,
No.35, Vaidyanathan Street,
Tondiarpet,
Chennai-600 081.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondents 1 to 3 to permit the petitioner to sell the petroleum products stored in the underground storage tank of petitioner's petrol bunk, situate in Koyembedu Village, Egmore-Nungampakkam Taluk, bearing Plot Nos.1 to 7, Jawahar Nehru Road, Koyembedu, Chennai, comprised in S.Nos.37 and 37/2 (Part), T.S.No.4, Block No.64 by deferring the eviction process pursuant to the eviction notice dated 29.12.2022 issued by the second respondent vide Notice No.211/2022/Koyembedu/E.Va.Aa by considering the petitioner's representation dated 6.1.2023.

For the Petitioner : Mr.Sugumar
for Mr.S.Senthil

For the Respondents : Mrs.R.Anitha
Special Government Pleader
for respondents 1 to 3

ORDER

(Order of the court was made by the Hon'ble Acting Chief Justice)

This writ petition has been filed by the petitioner for issuance of a writ of mandamus directing respondents 1 to 3 to permit the petitioner to sell the petroleum products stored in the underground



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storage tank of the petitioner's petrol bunk situated at Plot Nos.1 to 7, Jawahar Nehru Road, Koyembedu, Chennai, comprised in S.Nos.37 and 37/2(P), T.S.No.4, Block No.64, by deferring the eviction process taken by the second respondent.

2. Learned counsel for the petitioner submitted that the fourth respondent entered into a lease deed dated 16.6.2014 with Mrs.S.Rajeswari and Mrs.Uma in respect of Plot Nos.1 to 7, Jawahar Nehru Road, Koyembedu, Chennai, comprised in S.Nos.37 and 37/2(P) measuring an extent of 9,791 sq. ft. for a period of 29 years commencing from 1.6.2014 ending with 31.5.2043. The fourth respondent appointed the petitioner as its retail outlet dealer for stocking and selling/dispensing the petroleum products for a period of 15 years and, in this regard, an agreement has also been entered into between the fourth respondent and the petitioner on 30.10.2014. Pursuant to the agreement, the petitioner is peacefully running the said petroleum outlet in the said site without any remark whatsoever by complying with all the rules and regulations.



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3. Learned counsel for the petitioner further submitted that, on 14.12.2022, the second respondent issued an eviction notice directing to remove the steel and RCC structure erected in the above site within 7 days, as the said site belongs to the Highways Department, indicating therein that an extent of 516.14 sq. metre has been encroached by the petitioner. Challenging the eviction notice, the land owners have filed W.P.No.34277 of 2022 before this Court and by order dated 20.12.2022, the said writ petition was dismissed by this Court. Immediately, after the dismissal of W.P.No.34277 of 2022, the third respondent came to the petitioner's petroleum outlet and affixed notice dated 29.12.2022 directing the petitioner to vacate the site with immediate effect.

4. Learned counsel for the petitioner added that the petitioner has been advised not to challenge the action initiated by the official respondents. Since petroleum products worth about Rs.50 lakh are stored in the underground storage tank, the same have to be at first sold, for which the petitioner seeks permission to open the petroleum outlet. Therefore, the petitioner has been advised to file



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this writ petition with the aforesaid prayer.

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5. Learned Special Government Pleader appearing for the official respondents, by producing the written instructions given by the Assistant Divisional Engineer(H), Construction and Maintenance, Chennai City Road, Sub-Division, submitted that a notice was issued on 14.12.2022 giving sufficient time to vacate the encroachment in the Government land vested with the Highways Department and to handover the site by themselves. However, the same was not complied with by the petitioner, necessitating issuance of a final notice on 29.12.2022 to handover the site free from encroachment. Thereafter also no action was taken by the petitioner to hand over the Government land for widening the road for public purpose. Hence, the action initiated by the respondents need not be interfered with.

6. Learned Special Government Pleader further submitted that after following the procedures and rules prescribed in the Tamil Nadu Highways Act, 2001 and also after the dismissal of



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W.P.No.34377 of 2022 filed by the encroachers, the Highways Department was forced to evict the unauthorised encroachments in the Government land on 30.12.2022. But a portion of the land in which the petrol filling and outlet unit exists was left out as requested by the officials of the fourth respondent, subject to the condition that the above area in which the petrol filling outlet exists will be cleared in 30 days from 30.12.2022. Since the official respondents are taking action, the petitioner has filed the writ petition and the same is not maintainable.

7. At this juncture, the learned counsel for the petitioner submitted that if two weeks' time is granted to the petitioner, the petitioner will be able to sell/dispense the petroleum products stored in the underground storage tank.

8. Considering the limited prayer sought by the petitioner, we direct respondents 1 to 3 to permit opening of the petroleum outlet in question enabling the petitioner to run the same for selling/dispensing the petroleum products stored in the



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underground storage tank till 08.02.2023. It made clear that the petitioner has to clear-off the petroleum products stored in the underground storage tank within the said period and vacate the premises. It is made clear that no further time shall be granted to the petitioner to clear the petroleum products – whether sold or unsold.

9. With the above observation and direction, the writ petition is disposed of. There will be no order as to costs.

(T.R., ACJ.) (D.B.C., J.)
24.01.2023

Index : Yes/No
Neutral Citation : Yes/No
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Note:
Issue on 27.01.2023.



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To:

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Construction & Maintenance,
Chennai City Road Division,
Chennai-600 015.
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AND
D.BHARATHA CHAKRAVARTHY, J.

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