



W.P(MD)No.25861 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.25861 of 2023

and

W.M.P.(MD)Nos.22192 & 22193 of 2023

The Indian Oil Corporation
Rep. by its Senior Manager (Retail Sales),
Trichy Divisional Office,
Tiruveni 3rd Floor,
B-35, Shastri Road,
Thillai Nagar,
Trichy-620 018.

... Petitioner

Vs.

- 1.The District Collector,
Trichy District,
Trichy.
- 2.The Superintending Engineer (Highways)
Construction and Maintenance,
Department of State Highways,
Trichirappalli.
- 3.The Assistant Divisional Engineer (Highways)
Construction and Maintenance Division,
Trichy.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records relating to the impugned order made by the 2nd respondent in his proceeding Proc. No. 1791/2023/D.O.I dated 18.10.2023 and quash the same as illegal.



W.P(MD)No.25861 of 2023

For Petitioner : Mr.K.Govindarajan
for Mr.M.Mahaboob Athiff

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.K.Balasubramani
Special Government Pleader

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General assisted by learned Special Government Pleader appearing for the respondents.

2. The writ petitioner is a Government of India undertaking. On 05.02.1964, the Superintending Engineer (Highways), Trichy, granted permission to the petitioner company for constructing petrol pump in the petition mentioned survey number. Parallely, the District Collector, Trichirappalli issued license in favour of the petitioner in the prescribed form. It appears that the land given to the petitioner is required for widening State Highways-26. The Assistant Divisional Engineer(Highways) Construction and Maintenance Division, Trichy, issued eviction order dated 11.10.2023. Questioning the same, the petitioner herein filed W.P.(MD)No.25169 & 25387 of 2023. The said writ petitions were disposed of by the Hon'ble Division Bench vide order dated 19.10.2023 in the following terms:-



W.P(MD)No.25861 of 2023

“2. There is no dispute that the land belongs to the Highways Department. An extent of 0.74 acres in Sengulam Village of Trichirappalli Taluk, Trichirappalli District, was given under licence by the District Collector to the Indian Oil Corporation on 10.04.1969. The purpose of the licence was to run Petrol Vending Unit in and over the land. The Indian Oil Corporation has been running the said Unit from 1969 till date through the private dealer.

3. In terms of the licence that has been granted, the District Collector could revoke the licence by issuing a notice of a period of one month and when such notice is given, it is the duty of the licensee viz., the Indian Oil Corporation to vacate the premises and surrender the same. The Assistant Divisional Engineer seems to have issued the notice without prior revocation of the licence by the District Collector.

4. When the matter came up for admission on 17.10.2023, we pointed out this lacuna and this has immediately been rectified by the District Collector by revoking the licence through a Show Cause Notice dated 18.10.2023. By that letter, one month notice is given. This is in terms of the conditions of licence dated 10.04.1969.

5. Therefore, leaving it open to the petitioner in W.P.(MD) Nos. 25169 and 25387 of 2023 to respond to the Show Cause Notice, these Writ Petitions are disposed of. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.”

A day earlier the second respondent herein issued the impugned proceedings dated 18.10.2023 cancelling the permission for approach road granted vide proceedings dated 05.02.1964. The same is put to challenge in this writ petition.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Additional Advocate General took me through its contents. The learned



W.P(MD)No.25861 of 2023

Additional Advocate General relying Sections 26 and 27 of the Tamil Nadu Highways Act, 2001, submitted that the impugned order can be justified with reference to the said provision. They called upon this Court to dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. At the very outset, I must observe that the purpose for which resumption is sought is unexceptionable. It is not as if the Government or department wants the same for erecting a statue of some political leader. It is for a public purpose namely widening of an existing road. As rightly pointed out by the learned Additional Advocate General, what was granted in favour of the petitioner was a mere license and a permission. To cancel the permission given by the authority, one has to follow the statutory procedure. It is beyond dispute that the second respondent has invoked the power under Section 27 of the Tamil Nadu Highways Act, 2001. It reads as follows:-

“27(1). The Highways authority may cancel the permission granted under sub-Section (2) of Section 26 for violation of the conditions of permission subject to which the same has been granted.

Provided that no such cancellation shall be ordered without issuing a notice to the holder of the permit, to make his representation, if any.

(2) Where any permission is cancelled under sub-section(1), the holder of the permission shall not be entitled to any amount in respect of such



W.P(MD)No.25861 of 2023

cancellation or to the refund of any rent or charge paid by him in advance.”

6. A careful reading of the provision indicates that Section 27 can be invoked only if permission had been granted under Sub Section 2(26). In this case, the Act itself came into force in the year 2002. Therefore, invocation of Section 27 of the Act is misconceived. Since the impugned order is anchored only on Section 27 of the Act, it stands set aside. The power of the respondents to resume the land in the manner known to law is left open. The first respondent is at liberty to pass final order as indicated in the order dated 19.10.2023 by the Hon'ble Division Bench in W.P.(MD)Nos.25169 & 25387 of 2023.

8. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

01.11.2023

Index : Yes / No
Internet : Yes/ No
rmi

To

1.The District Collector,
Trichy District,
Trichy.

2.The Superintending Engineer (Highways)
Construction and Maintenance,
Department of State Highways,
Trichirappalli.



WEB COPY



W.P(MD)No.25861 of 2023

G.R.SWAMINATHAN, J.

rmi

3.The Assistant Divisional Engineer (Highways)
Construction and Maintenance Division,
Trichy.

W.P(MD)No.25861 of 2023

01.11.2023