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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2024

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.10484 of 2024

and

W.M.P.No.11487 of 2024

G.Sathyamoorthy

... Petitioner

Vs.

1.Union of India,
Union Territory of Puducherry,
Rep. by its Chief Secretary,
Secretariat,
Puducherry.

2.The Secretary,
Local Administration Department,
Government of Puducherry,
Secretariat,
Puducherry.

3.The Pondicherry Municipality,
Rep. by its Commissioner,
Kamban Kalai Arangam,
Bussy Street,
Puducherry-605 001.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order in No.2525/PM/RO-II/A3/2024, dated 02.03.2024



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made by the third respondent herein and consequently quash the said impugned order and consequently direct the respondent herein to Renew the Trace license of the petitioner herein.

For Petitioner : Mrs.Reshmi Christy
For R1 to R3 : Mr.V.Vasanthakumar
Additional Government Pleader
(Puducherry)

ORDER

This Writ Petition has been filed for a writ of Certiorarified Mandamus to quash the order of the third respondent in proceeding No.2525/PM/RO-II/A3/2024, dated 02.03.2024 and consequently direct the third respondent to renew the Trade license in favour of the petitioner with respect to the building situated in Puducherry Revenu Village, Ward D, T.S.No.41, to an extent of 00.02.59 H.A.Ca.

2. The learned counsel for the petitioner would submit that the petitioner claims to be a lessee and running a textile shop in the name and style of M/s.Vishnu Aispriya Implex in the above said property and he has also provided with GST. Originally, the property belonged to the Government of Puducherry, which once a French Colony, which is



subject matter of grant from the then Government of France to one Poonamalle with conditions. That condition was complied as mentioned in the grant and the said Poonamalle was in possession and occupation continuously. Nearly after 123 years of issuing the grant, the then Government of France revoked the leave granted by order dated 25.06.1963, which came to be questioned by the descendants of Poonammallee, the original grantee in administrative case No.13/1963 before the Additional District Judge, Puducherry. The suit was decreed. As against which, A.S.No.27/1970 was filed by the Puducherry Government before this Court. This Court by judgment dated 21.11.1975 allowed the appeal and remanded the matter for fresh consideration.

3. Thereafter, the suit was taken up for fresh hearing by the Additional District Judge, Puducherry and after conducting proper trial, the Additional District Judge by judgment dated 12.11.2001 dismissed the administrative case No.13/1963. Later the descendants of the said Poonamallee questioned the judgment, dated 12.11.2001 in A.S.No.212 of 2002 before this Court and this Court allowed the appeal by judgment dated 17.11.2017. When the matter stood thus, the Puducherry Planning



Authority seems to have been invoked the Puducherry Town and Country Planning Act and passed lock and seal order dated 03.10.2023 on the ground that the petitioner/lessor is not the owner of the building. Aggrieved by the same, the petitioner/lessor filed W.P.No.30786 of 2023 and this Court by order dated 20.10.2023 disposed the writ petition with a direction to dispose of the appeal filed by the lessor before the appellate authority and not to take any coercive action till the disposal of the appeal. In the meanwhile, the petitioner applied for trade license and obtained the same vide order No.101110001527/PM/2023-2024, dated 09.05.2023. While so, the third respondent seems to have issued a show cause notice, dated 15.11.2023 under Section 3553C1 of Puducherry Municipality Act, 1963 to show cause as to why not the license be revoked on the ground of not disclosing the material facts. The petitioner had given a detailed reply on 22.11.2023 enclosing the necessary documents for the same. However, the third respondent has issued the impugned order dated 02.03.2024 under Section 3553C1 of Puducherry Act, 1973 as against which, the present writ petition has been filed.

4. The respondents have filed counter affidavit, dated 10.07.2024.

Mr.Vasanth, learned Government Pleader would contend that since the



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original allottee during the Fresh Government did not complied with the conditions, the actions were initiated as early as 1963 and after various round of litigation, when this Court in A.S.No.212 of 2022 allowed the appeal by its judgment dated 17.11.2017 in favour of the petitioner/lessor, S.L.P.Diary No.40465/2022 is filed and the matter is now subsidies before the Hon'ble Supreme Court. He would also contended that since there is a violation of terms and conditions of allotment and in view of cessation of the property, the property has already vested with the Government. As far as the lock and seal is concerned, which falls within the domain of planning department and notice was issued to the disputed person, who claims title of the property. In fact, the learned counsel also contended that the Puducherry Planning Authority is the necessary party and the writ petition should be dismissed for non-joinder of necessary party. He would also submit that the trace license was granted on 09.05.2023 and later it was observed that the Puducherry Plainning Authority had already issued violation notice and demolition notice, dated 10.11.2022 to the owner of the building Tmt.Hemavathy for unauthorized construction.

5. He further submitted that the proceedings initiated by the



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Puducherry Planning Authority was suppressed by the petitioner while applying for Trade license and action has been initiated as against the official, who had issued the trace license dated 09.05.2023. However, the license issued on 09.05.2023 was valid upto 31.03.2024 only and upon expiry, the renewal application was filed by the petitioner on 20.02.2024. However, the said renewal application was not considered or renewed and thereafter, the impugned order dated 02.03.2024 came to be issued under Section 3553CI of Puducherry Municipality Act, 1973, which is after considering the detailed representation submitted by the petitioner.

6. The learned Government Pleader also contended that since the licensee has failed to disclose the applicant to the Municipality about the violation notice and demolition notice issued by Puducherry Planning Authority which is the misrepresentation of the essential facts under the Puducerry Municipality Act, 1973. The order invoking the trace license was issued under Section 3553CI dated 02.03.2024, after affording sufficient opportunity to the petitioner. The counsel further contended that the trade license ought not to have been granted as per the existed law and even if it had been erroneously granted, the same can be cancelled by the authorities and he would further submit that the writ



petition should be dismissed and to sustain the impugned order.

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7. Heard the learned counsel appearing for the petitioner and the learned Government Pleader appearing for the respondents and perused the materials available on record.

8. It is not in dispute that the trade license dated 09.05.2023 came to be issued to the petitioner in License No.10111001527/PM/2023-2024 dated 09.05.2023 in the name and style of M/s.Vishnu Aispriya Implex for the nature of the trade to run the textile (Sale of Fabric Products) to a place of trade at No.492-494 and 496, Anna Salai, Puducherry-605 001, which is valid upto 31.03.2024.

9. From the above records, it is seen that the property belongs to the descendants of Poonamallee, who have succeeded in the administrative case No.13/1963, which initially after several round of litigation, the learned District Judge, Puducherry dismissed the administrative case on 12.11.2001. Originally, when the grant was issued 123 years back was attempted to be revoked on 25.06.1963. This Court in A.S.No.212 of 2022 by the judgment dated 17.11.2017 allowed the appeal suit thereby reversing the judgment of the District Judge,



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Puducherry in Administrative Case nO.13/1963 by holding that the decree and the order of the Chief Commissioner, Land in question to grant the Poonamalle under Arrete dated 23.03.1840 will stand re-united with domain is set aside. The grantee Poonamallee and the defendants are the absolute owner of the property in question. It is brought to the knowledge of this Court that SLP Diary No.40465/2022 is pendig before the Hon'ble Supreme Court. Pending all this proceedings, the petitioner before this Court, who is the lessee, is the original owner Hemavathy has applied for trace license under the Pondicherry Municipality Act, 1973, which has been rightly granted on 09.05.2023. This Court is unable to accept the contention raised by the Government Pleader, Pondicherry that the original trade license that came to be issued on 09.05.2023 is itself void as the licensee/ the petitioner herein has not disclosed the notice of lock and seal issued to the property by the Pondicherry Planning Authority.

10. It is seen from the records that as against the lock and seal order issued by the Pondicherry Planning Authority, the descendant of the original grantee, who is favour of this Court in A.S.No.212 of 2022, has declared as the absolute owner of the property in question from



whom the lessor of the petitioner G.Hemavathy had purchased the property in the year 2000 and put up construction in the year 2015, when the Pondicherry Planning Authority had issued notice of lock and seal dated 03.10.2023, a statutory appeal filed by the lessor of the petitioner before the competent authority is pending. This Court while disposing of the W.PNo.30786 of 2023 has held as follows:-

" It is not in dispute that the statutory appeal filed by the petitioner is pending before the competent authority for disposal. Keeping in view that on coming festivals are approaching and the petitioner is running tetiles shop, the respondent are directed to de-sealed the premises by 21.10.2023. It is made clear that no further construction should be made by the petitioner. Taking into consideration, the entire circumstances of the case, the respondents are directed to dispose of the appeal within a period of 3 months from today. Till then, the respondents are directed not to take any coercive action as against the petitioner."

11. It is seen from the above order that the lessor of the petitioner has filed the statutory appeal and this Court has protected the interest of the lessor of the petitioner, who is the owner of the premises. That being so, the third respondent on the very same ground cannot take a stand that the petitioner has not disclosed the proceedings between the Pondicherry



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Planning Authority and the lessor of the petitioner G.Hemavathy. In fact, the learned Government Pleader submitted that the Pondicherry Planning Authority had also communicated the same to the third respondent, who has issued the impugned order in the present writ petition. The reasons stated in the impugned order cannot be sustained on two folds are (i) as far as the title issue that was confirmed by this Court in A.S.No.212 of 2022 is subjudice before the Supreme Court as contended by the Government Pleader, Puducherry and the High Court order is in favour of the petitioner's lessor as on date untill unless revoked by the Hon'ble Supreme Court. (ii) The statutory appeal filed as against the lock and seal is also pending before the concerned authority and till the disposal, this Court has protected the interest of the original owner. That being so, the impugned order revoking the trace license issued as early as 09.05.2023 cannot be sustained and thus hereby set aside.

12. While setting aside the impugned order, it is made clear that the petitioner's application for renewal of trace license dated 29.02.2024 to be considered favourable in accordance with law. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.



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Index : yes/no
Internet : yes/no
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To

1. The Chief Secretary,
Union of India,
Union Territory of Puducherry,
Secretariat,
Puducherry.
2. The Secretary,
Local Administration Department,
Government of Puducherry,
Secretariat,
Puducherry.
3. The Pondicherry Municipality,
Rep. by its Commissioner,
Kamban Kalai Arangam,
Bussy Street,
Puducherry-605 001.
4. The Public Prosecutor
High Court, Madras,
Chennai.



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V.BHAVANI SUBBAROYAN, J.

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