



W.P(MD)No.18850 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 04.07.2024

Delivered on : 31.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.18850 of 2021

and

W.M.P(MD)No.15673 of 2021

S.Nelson

: Petitioner

Vs.

1.The District Collector,
Kanyakumari District, Nagercoil.

2.The Executive Officer,
Kumarapuram 1st Grade Town Panchayat,
Kumarapuram Post,
(Via -Thuckalai), Kanyakumari District.

3.Rajans

: 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 pertaining to the impugned order, dated 20.09.2021 in Se.Mu.Na.Ka. No.184/2020/A2 passed by the second respondent and quash the same.

For Petitioner : Mr.T.Antony Arulraj

For Respondents : Mr.V.Om Prakash,
Government Advocate, for R1 & R2.



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: Mr.K.P.Narayanakumar, for R3.

ORDER

The Writ Petition is directed against the order, dated 20.09.2021 passed by the second respondent directing the petitioner to stop using of rubber rolling machine for his own or commercial purposes.

2. The case of the petitioner is that the petitioner is owning property in S.No.335/11 in Kumarapuram Village, Kalkulam Taluk; that the petitioner has been residing there along with his family and he has also planted rubber trees around his house and engaged in rubber cultivation; that the petitioner set up a rubber rolling machine in the year 1990 itself and it is only a non mechanical hand driven machine, which does not require any electricity connection; that as per new scheme introduced by the Government of India to produce gas from the residual water from the rubber sheets, the petitioner has also set up such a unit; that one Devaraj filed a suit in O.S.No.289 of 2001 on the file of the District Munsif, Padmanabhapuram, seeking relief of mandatory injunction for the removal of the rubber rolling machine and the same was decreed; that the petitioner has preferred an appeal in A.S.No.96 of 200 on the file of the I Additional Sub Court, Nagercoil and the same came to be allowed; that since the said



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Devaraj has not preferred any second appeal, the judgment and decree passed in the appeal have attained finality; that thereafter, the third respondent started sending anonymous and baseless complaints against the petitioner in order to harass and to disturb his peaceful livelihood; that the third respondent has filed a writ petition in W.P.(MD)No.7782 of 2021 with a prayer to consider his representation, dated 06.01.2020 and this Court has directed the second respondent to consider the representation and pass a speaking order on merits and in accordance with law; that in pursuance of the said direction, the petitioner was called upon to attend enquiry and accordingly, he appeared in the enquiry on 09.06.2021 and submitted his statement along with documents; that the second respondent refused to receive the said documents and insisted him to oblige the terms of the third respondent for which, the petitioner has refused; that the third respondent has not chosen to appear before the second respondent nor produced any materials to substantiate his claim; that the second respondent without considering the petitioner's explanation and the documents has passed a non speaking impugned order, dated 20.09.2021, directing the petitioner to stop the using of rubber rolling machine for his own or commercial purposes and that therefore, the petitioner, with no other option, was constrained to file the present writ petition.



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3. The third respondent has filed a counter affidavit disputing the petitioner's averments and further stated that the third respondent is owning property in Re.Sy.No.335/5 of Kothanallur Village and he is residing therein with his family; that the petitioner and his two sons are owning property adjacent to the third respondent's house; that the petitioner without obtaining any permission from the authorities concern, started the business activities by installing natural rubber rolling machine to convert natural rubber latex into a particular shape; that the Formic Acid, which is used in the process undertaken by the petitioner, is dangerous one and breathing of the same cause irritation in eyes, nose, sore throat, cough, chest tightness, headache and confusion; that though the petitioner started the above unit converting small quantity of rubber latex as rubber sheets, subsequently, he used to collect all the latex from the other rubber estate owners of that locality; that the third respondent is unable to live in the house because of bad smell and accumulation of waste water mixed with acid, which paves way to spread the deceases and quality of ground water gets worse; that the third respondent made a representation to the second respondent on 05.06.2020 and as there was no response, made another representation to the higher authorities on 19.06.2020; that in the writ petition filed by the



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third respondent in W.P.(MD)No.7782 of 2021, this Court directed the second respondent to take decision on the third respondent's representation on merits within a period of six weeks; that the second respondent, after considering the materials placed by the third respondent and also the reports of the Health Department and Pollution Control Board, has passed the impugned order, directing the petitioner to close the unit; that the petitioner has purchased the rubber estate for several acres in S.No.608/1 of Adayamadai Village and started to convert the entire rubber from the said estate in the unit now in dispute, that the Health and Pollution Control Board authorities conducted spot inspection in the presence of the petitioner and recommended to take action and as such, he had full knowledge about the proceedings referred in the impugned order and that therefore, the petition is liable to be dismissed.

4. The second respondent/Executive Officer of Kumarapuram 1st Grade Town Panchayat, Kumarapuram Post, has filed counter affidavit referring to the order passed by this Court in W.P.(MD)No.7782 of 2021, dated 15.04.2021, stating that in compliance of the order of this Court, the petitioner and his two sons and the third respondent were directed to appear for enquiry; but the third respondent did not appear for the enquiry, but gave



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representation only on 19.05.2020, stating that there will be no health hazard by functioning of rubber rolling machine; that the petitioner and his son Jeya Jeraldson and Jeya Jenilson appeared for the enquiry; that the second respondent, after conducting enquiry and on the basis of the report of the Public Health Department and on the spot inspection of the second respondent, was convinced that rubber sheet manufacturing installed by the petitioner was causing health hazard and likely to spread diseases to the public and accordingly, the second respondent issued proceedings, dated 20.09.2021, prohibiting the functioning of rubber manufacturing machine both for personal and commercial purposes and that therefore, the writ petition itself is not maintainable and the same is liable to be dismissed.

5. It is evident from the affidavit filed in support of the writ petition and the counter affidavit of the private respondent that the natural rubber manufacturing process begins with harvesting latex from rubber trees; that while tapping of rubber trees, the latex is collected in a semiliquid form; that since latex is having more water, the same has to be separated so as to convert the same into solid form and in that process they are adding Formic acid; that the rubber rolling machine is used to squeeze out water from the latex, but according to the petitioner, the rolling machine does not require



any mode of power for its operation and the same are very common and well known and widely used in our District especially in their Taluk. But according to the private respondent that since Formic Acid and some other chemicals were mixed with natural rubber latex, lot of wastes and residuals were occurred in the machine process, which resulted the area and the ground water around the area as polluted; that the third respondent and his family members and other local people are facing several health problems and that the Formic Acid used for the said process is a dangerous one and its breathing would cause severe health issues.

6. It is not in dispute that one Devaraj claiming to be the neighbor of the petitioner has filed a suit claiming mandatory injunction for removal of rubber rolling machineries and that after trial, the suit in O.S.No.289 of 2001 on the file of the District Munsif, Padmanabhapuram, was decreed on 22.06.2004, granting mandatory injunction as claimed by the plaintiff and that the petitioner has preferred an appeal in A.S.No.96 of 2004 and the learned Additional Subordinate Judge, Nagercoil, has passed the judgment and decree, dated 28.06.2005, setting aside the judgment and decree passed by the trial Court and thereby dismissed the suit.



7. It is not the case of the respondents that the said Devaraj has preferred second appeal and the same is pending. As rightly pointed out by the learned counsel for the petitioner, in the absence of any appeal challenging the judgment and decree passed by the first appellate Court in A.S.No.96 of 2004, the same has attained finality.

8. It is also not in dispute that the third respondent has filed a writ petition in W.P.(MD)No.7782 of 2021, against the petitioner and his two sons and also against the respondents 1 and 2 herein, seeking a writ of mandamus, directing the official respondents to take appropriate action to close the rubber sheet processing unit run by the petitioner and his sons in S.No.335/11, Kumarapuram Village (Kothanallur Village) by considering the third respondent's representation, dated 19.06.2020 and 06.01.2021. Considering the submissions made by the learned counsel on either side, this Court has passed an order, dated 15.04.2021 and the relevant portion is extracted hereunder :

“ 6.Taking into consideration the facts and circumstances of the case and also the fact that the fourth respondent has already acted upon the representations made by the petitioner, there shall be a direction to the fourth respondent to afford



sufficient opportunity to the petitioner and respondents 5 to 7 and deal with the issue on its own merits and strictly in accordance with law and pass appropriate orders within a period of six (6) weeks from the date of receipt of a copy of this order. It is made clear that the order passed in this Writ Petition will not influence the decision making process of the fourth respondent and the fourth respondent is expected to independently apply his mind and pass orders. The petitioner and respondents 5 to 7 shall co-operate for the enquiry and ensure that it is completed within the time limit fixed by this Court.”

9. It is the specific case of the second respondent that in pursuance of the directions issued by this Court, the second respondent has issued call letters to the petitioner and his two sons Jeya Jeraldson and Jeya Jenilson and also to the third respondent to appear for enquiry on 11.05.2021, 25.05.2021 and 15.06.2021; that the third respondent did not appear for enquiry but he gave a representation on 19.05.2021 and that the petitioner and his sons Jeya Jeraldson and Jeya Jenilson had appeared for enquiry.



10. According to the third respondent, after conducting above enquiry and on the basis of the letter of the Public Health Department and on the basis of the spot inspection made by the second respondent, the impugned order came to be passed for closure of the rubber processing unit. In the impugned order, the second respondent after referring to the reports of the Health Services Department and taking note of the inspection made by him, has come to a decision that the rubber processing unit of the petitioner causes health hazard and there is every possibility for spreading of diseases, directed the petitioner to stop his unit and the relevant portion is extracted hereunder for better appreciation :

“ மேலும் இது சம்மந்தமாக பார்வை 7 மற்றும் 10-ல் காணும் சுகாதாரத்துறையை சார்ந்த கடிதங்களின் அடிப்படையிலும் குமாரபுரம் பேரூராட்சி செயல் அலுவலர் அவர்களின் தல ஆய்வின் அடிப்படையிலும் மேற்படி எதிர்மனுதாரர்கள் குடியிருப்புகள் நிறைந்த பகுதியில் ரப்பர்ஷீட் மெஷின் வைத்து தொழில் செய்வது மிகுந்த சுகாதார சீர்கேட்டை ஏற்படுத்துவது உறுதிபடுத்தப்பட்டுள்ளது. இதனால் பொதுமக்களுக்கு நோய் தொற்றுகள் ஏற்பட வாய்ப்புள்ளது. ஆகவே மேற்படி எதிர்மனுதாரர்கள் உடனடியாக மேற்படி ரப்பர்ஷீட் அடிக்கும் மெஷினை சொந்த பயன்பாட்டிற்கும், தொழில் நடத்துவதற்கும் தடைவிதிக்கப்பட வேண்டியது மிகவும் அவசியமாகிறது.”



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11. It is pertinent to note that the impugned order came to be passed on 20.09.2021, whereas the second respondent has issued one page statement on 12.04.2021 and wherein, it has been observed that

“ ... மேற்படி ரப்பர் ஷீட்டு அடிக்கும் தொழிலானது சீசன் நேரத்தில் மட்டுமே நடைபெறும். மேற்படி ரப்பர் ஷீட்டுகள் அடிக்கும் போது ஏற்படும் கழிவு நீரானது பாதுகாப்பான முறையில் குழாய் மூலம் பயோ கேஸ் தொட்டிக்கு செல்வதாக உள்ளது. மேற்படி பயோகேஸ் தொட்டியில் உள்ள பயோ கேஸானது தன்னுடைய வீட்டிற்கு எரிவாயுவாக சமையல் பயன்பாட்டிற்காக பயன்படுத்தி வருகிறார் இவைகள் அனைத்தும் திரு. நெல்சன் என்பவரின் கம்பவுட்டுக்குள் இருக்கிறது.

... மேற்படி புகாரின் பேரில் இடம், தல ஆய்வு செய்யப்பட்டு திரு.நெல்சன் என்பவருக்கு ரப்பர் ஷீட்டு அடிப்பதனால் ஏற்படும் கழிவு நீரினை பாதுகாப்பான முறையில் அப்புறப்படுத்துமாறும் சுகாதாரமுறையில் ரப்பர் ஷீட் அடிக்கவும் குமாரபுரம் முதல் நிலை பேருராட்சியின் மூலம் நோட்டீஸ் வழங்கப்பட்டு மேல் நடவடிக்கையில் இருந்து வருகிறது.”

12. In the said report, it has been specifically stated that the petitioner has installed bio-gas tank and made arrangements to take the residual/waste water to the bio-gas tank and to take bio-gas for cooking purposes.

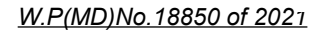


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13. The learned Government Advocate appearing for the official respondents has produced the copies of the letter sent by Block Health Supervisor, Primary Health Centre, Kothanallur, dated 22.01.2021 and also the report of the Assistant Director, Health Services, Nagercoil, Kanyakumari District, dated 18.03.2021, wherein the Block Health Supervisor in his report has stated that there is possibility for health hazard and nowhere stated that the rubber processing unit of the petitioner was causing health issues. In the report, he has stated that “பார்வையின் போது ரப்பர் சீட் அடிக்கும் இயந்திர கழிவு நீர் பயோகேஸ் தயாரிக்க பயன் படுத்தப்பட்டாலும் வெளி ஆட்கள் வந்து ரப்பர் ஷீட் அடிப்பதால் அதிக அளவு தண்ணீர் வெளியேறி சுகாதாரகேடு ஏற்பட வாய்ப்புள்ளமையால் அதன் மீது நடவடிக்கை மேற்கொள்ள வேண்டுகிறேன்”.

14. The Assistant Director, Health Services, Nagercoil, in her report, dated 18.03.2021 has only reiterated the report of the Block Health Supervisor, Primary Health Centre, Kothanallur, dated 22.01.2021.

15. The third respondent has also produced the copies of the proceedings of the Pollution Control Board wherein, after the receipt of the complaint from the third respondent, they have directed the second respondent to take necessary action in accordance with Local and Health Laws.



17. As already pointed out, the second respondent in the impugned order as well as the counter statement has specifically stated that though the third respondent has lodged complaint and also obtained orders from this Court, he has not chosen to enter into appearance at the enquiry before the second respondent. In the counter affidavit, the second respondent has also stated that the third respondent has given a representation on 19.05.2021, stating that there will be no health hazard by functioning of rubber rolling machine, but that statement of the third respondent was not referred in the impugned order.

18. Considering the above facts and circumstances of the case, in the absence of any materials or evidence to show that the petitioner was taking



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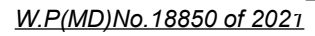
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his residuals or waste water to the neighboring lands or to the ground and in the absence of any evidence to show that the processing unit caused health issues to the people of that locality, this Court has no hesitation to hold that the impugned order for closure of the processing unit itself cannot be sustained and as such, the same is liable to be quashed.

19. In the result, the Writ Petition is allowed and the impugned order, dated 20.09.2021 passed by the second respondent is quashed. The second respondent is at liberty to take necessary action, if rubber processing unit causes any health issues or any other issues to that area or to the people of that locality. Consequently, connected Miscellaneous Petition is closed. No costs.

31.07.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das



- 1.The District Collector,
Kanyakumari District, Nagercoil.
- 2.The Executive Officer,
Kumarapuram 1st Grade Town Panchayat,
Kumarapuram Post,
(Via -Thuckalai), Kanyakumari District.



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K.MURALI SHANKAR, J

DAS

Pre-delivery Order made in
W.P(MD)No.18850 of 2021
and
W.M.P(MD)No.15673 of 2021

Dated : 31.07.2024