

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM

THE HON'BLE MR.JUSTICE T. S. SIVAGNANAM

W.P.Nos.12960 & 18851 of 2014

and

M.P.Nos.1 & 1 of 2014

E.TAMILARASI

...Petitioner in W.P.No.12960/14

M.JAWAHAR

...Petitioner in W.P.No.18851/14

Vs

1. THE COMMISSIONER
PALLAVARAM MUNICIPALITY
CHROMPET CHENNAI 44

2. MUNICIPAL COUNCIL
REP BY ITS CHAIRMAN
PALALVAPURAM MUNICIPALITY
CHROMPET CHENNAI 44

3. COMMISSIONER OF MUNICIPAL ADMINISTRATION
EZHILAGAM CHEPAUK CHENNAI 5

4. TAMILNADU POLLUTION CONTROL BOARD
REP BY THE DISTRICT ENVIRONMENTAL ENGINEER
MARAIMALAI ADIGALAR ST.,
MARAIMALAI NAGAR CHENNAI 603 209

5. S.MANOCHARAN

... Respondents in W.P.No.12960/14

PALLAVARAM MUNICIPALITY
REP. BY ITS COMMISSIONER,
CHROMPET, CHENNAI-600 044.

... Respondent in W.P.No.18851/14

Prayer in W.P.No.12960 of 2014: This Writ Petition has been filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondents 1 and 2 to forbear the 5th respondent his agent or representative from carrying or welding activities in 30/16, Manickam Nagar, Sarathi Street, Chrompet, Chennai 600 044.

Prayer in W.P.No.18851 of 2014: This Writ Petition has been filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondent to deem the installation certificate has been granted to the petitioners welding and fabrication unit functioning in the name of Jayaram Fabrication Works at No.30/16 Sarathy Street, Bharathypuram, Chrompet Chennai 44 on petitioners application dt 3.12.2012 in accordance with Section 250 of the Tamilnadu District Municipalities Act.

For Petitioner in
W.P.No.12960/14 : Mr.Karthik

For Petitioner in
in W.P.No.18851/14 : Mr.K.Sakthivel

For R1 in
W.P.No.12960/14 &
respondent in W.P.No.18851/14 : Mr.P.Srinivas

For R3 in
W.P.No.12960/14 : Mrs.R.Rajeswari

For R5 in
W.P.No.12960/14 : Mr.K.Sakthivel

For R2 & R4 in
W.P.No.12960/14 : No appearance

ORDER

The petitioner in W.P.No.12960 of 2014 is a resident of Manickam Nagar at Chrompet and he has filed this Writ petition to direct the respondents 1 and 2 to forbear the 5th respondent from carrying on welding activities at premises in Door No.30/16, Manickam Nagar, Sarathi Street, Chrompet, Chennai.

2. Several allegations have been made in the affidavit filed in support of the writ petition about the 5th respondent and that he is carrying on industrial activities in a residential area without obtaining license flouting all rules and regulations and causing noise pollution. The petitioner would state that all the residents of the area had submitted a joint representation on 18.04.2012 and inspite of the same, no action was initiated. Therefore, the petitioner after obtaining information under the Right to Information Act submitted representations on 28.09.2012, 28.03.2013 and 13.03.2014. In spite of the same, since the authorities failed to take any action, the petitioner has approached this Court. In the meantime, it appears that the respondent Municipality has initiated action against the 5th respondent and issued a notice under Section 250 of the District Municipalities Act, 1920 (hereinafter called the Act) apart from initiating criminal prosecution before the Judicial Magistrate, Tambaram in S.T.C.No.4690 of 2013. In such circumstances, the 5th respondent filed separate writ petition in W.P.No.18851 of 2014 for a direction to the respondent, namely, Pallavaram Municipality to deem that the installation certificate has been granted for their welding and fabrication unit functioning under the name and style of M/s.Jayaram Fabrication Works in accordance with Section 250 of the Act. The 5th respondent claimed that he has made an application for grant of license on 03.02.2012. In this order, the petitioner in W.P.No.12960 of 2014 shall be referred to as the petitioner and the petitioner in W.P.No.18851/14 shall be referred as 5th respondent.

3. The learned counsel for the 5th respondent contended that the writ petition in W.P.No.12960 of 2014 is not maintainable since the petitioner alleges that the fabrication unit is causing pollution and if that be the case, the remedy is not before this Court and therefore, the writ petition is liable to be dismissed as not maintainable. In support of such contention, reliance has been placed on the decision of the first bench of this Court in P. Sundararajan etc., Vs. The Deputy Registrar, National Green Tribunal (2015 (4) CTC 353). Further, it is submitted that no notice was issued to the 5th respondent before the Tamil Nadu Pollution Control Board conducted inspection to record the ambient noise level and when notice was sent by respondent municipality, the 5th respondent's son has sent a reply stating that no such notice was issued to them and they have not violated the ambient noise level standards as the unit is only a 4HP unit. Further it is submitted that the 5th

respondent is not the only fabrication unit in that area and there are 82 such units and the 5th respondent alone has been targeted on account of certain animosity between the petitioners and himself.

4. So far as the action initiated by the municipality against the 5th respondent which has been independently challenged in a writ petition, the 5th respondent contends that he has applied for license on 03.02.2012 and no orders have been passed by the authority within the time frame and therefore, in terms of Section 250(7) of the Act, the license is deemed to have been granted. In this regard, the learned counsel placed reliance on the decision of the Division Bench of this Court in the case of Govinda Iyer V. Municipal Council, Villupuram, (AIR 1967 Madras 290) and Chandranathan V. Commissioner, Ambattur Municipality (1997 (III) CTC 716).

5. The learned counsel appearing for the respondent municipality submitted that the deemed provision will not be attracted in the light of Section 321(11) of the Act and if at all, it is attracted, it is only in the case of renewal of license and not a fresh grant. Further more, it is submitted that the 5th respondent has not applied for license and there is no proof on such application.

6. Further, by referring to the counter affidavit filed by the Commissioner of municipality, it is submitted that notice was issued under the Tamil Nadu Public Health Act to stop the noise which is being created and further notice was issued under Section 250 r/w Section 313 of the Act. Further, it is submitted that the 5th respondent has installed machinery in a residential area without any permission and also usage of the premises, criminal complaint has been lodged before the Judicial Magistrate Court, Tambaram.

7. It is further stated that the 5th respondent has not appeared before the Court and therefore, the Court has been adjourned the matter and that is why the prosecution is being delayed.

8. I have elaborately heard the learned counsel for the parties and carefully perused the materials placed on record.

9. The 5th respondent by relying upon the application dated 03.2.2012 submits that he has applied for a grant of license on

the said date and since the authorities have not passed any orders within a period of 60 days, the license is deemed to have been granted. However, there is no proof to show that the 5th respondent has remitted any license fee which has been stipulated by the municipality and it is an admitted case of the 5th respondent that the application was sent by Registered Post. Therefore, the application sought to be relied on by the 5th respondent dated 03.02.2012 is not an application in the eye of law. In such circumstances, the question of considering as to whether the deeming provision would be attracted in the case of the 5th respondent, does not arise. Be that as it may, even assuming the petitioner's application dated 03.02.2012 for grant of license under Section 249 of the Act is a valid application, the period of validity of license can only be for one year, i.e., upto December 2013. Beyond the said date, the question of yearly license operating does not arise.

10. Therefore, the plea raised by the 5th respondent that the deemed provision would operate is thoroughly misconceived since on the date when he filed the writ petition, i.e., on 15.07.2014, there was no license issued in favour of the petitioner much less an application for a license was made. Further more, it is not the case of the 5th respondent that he has not applied for renewal of license. Therefore, the plea raised by the 5th respondent as regards the deemed provision would not stand attracted to the facts of the case and therefore, there would be no necessity to refer to the decision relied on by the learned counsel for the 5th respondent. The 5th respondent in order to operate his unit has to definitely secure the license and without that if 5th respondent operates his units, it would be contrary to law.

11. Hence, the prayer sought for by the 5th respondent in W.P.No. 18851 of 2014 is not feasible for consideration and the same is liable to be dismissed.

12. So far as the relief sought for in W.P.No.12960 of 2014 is concerned, since the writ petition filed by the 5th respondent is dismissed by this Court by this order, it is needless to state that the respondent municipality will proceed further in accordance with law. The objection raised as regards the maintainability of the petitioner's writ petition stating that this Court cannot entertain the matter since it deals with the pollution issue, it is to be noted that the proceedings were initiated

against 5th respondent under the Tamil Nadu Public Health Act and Tamil Nadu District Municipalities Act. Having found that the 5th respondent never had a valid license the municipality had jurisdiction to take action against the 5th respondent. Since there were a stalemate in the matter and inspite of several representations, the municipality did not act, the petitioners have filed the writ petition. The petitioner placed reliance on proceedings of Pollution Control Board and the same is only to establish the noise level in the area on account of 5th respondent's business activities beyond the prescribed limits. Therefore, merely because the petitioner places reliance on the proceedings dated 06.11.2013 does not make the matter as a 'pollution matter' and therefore, the writ petition in W.P.No.12960 of 2014 is maintainable.

13. In the light of the above discussion, W.P.No.18851 of 2014 is dismissed and W.P.No.12960 of 2014 is disposed of by directing the respondent municipality to proceed further in accordance with law leaving it open to the 5th respondent to apply for license before the municipality which shall be considered in accordance with law within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the observation contained in this order will not prejudice the rights of the 5th respondent in the pending criminal case. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kua

To

1. THE COMMISSIONER
PALLAVARAM MUNICIPALITY
CHROMPET CHENNAI 44
2. MUNICIPAL COUNCIL
REP BY ITS CHAIRMAN
PALALVAPURAM MUNICIPALITY
CHROMPET CHENNAI 44

3. COMMISSIONER OF MUNICIPAL ADMINISTRATION
EZHILAGAM CHEPAUK CHENNAI 5

4. TAMILNADU POLLUTION CONTROL BOARD
REP BY THE DISTRICT ENVIRONMENTAL ENGINEER
MARAIMALAI ADIGALAR ST.,
MARAIMALAI NAGAR CHENNAI 603 209

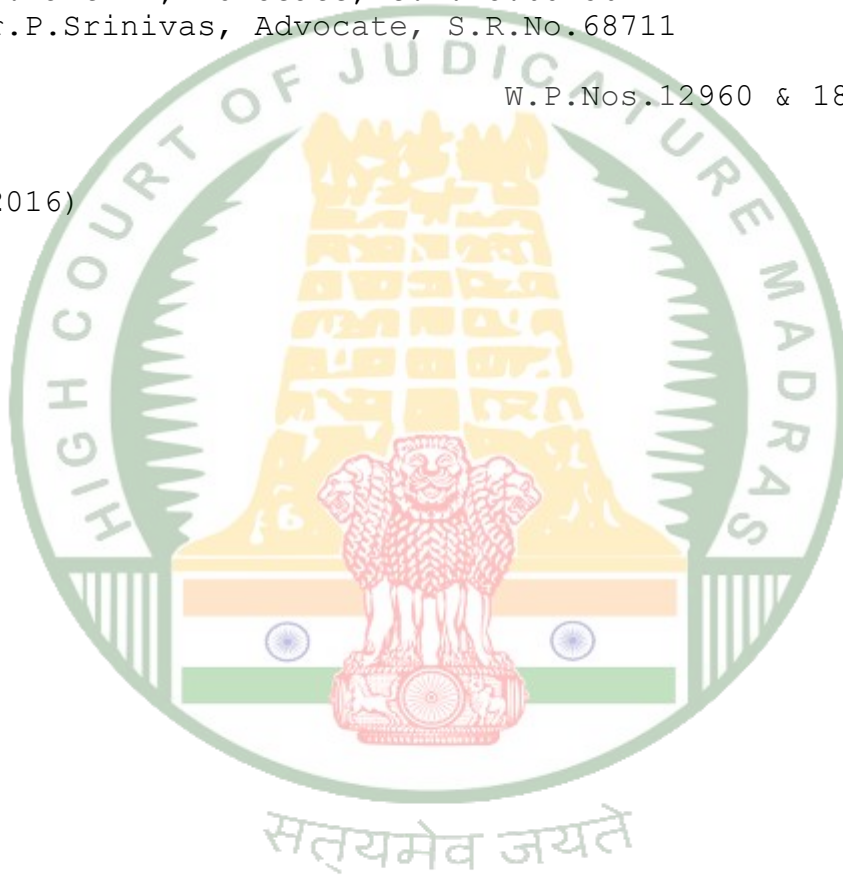
+2cc's to Mr.K.Sakthivel, Advocate, S.R.No.68858 & 68759

+1cc to Mr.Karthik, Advocate, S.R.No.68756

+1cc to Mr.P.Srinivas, Advocate, S.R.No.68711

W.P.Nos.12960 & 18851 of 2014

CTK(CO)
CA(07/01/2016)



WEB COPY