

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.01.2010

CORAM

THE HON'BLE MR.JUSTICE ELIPE DHARMA RAO
&
THE HON'BLE MR.JUSTICE K.VENKATARAMAN

W.A.NO.758 OF 2008

M/s.Suriya Sweets
a partnership firm represented
by its partner - R.Parvathy Ramesh
No.66/47, 1st Main Road
Raja Annamalaipuram
Chennai - 28 ..Appellant

Vs.

- 1.The State of Tamil Nadu
represented by its Secretary to Government
Department of Housing & Urban Department
Fort St. George, Chennai - 9.
- 2.Chennai Metropolitan Development Authority
represented by its Member Secretary
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai - 8
- 3.M/s.Sundaram Brake Linings Ltd.,
represented by its Deputy financial
Controller Secretary, No.81, First Main Road
R.A.Puram, Chennai - 28 ..Respondents

Prayer: Writ Appeal against the order dated 31.03.2008 passed by this court in W.P.No.22086/2007, filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the discontinuance notice issued by the 2nd respondent in his letter No.ESI/11721/2002 dated 08.09.2006 and as confirmed by the I respondent in G.O(D)No.151 dated 12.06.2007 and quash the same and consequently forbear the reapondents and their men from interfering with the peaceful running of the business of selling sweets, vegetables and fruits under the name and style of M/s.Surya Sweets in the premises bearing Door No.66/47, I Main Road, R.A.Puram, Chennai - 28 till the disposal of the Permission/Regularisation application dated 23.05.2002 by the 2nd respondent.

For Appellant : Mrs.Pushpa Sathyanarayana
For Respondent 1 : Mr.Desingu, Spl.G.P.
For Respondent 2 : Mr.D.Veerasekaran
For Respondent 3 : Mr.P.R.Raman

JUDGMENT

(Judgment of the court was delivered by
Justice K.Venkataraman)

This writ appeal is directed against the order dated 31.03.2008 passed by this court in W.P.No.22086/2007.

2. The said writ petition was filed challenging the impugned notice of the second respondent dated 08.09.2006 and as confirmed by the first respondent in G.O.(D) No.151 dated 12.06.2007.

3. By proceedings dated 08.09.2006, the second respondent passed an order stating that the site in which the petitioner/appellant is running the Sweet Stall and Vegetable & Fruit Stall at D.No.66, Old No.47, 1st Main Road, R.A.Puram, Chennai, is a residential building, which is against the Development Control Rules. Further, it is stated therein that for any change of use, prior permission from the competent authority is needed. Therefore, the appellant was directed to discontinue the usage of the building.

4. Challenging the said order, the appellant filed an appeal before the Government and Government, by G.O.(D) No.151 Housing & Urban Development (UD-VI) Department dated 12.06.2007, rejected the said appeal preferred by the petitioner/appellant. The petitioner/appellant, thus challenging the said orders, filed the writ petition and the same was dismissed by a learned Single Judge of this court by order dated 31.03.2008, which is challenged in the present writ appeal.

5. The learned Single Judge had clearly stated that the illegality committed by the petitioner/appellant has been examined and analysed in detail by the Division Bench, which concluded that such illegality cannot be permitted to continue. Further, the learned Judge has stated that the impugned orders have been passed by respondents 1 and 2 pursuant to the earlier direction given by a Division Bench of this court in W.P.No.35483/2002 on 07.01.2005. The learned Single Judge further held that if the petitioner/appellant is allowed to continue to perpetuate such illegality detrimental to the interest of the public at large, who are all none other than the residents living in the primary residential zone as declared by the first and second respondents under the provisions of the Town and Country Planning Act, it would amount to paying a premium for the blatant violation of law committed by the petitioner/appellant.

Taking such view, the writ petition was dismissed and we do not find any illegality or infirmity in the said order. Further more, the building where the appellant is stated to be running "Suriya Sweets" has now been demolished and hence the appellant may not be in a position to pursue the appeal further.

6. In fine, the writ appeal stands dismissed. However there is no order as to costs. Connected miscellaneous petition is closed.

22.01.2010

BEING MENTIONED

This Writ Appeal being posted under the caption "For Being Mentioned" on 20.10.2010 in the presence of Mr.T.R.Rajagopal, Senior Counsel for Ms.Pushpa Sathyanarayanan, Advocate for the appellant, the Court made the following order :

When this matter has been taken up 'for being mentioned', Mr.T.R.Rajagopal, the learned senior counsel appearing for the appellant would state that the SLP filed before the Honourable Supreme Court, challenging the Ordinate issued by the Government to insulate unauthorised buildings from being pulled down, has been posted for final disposal in the first week of January, 2011.

In this view of the matter, we do not think any necessity to pass any order at this stage in this matter. Accordingly, the judgment dated 22.01.2010 passed by us in this matter shall stand recalled.

Post this matter after Pongal vacation of 2011.

20.10.2010

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vsl

To

1. The Secretary to Government
The State of Tamil Nadu
Department of Housing & Urban Department
Fort St. George, Chennai - 9

2. The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai - 8

3. The Deputy financial
M/s.Sundaram Brake Linings Ltd.,
Controller Secretary, No.81, First Main Road
R.A.Puram, Chennai - 28.

1 cc To The Government Pleader, SR.4209.

1 cc To Mr.P.R.Raman, Advocate, SR.4488.

W.A.NO.758 OF 2008

GG(CO)
RVL 07.12.2010



WEB COPY