

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P.No.29947 of 2016
& W.M.P.Nos.25901 & 25902 of 2016

1 M/s A.Ve. Aqua Farms
Rep by its Proprietor Mr.K.Manivasagam No.4
Church Road Injambakkam,
Chennai-600 041 ... Petitioner

Vs

1 The Revenue Divisional Officer
Cum Sub Divisional Magistrate,
Tambaram, Chennai
2 The Tahsildar
Sholinganallur Taluk, Chennai. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the entire records in connection with the impugned order of 1st respondent in Na.Ka.1847/2016/A, dated 08.08.2016 and quash the same.

For Petitioner : Mr.M.Venkatachalapathy, SC
Assisted by Mr.S.Sriram

For Respondents : Mr.A.N.Thambidurai, AGP

O R D E R

This writ petition has been filed seeking a Writ of Certiorari to call for the entire records in connection with the impugned order of the first respondent made in Na.Ka.1847/2016/A, dated 08.08.2016, and quash the same.

2. The only ground challenged in this writ petition is that no notice had been issued prior to passing the impugned order. Hence, Principle of Natural Justice is violated. According to the petitioner, he was under the bonafide impression that there is a deemed permission for grant of taking

water. It is further submitted that an application before the National Green Tribunal had also been submitted and the petitioner is running the unit well within the limitations, imposed by the said Tribunal. However, all of a sudden, the respondent had made a surprise visit to the premises and had sealed the same on 04.08.2016.

3. Learned Senior counsel appearing for the petitioner would also submit that a Division Bench of this Court in identical circumstances, had upheld the order of the learned single judge in W.A.No.35 of 2016 and ordered to de-seal and unlock the premises forthwith.

4. Per contra, learned Additional Government Pleader appearing for the respondents would submit that the petitioner is running the unit without obtaining proper permission, neither from CMWSSB nor from the first respondent/Corporation. According to the learned Additional Government Pleader, even though the alleged application is made to CMWSSB, no copy is made to the Corporation and the deemed permission will not be applicable to the petitioner. In any event, learned Additional Government Pleader also submitted that since no notice was issued, they will provide sufficient time for enquiry.

5. Heard both sides and perused the materials available on record.

6. It is seen that the Green Tribunal has categorically passed an order in respect of all these industries and if they want to utilise the water they will have to utilise the same between 10.00 a.m. and 4.00p.m. and by using motors not exceeding 5 hp. However, according to the petitioner, he had applied for permission to CMWSSB for the grant of license on 27.03.2014, which according to the respondent, the petitioner had not marked copy to the Corporation.

7. Be that as it may, a perusal of the impugned order would clearly show that nowhere it is stated that notice had been issued prior to the final order being passed, based on the complaint made by the third party. Suddenly, the petitioner had been directed to close down the industry, which had created the petitioner lots of problem. Of course, the authority has got every right to initiate action against petitioner in case of any unlawful act, however, the same has to be done only by following due procedure contemplated under the law. Failure on the part of the authorities concerned, vitiates the right of Principle of Natural Justice to the petitioner. As rightly pointed out by the learned Senior Counsel for the petitioner, in identical circumstances, a Division Bench of this Court has ordered to de-

seal the premises, wherein also no notice had been issued.

8. Following the order of the Division Bench in W.A. (MD)No.35 of 2016, I hereby direct the authority concerned to de-seal the premises. However, taking into account the totality of circumstances, I hereby direct the petitioner to treat the impugned order as show cause notice and the petitioner will have to respond to the same, within a period of three weeks, from the date of receipt of a copy of this order. On such reply being made by the petitioner, the authority will pass orders in accordance with law. It is made clear that the petitioner should follow the dictum laid down by the Honourble Division Bench.

This writ petition is disposed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1 The Revenue Divisional Officer
Cum Sub Divisional Magistrate,
Tambaram, Chennai

2 The Tahsildar
Sholinganallur Taluk, Chennai.

1 cc to M/s.M.Sriram, Advocate, sr.50976

1 cc to Government Pleader, sr.50892

W.P.No.29947 of 2016

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