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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.[MD].No.18521 of 2016

and

W.M.P. (MD)No.13412 of 2016

P.Suresh

:Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai-625 020.

2.The Commissioner,
Madurai Corporation,
Anna Maligai,
Tallakulam,
Madurai-625 002.

3.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kappalur,
Madurai-625 008.

4.The Commissioner of Police,
Madurai City,
Alagarkoil Road,
Madurai-625 007.

5.Seenivasan

:Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 1 to 4 to take action to shift the fifth respondent - Bottle Company, from the residential area at Singarayar Colony 1st Street, Narimedu, Madurai-2, within a time limit to be fixed by this Court and thereby, prevent the health hazard and injury being caused to the residents and passers of the area.

For Petitioner	: Mr.R.M.Makesh Kumaravel
For Respondents 1&4	: Mr.M.Govindan, Special Government Pleader
For Respondent No.2	: Mr.T.Bala Rathinakumar
For Respondent No.3	: Mr.C.Ilaman



For Respondent No.5 : Mr.Veera Kathiravan,
Senior Counsel,
For Mr.R.Manicka Raj

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O R D E R

[Order of the Court was made by S.NAGAMUTHU, J.]

This is a Public Interest Litigation. The petitioner is a resident of Singarayar Colony in Narimedu, Madurai. The fifth respondent is presently running a business establishment at 28/2A, Singarayar Colony, South Street, Narimedu, Madurai, wherein, according to the petitioner, the fifth respondent brings huge quantity of broken bottles, crushed the same and then, transported the same to various destinations. As a result, according to the petitioner, lot of nuisance is caused as the said processing causes great health hazard to the people living in that area. It is also alleged that no licence has been obtained to run the said business in the said place, nor any permission has been obtained from the Pollution Control Board.

2. Mr.Veera Kathiravan, learned Senior Counsel appearing for the fifth respondent would vehemently oppose this Writ Petition. According to him, on the direction issued by the Inspector of Police, Narimedu Police Station, unilaterally, the business establishment has been closed now. He would further submit that no processing takes place in the building in question. As a matter of fact, according to him, old bottles have been brought to the said building, cleaned and then, transported to various destinations. Thus, according to the learned Senior Counsel, neither licence nor any permission is obtained under any enactment. He would further submit that the fifth respondent has been running the business for the past 20 years and there has been no complaint of any nuisance by any resident of that locality. He would further add that out of some personal motive, the petitioner has come up with the present Writ Petition.

3. The learned Standing Counsel for the second respondent would submit that as of now, the building has been closed and during the inspection made by the officials of the second respondent, there was no such nuisance found at all.

4. The learned Special Government Pleader appearing for the respondents 1 and 4 would submit that on receipt of a complaint, the Inspector of Police visited the place of occurrence and found that there was nuisance. During enquiry, the fifth respondent, on his own, offered to close the business and to start it again after getting necessary permission from the Pollution Control Board. He would further submit that the Inspector of Police never directed the fifth respondent to close the business.



5. We have considered all the above submissions.

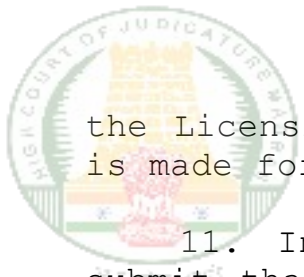
6. Section 360 of the Madurai City Municipal Corporation Act, 1971, states that no place within the limits of the City shall be used for any of the purposes mentioned in Schedule-IV without a licence obtained from the Commissioner and except in accordance with the conditions specified therein.

7. Now, the question is for running the business, as it is under discussion in this Writ Petition, any such licence is required under Section 360 of the Madurai City Municipal Corporation Act, 1971 (hereinafter referred to as "the Act").

8. A close perusal of Schedule-IV would go to show that for running a Glass Industry, such licence is required. The learned Senior Counsel appearing for the fifth respondent would submit that the business establishment of the fifth respondent cannot be termed as a Glass Industry at all. But, we find no force at all in the said argument. It is not as though unbroken bottles are brought to the building and they are simply transported from the said place to various places. He himself admitted before us that the glass bottles are cleaned in the building in question. But the petitioner has produced photographs taken at the time of business hours, which show that the bottles had been crushed and transported in lorries.

9. In our considered view, since there is some kind of processing going on, it is certainly a Glass Industry. Further, as per the Schedule, even for washing soiled clothes or keeping soiled clothes for the purpose of washing or keeping washed clothes, licence is required. Thus, even for storing the clothes for the purpose of washing, licence is required. It goes without saying that for washing such huge quantity of old bottles, certainly, licence is required under Section 360 of the Act. Even assuming that the contention of the learned Senior Counsel, on facts, is admitted, it is applicable, if only washing of bottles takes place. Thus, in our considered view, such a licence, as required under Section 360 of the Act, is absolutely necessary for the nature of the business that the fifth respondent is now doing in the building in question.

10. It is needless to point out that if any application is made for licence under Section 360 of the Act, it is for the Licensing Authority to consider the suitability of the place in respect of which the licence is applied for, the possibility of any danger to life or health or property or the likelihood of any nuisance being created either by reason of the manner in which or by the nature of such use, etc. Therefore, when it is alleged that the business of the fifth respondent caused nuisance, it is for



the Licensing Authority to consider that also, if any application is made for licence.

11. In the instant case, the learned Senior Counsel would submit that though there is no written licence, but, licence fee is collected by the Corporation from the fifth respondent. We are not at all satisfied with the said argument, because, what is required of, under Section 360 of the Act, is a licence by the Licensing Authority, by having regard to the various aspects, which have been enumerated under Section 360 of the Act itself. It is also surprising to note that as to how the Corporation has been going on collecting licence fee from the fifth respondent for 20 years, without granting licence to him.

12. In view of the above factual matrix that there has been no licence issued by the Licensing Authority, as required under Section 360 of the Act, we cannot allow the fifth respondent to run the business in the said building. When this was expressed, the learned Senior Counsel submitted that the fifth respondent would apply for appropriate licence, as required under Section 360 of the Act and only after getting licence, he would run the business. Now, he would seek permission from the Court to open the building and to remove all the materials available inside to some other place. This request, in our considered view, is very reasonable, because, these materials cannot be allowed to be kept in the building in violation of Section 360 of the Act. Therefore, we are inclined to give such permission.

13. In the result, this Writ Petition is allowed in the following terms:

(i) The fifth respondent is, hereby, restrained from running the glass business in question in the building, unless he gets licence, as required under Section 360 of the Madurai City Municipal Corporation Act, 1971.

(ii) The fifth respondent is directed to remove all the materials in the building, on or before 26.10.2016.

(iii) It is further directed that the fifth respondent shall remove the same, after due intimation to the second respondent and the second respondent shall depute one of its officers to be present physically at the site to supervise the removal of the materials available in the building and ensure that no glass piece is left behind in the building.

(iv) It is further directed that if any application is made by the fifth respondent seeking licence for running the Industry, as required under Section 360 of the Act, it is for the Licensing Authority to follow the procedure and to pass necessary orders expeditiously, preferably, within a period of two months from the date of receipt of application. This direction is issued, in the context that there are about 40 employees involved in the business.



No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS-II)

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

1.The District Collector,
Madurai District,
Madurai-625 020.

2.The Commissioner,
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Anna Maligai,
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3.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kappalur,
Madurai-625 008.

4.The Commissioner of Police,
Madurai City,
Alagarkoil Road,
Madurai-625 007.

+1cc to M/S.R.M.Makesh Kumaravel, Advocate in SR.No.62490.

+1cc to m/s.VEERA ASSOCIATES SR.No. 62834

+1cc to Mr.T.Bala Rathinakumar, Advocate SR.No.63318/16

W.P.[MD].No.18521 of 2016

Dated: 21.10.2016

sml

msm/gsv-pm/Sar-3/21.10.16/p5/8c