

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.30792 of 2017

and

WMP.No.33717 of 2017

S.Egyasamy,
S/o.Sankara Mudaliar,
Salem Fuels,
Cherry Road, Slaem - 636 007.

... Petitioner

vs.

The Commissioner,
Salem Municipal Corporation,
Salem -1.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the entire records relating to the impugned proceedings in F1/14152/2015, dated 23.10.2017 from the file of the respondent, so far as it relates to levy of penalty of Rs.2,50,000/- quash the same and further direct the respondent to given an opportunity of hearing as contemplated under Section 84 of the Tamil Nadu Public Health Act, 1939.

For Petitioner : M/s.D.Shivakumaran

For Respondent : Mr.S.Diwakar,
Spl.G.P.

सत्यमेव जयते

O R D E R

The petitioner has come up with this Writ Petition, to call for the entire records relating to the impugned proceedings in F1/14152/2015, dated 23.10.2017 from the file of the respondent, so far as it relates to levy of penalty of Rs.2,50,000/- and quash the same and further direct the respondent to given an opportunity of hearing as contemplated under Section 84 of the Tamil Nadu Public Health Act, 1939.

2. When the matter is taken up for hearing, learned Special Government Pleader appearing for the respondent,

submitted that the respondent is willing to issue fresh notice to the petitioner and afford them an opportunity of hearing to clean their premises within the time stipulated, failing which, they will proceed as per the provisions stipulated under the Tamil Nadu Public Health Act, 1939 and they are also willing to follow the guidelines stipulated in the order dated 01.11.2017 passed by this Court in W.P.Nos.27875 and 27817 of 2017.

3. Heard the learned counsel on either side and perused the material documents available on record.

4. In a similar circumstance, this Court, by an order dated 13.11.2017 in W.P.No.28338 of 2017, has held as follows:

"6. Though according to the petitioner, a notice under Section 84 of the Act has to be issued to him and only in the case of non-compliance of the same, provisions of Section 88 has got to be invoked, this Court is of the view that it is not necessary that the provisions of the Tamil Nadu Public Health Act have to be invoked in the ascending order. Since Dengue fever is prevalent everywhere in the State, immediate prevention of breeding of mosquitoes is the need of the hour and owners, who do not maintain their premises cleanly, cannot expect a notice to be issued to them at first.

7. In view of the above, this Court holds that the respondents are at liberty to inspect the petitioner's premises on a specific date and the same shall be intimated to the petitioner, who is directed to be present at his premises on the said date. However, it is made clear that there is no need for advance intimation and that notice can be served on the day of inspection also. The respondents shall take photographs/videographs of the premises and if defects are found, they shall serve a notice to the petitioner immediately. The petitioner can be directed to rectify the defects within 24 hours or such other time frame from the receipt of the notice from the respondents, failing which, it is open to the respondents to demand the amount

towards cost of clearing dengue larva breeding areas and also demand other amounts as per the provisions of the Act."

5. In view of the above, as the respondent has not granted an opportunity to the petitioner under the provisions of the Tamil Nadu Public Health Act, 1939, to clean its premises, this Court feels it is appropriate to quash the impugned order dated 23.10.2007 and accordingly, it is quashed. However, it is open to the authorities to go to the site, inspect and thereafter, directly serve notice on the petitioner to clear the debris, which cause health hazards and if the petitioner does not clear the debris within 24 hours or such other time stipulated by the respondent, it is open to the respondent to initiate action in accordance with the provisions of the said Act.

The Writ Petition is allowed with the above direction and observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

pvs

To:

The Commissioner,
Salem Municipal Corporation,
Salem -1.

+1cc to Mr.S.Diwakar, Advocate SR.No.85543

+1cc to Mr.D.shivakumaran, Advocate SR.No.85203

GP(CO)
GN(02/01/2018)

W.P.No.30792 of 2017