

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.32895 of 2017
and
W.M.P.No.36265 of 2017

M/s.Hotel Vasantham

(a Unit of Hotel Vishnupriya Pvt. Ltd),
Represented by its
General Manager Mr.Ravikumar,
LIC Colony, Opp. to New Bus Stand,
Alagapuram Village, Salem-636 002. ... Petitioner
Vs.

The Commissioner,
Salem Municipal Corporation,
Salem. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned proceedings in F1/14152/2015, dated 25.10.2017 under Section 3 (25), 41(1)(2)(4), 83(1)(2)(a)(b)(2), 84(1)(2), 85, 87, 134(1) of the Tamil Nadu Public Health Act, 1939, from the file of the respondent, so far as it relates to levy of penalty of Rs.5,00,000/-, quash the same and further direct the respondent to give an opportunity of hearing as contemplated under Section 84 of the Tamil Nadu Public Health Act, 1939.

For petitioner : Mr.D.Shivakumaran

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

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned proceedings in F1/14152/2015, dated 25.10.2017 under Section 3(25), 41(1)(2)(4), 83(1)(a)(b)(2), 84(1)(2), 85, 87, 134(1) of the Tamil Nadu Public Health Act, 1939, from the file of the respondent, so far as it relates to levy of penalty of Rs.5,00,000/-, quash the same and further direct the respondent to give an opportunity of hearing as contemplated under Section 84 of the Tamil Nadu Public Health Act, 1939.

2. Learned counsel for the petitioner submitted that the issue involved in this Writ Petition is almost covered by a decision of this Court, dated 01.11.2017 in W.P.Nos.27875 and 27817 of 2017.

3. In the present case on hand, after receipt of the impugned notice, dated 25.10.2017, the petitioner has given reply, dated 31.10.2017 through Advocate.

4. This Court makes it clear that it is open for the respondent to go and have a spot inspection and if any violation of the provisions of the said Act is found, the respondent shall immediately issue show cause notice and proceed against the petitioner or violator. In this case, fine has also been imposed by the impugned notice dated 25.10.2017. Such fine cannot be imposed on the petitioner. If any defects/violations are found, it is open for the respondent to proceed against the petitioner/violator under the provisions of the Tamil Nadu Public Health Act. Since the petitioner has sent reply to the impugned notice, it is open for the respondent to fix a date of spot inspection, on which date, the petitioner shall be present and thereafter, it is open for the respondent to take photograph and videograph of the place in question and pass appropriate orders in accordance with law. This Court makes it clear that there is no provision for imposition of fine of Rs.5 lakhs under the said Act. However, it is open for the respondent to recover the amount incurred by the respondent for taking preventive measures like cleaning the place, etc., from the petitioner.

5. With the above observations and directions, the Writ Petition is allowed. No costs. Consequently, connected W.M.P. is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

cs

To

The Commissioner,
Salem Municipal Corporation,
Salem.

+ 1 cc to Mr.D.Shivakumaran Advocate,SR.89966

+ 1 cc to Mr.S.Diwakar, Advocate,SR.89873

W.P.No.32895 of 2017

nr 10/01/2018