

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.26223 of 2017

and

W.M.P.Nos.27872 and 27873 of 2017

Tmt.Pritibhen Kartik Mistry

.. Petitioner

Vs.

1. Union Territory of Puducherry Represented by Her Excellency The Hon'ble Lieutenant Governor of Puducherry, Represented by Secretary to Governor, Government of Puducherry, Raj Nivas, Puducherry.
2. The Secretary to Government (Local Administration), Government of Puducherry, Secretariat, Beach Road, Puducherry-605 001.
3. The Secretary to Government (Revenue) -cum-District Collector, Government of Puducherry, Secretariat, Beach Road, Puducherry-605 001.
4. The Commissioner, Government of Puducherry, Puducherry Municipality, Pondicherry-605 001.
5. The Revenue Officer, Pondicherry Municipality, Office of Revenue Office, Puducherry.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for records relating to impugned order, vide No.3684/PM/ARO/A.4/2016, dated 11.08.2017 passed by the fifth respondent and quash the same.

For Petitioner :Mr.Prakash Adiapadam
For Respondents :Mr.J.Kumaran, Govt. Advocate
(Pondicherry)

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Certiorari to call for records relating to impugned order, vide No.3684/PM/ARO/A.4/2016, dated 11.08.2017 passed by the fifth respondent and quash the same.

2. According to the petitioner, on 07.08.2017, she has paid a sum of Rs.4,910/- towards fee for granting Trade Licence in her favour for opening Tea and Snacks Shops (M/s.SSTUFFED) at No.32, Dupuy Street, Puducherry for the period 2017-2018, and the licence would be valid upto 31.03.2018. Further, on payment of necessary fee in a sum of Rs.1,000/- on 07.08.2017, the fourth respondent-Commissioner of Puducherry Municipality granted Trade Licence, vide Licence No.6722/PM/RO-II/TL/A4/2017 for running the said shop. It is her further case that she has also made an application for obtaining licence from the Department of Food Safety, Government of Puducherry. By the impugned order, dated 11.08.2017, the fifth respondent-Revenue Officer, without issuing any show cause notice, cancelled the licence granted on 07.08.2017. It is the grievance of the petitioner that the fifth respondent-Revenue Officer has no jurisdiction to pass the impugned order, much less non-speaking order. According to the petitioner, the impugned order is passed in violation of the provisions of the Puducherry Municipalities Act, more particularly, Section 355(3)(c), which reads as follows:

"Trades, Industries and Factories

Section 355: Purpose for which places may not be used without licence.-

....

(3)

....

(c) If the Commissioner is satisfied either on a reference made to him in this behalf or otherwise that-

(i) a licence granted under clause (a) has been obtained by misrepresentation as to an essential fact, or

(ii) the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the

rules made thereunder,

then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the Commissioner may, after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence.

....."

(emphasis supplied)

3. From the above extracted Section 355(3)(c), it is clear that the Commissioner alone is empowered to decide the issue, that too, only after providing an opportunity of showing cause, the licence can be revoked or suspended. Thus, on the above two grounds, the impugned order is liable to be interfered with.

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

5. Learned Government Advocate (Pondicherry) appearing for the respondents fairly submitted that from the impugned order, it appears that no opportunity of hearing has been provided to the petitioner and that in case the Court is going to interfere with the impugned order, the respondents may be given liberty to proceed afresh after hearing the petitioner.

6. Taking note of the above submission of the learned Government Advocate (Pondicherry), and as I find much force in the submissions made by the learned counsel for the petitioner, the Writ Petition is allowed on the short ground of no opportunity of hearing provided to the petitioner before-ever the impugned order is passed cancelling the licence to run the shop given to the petitioner, coupled with the fact that the fifth respondent-Revenue Officer has no jurisdiction to pass the impugned order, as only the fourth respondent-Commissioner of the Municipality is vested with such power of granting/revoking the licence.

7. The above allowing of this Writ Petition will not preclude the authority concerned from proceeding afresh against the petitioner, if there are any violations, and action, if necessitates, can be taken after giving an opportunity of hearing to the petitioner on merits and in accordance with law, and such exercise shall be carried out within a period of one month from the date of receipt of a copy of this order. Till such time any such action is initiated, the petitioner shall not be disturbed from running the shop in question.

8. No costs. Consequently, W.M.Ps. are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

cs

To

1. The Secretary to Governor,
Government of Puducherry,
Raj Nivas, Puducherry.
2. The Secretary to Government (Local Administration),
Government of Puducherry,
Secretariat, Beach Road, Puducherry-605 001.
3. The Secretary to Government (Revenue)
-cum-District Collector,
Government of Puducherry,
Secretariat, Beach Road,
Puducherry-605 001.
4. The Commissioner,
Government of Puducherry,
Puducherry Municipality,
Pondicherry-605 001.
5. The Revenue Officer,
Pondicherry Municipality,
Office of Revenue Officer,
Puducherry.

+1 CC to Mr.Prakash Adiapadam, advocate sr 71918
+1 CC to Govt. Pleader sr 72240.

SP(09/11/2017)

W.P.No.26223 of 2017

WEB COPY