

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.28794 of 2017
& W.M.P.Nos.30978 and 30979 of 2017

M.Jawahar

..Petitioner

Versus

Pallavaram Municipality
Represented by its Commissioner
Chrompet, Chennai 600 044.

..Respondent

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the respondents proceeding Na.Ka.No.3771/2013/H1 dated 21.08.2017 and quash the same and consequently direct the respondent to allow the petitioner to operate welding, fabric and cutting works unit in the address 30/16, Sarathi Street, Bharathipuram, Chrompet, Chennai 600 044.

For Petitioner : Mr.K.Sakthivel
For Respondent : Mr.P.Srinivas

O R D E R

The petitioner has come forward with this writ petition to call for the records relating to the respondent's proceeding Na.Ka.No.3771/2013/H1 dated 21.08.2017 and quash the same and consequently direct the respondent to allow the petitioner to operate welding, fabric and cutting works unit in the address at No.30/16, Sarathi Street, Bharathipuram, Chrompet, Chennai 600 044.

2. The case of the petitioner is that he was running a fabrication unit in the category of welding works as a Small Scale Industry in the name of Jayaram Fabrication since 2011 in his house situated at No.30/16, Sarathi Street, Bharathipuram, Chrompet, Chennai 600 044. The Department of Industries and Commerce issued a Certificate of Registration on 15.11.2012 after inspection of the premises. Thereafter, the petitioner applied for installation certificate on 03.12.2012 as

contemplated under Section 250 of the Tamil Nadu District Municipalities Act. As there was no response from the respondent, the petitioner has preferred a writ petition in W.P.No.18851 of 2014 for a direction to grant installation certificate and this Court directed the petitioner to file fresh application within two weeks and the same could be considered. The petitioner could not file the application within two weeks and the respondent has sealed the premises of the welding and fabrication work. Thereafter, the petitioner preferred a representation on 09.08.2016 under Section 340 of the Tamil Nadu District Municipalities Act to remove the seal and to grant permission to run the fabrication unit. The said representation was rejected on 13.08.2016 for non mentioning of horse power used and the lock and seal was also not removed.

3. It is stated that the petitioner has again preferred writ petition in W.P.No.12087 of 2017 and this Court by order dated 15.06.2017, directed the respondent to remove the lock and seal and to consider the representation of the petitioner, dated 11.02.2017. The respondent has removed the seal, but however, rejected the application of the petitioner, by the impugned order, dated 21.08.2017, on the ground that the unit proposed is on the residential flat provided by the Slum Clearance Board, which is contrary to the Development Control Rules for Chennai Metropolitan Area, but without specifying any specific Rule. According to the petitioner, there is no specific Rule in the Development Control Rules for Chennai Metropolitan Area prohibiting the functioning of welding, fabric and cutting works unit in a land provided by the Slum Clearance Board. The action of the respondent is illegal and is liable to be interfered with. For the sake of convenience, Section 250(7) of the Tamil Nadu District Municipalities Act and Clause 14-A(vii) of the Development Control Rules for Chennai Metropolitan Area issued by the Chennai Metropolitan Development Authority, amendment incorporated after 2008 are extracted below:

Section 250(1 & 7) of the Tamil Nadu District Municipalities Act

- "(1) Every person intending-
- (a) to construct or establish any factory, workshop or workplace in which it is proposed to employ steam-power, water-power or other mechanical power or electrical power, or
 - (b) to install in any premises any machinery or manufacturing plant driven by steam, water or other power as aforesaid, [not being machinery or manufacturing plant exempted by rules] shall, before beginning such construction, establishment or installation, make an application in writing to the municipal council for permission to undertake the intended work."

.....

(7) Save as otherwise specially provided in this Act, if orders on an application for permission under sub-section (1) are not received by the applicant within sixty days after the receipt of the application by the executive authority, permission shall be deemed to have been granted subject to the law, rules, by-laws, regulations and all conditions ordinarily imposed."

14-A(vii) of the Development Control Rules for Chennai Metropolitan Area

"vii) Cottage industries listed in G.O.Ps.Nos.565 and 566 dated 12.03.1962 as amended and indicated in Annexure V, with number of workers not exceeding 8 and electric machineries not exceeding 5 H.P."

4. The respondent would contend that the petitioner has given undertaking that he will not run the business, if the neighbour objects and neighbour has already filed writ petition stating that the machinery is causing disturbances. This Court heard the writ petition and passed order on 18.01.2005, dispose of the writ petition, however this Court did not reject the request of the petitioner, who has made complaint. The learned counsel further submitted that even though it may be correct that the petitioner was running industry, which does not consume more than 5 horse power, as per the provisions of law, extracted supra, the petitioner has given undertaking that he will not run the industries in the residential area. There is no error in the impugned order, and hence the writ petition has got to be dismissed.

5. The petitioner has given reply stating that the machineries have been removed and the business activities / industrial activities are not carried out in the same place, but however, the petitioner has requested for permission to run the business in the same place on 11.02.2017, and this Court has directed the respondent to consider the said representation and the respondent has rejected the representation. The reason given for rejection is completely illegal and arbitrary and that there is no provision of law quoted by the respondent for rejecting the same. Hence, the writ petition is liable to be allowed.

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

7. The petitioner was running a Fabrication Industry in the said address and activities have been stopped pursuant to the order of this Court. As he has given undertaking to remove the machines, the Court has directed the respondent that the petitioner's representation for running fabrication industries may be considered, and the respondent ought to have granted

permission. I find that the respondent has not given any reason for rejecting the request of the petitioner, except stating that in terms of the Rules, permission cannot be granted. Even before this Court, no provision of law has been quoted at the time of arguments. The learned counsel appearing for the respondent has fairly submitted that in terms of Development Control Rules for Chennai Metropolitan Area, which are extracted supra, the petitioner can run the business, but however in the application, the petitioner has mentioned 3 types of industrial activities, and the horse power that is going to be used is not stated in the application. As the application is said to be incomplete and the reason given in the impugned order is not correct, I interfere with the order dated 21.08.2017. But however, the application may be rectified by the petitioner by mentioning the horse power and he shall fill up the entire application without any blank. As this Court has already heard the complainant before passing orders, such person / complainant should also be heard. In case of adverse order challenged, this Court makes it very clear that the said complainant / intervenor shall be made as a party in all the proceedings, failing which, the prayer of the petitioner that may be made will be rejected on the ground of the non-joinder of necessary and proper party. If any rectification application is filed by the petitioner, the same shall be considered after hearing the parties in terms of Section 250 of the Tamil Nadu District Municipalities Act and the decision shall be taken within a period of 60 days.

8. With the above observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

pvs
To

The Commissioner,
Pallavaram Municipality,
Chrompet, Chennai 600 044.

+1 CC to Mr.K. Sakthivel, Advocate sr 82184.
+1 CC to Mr.P. Srinivas, Advocate sr 82168.

W.P.No.28794 of 2017
& W.M.P.Nos.30978 and 30979 of 2017

SP(20/12/2017)