

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.29495 of 2017 &
W.M.P.Nos. 31798 to 31800 of 2017

Milka Foods,
Rep. by its Proprietrix
Malarvizhi

... Petitioner

Vs.

The Assistant Commissioner,
Erode Municipal Corporation,
Erode, Erode District.

... 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 order passed by the respondent in his proceedings Na.Ka.No.H1/1754/2017, dated 28.08.2017 and quash the same and consequently directing the respondent to dispose the petitioner's application dated 30.10.2017 for issuing license under the Provisions of Erode Municipal Act.

For Petitioner : Mr.C.Prakasam
For Respondent : Mr.M.Rajamathivanan

ORDER

The petitioner has filed this petition to call for the entire records relating to the impugned order passed by the respondent in his proceedings Na.Ka.No.H1/1754/2017, dated 28.08.2017 and quash the same and consequently direct the respondent to dispose of the petitioner's application dated 30.10.2017 for issuing license under the Provisions of the Erode Municipal Act.

2. The case of the petitioner is that she was running an industry for manufacturing bread in No.157-A, Eranian Street, Chennimalai Road, Rangampalayam, Erode. It is submitted that the petitioner is the lessee and the lessor had already obtained permission to run the industry and installation of machineries in the said premises and after obtaining the same, the industry was given to petitioner. The petitioner's industry has been issued with GST Registration Certificate and she obtained

license from the Industrial Security and Health Department for running the industry and also obtained FSSAI license from the Tamil Nadu Food Safety and Drug Administration Department for manufacturing bread. Even though the petitioner has obtained all necessary licences and registration certificate, based on the impugned notice, the industry has now been sealed stating that the installation permission has not been obtained and that there is no license taken from the Corporation.

3. The learned counsel for the petitioner submitted that the petitioner was running the business after duly obtaining permission from all the authorities concerned, and rejecting it on technical grounds, more particularly, when the petitioner has obtained license from the Inspector of Factories and the installation permission has also been obtained by the lessor, there is no justification on the part of the respondent in asking the petitioner to obtain license.

4. The learned counsel for the respondent has not filed counter. However, learned counsel for the respondent on instructions, verbally submitted that the petitioner has not applied installation permission individually and also not obtained license from the Corporation before running the industry. Since there is violation, the impugned notice dated 28.08.2017 has been issued asking the petitioner to stop the work and inform the same to the Corporation.

5. In reply, the learned counsel for the petitioner submitted that the petitioner has given representation on 27.10.2017 stating that on account of the illness of his 6 month child, the petitioner is not able to give a reply immediately and she has taken necessary action to get permission and hence, she may be permitted to run the industry. Subsequently, the petitioner has made a representation on 30.10.2017 by enclosing Factory license, Fassi certificate, GST certificate, Rental agreement and Plan, stating that she may be permitted to install and run the machinery. According to the learned counsel for the petitioner, an opportunity may be given to the petitioner to rectify her mistake, if any and the impugned action of the respondent is liable to be interfered with.

6. In reply, the learned counsel for the respondent submitted that the petitioner is running industry in residential zone, which is not permissible.

7. Heard both sides and perused materials available on record.

8. Admittedly, the petitioner is running an industry and she is the lessee and the lessor had obtained license for the

installation of machines, which is not disputed by the respondent, but license was not taken from the Corporation. The contention of the petitioner that she has obtained license from the Factory Inspector, GST Certificate from the appropriate authorities, etc., cannot be a ground to run the industry, as it is the bounden duty of any industry to take license and renew the same every year. Since the petitioner has already made application for installation and to run the machinery on 30.10.2017, this Court is of the view that the said representation may be considered within a period of one week from the date of receipt of a copy of this order. This Court is not inclined to deal with the contention of the respondent that the industry is situated in residential area and it is not permissible, as the rejection order cannot be improved by means of verbal averments or by means of counter. As the application is pending with regard to the permission of license, it is for the authorities concerned to decide the issue within the time stipulated supra.

9. With the above observation and direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

pvs
To:

The Assistant Commissioner,
Erode Municipal Corporation,
Erode, Erode District.

+lcc to Mr.M.Rajamathivanan, Advocate SR.No.83433
+lcc to Mr.C.Prakasam, Advocate SR.no.83894

W.P.No. 29495 of 2017
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