

HONOURABLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.503 OF 2014

ORDER:

Heard Mr.S.Appadhara Reddy, counsel for petitioner, Mr. J.V.Prasad counsel for respondents 1 to 4 and Government Pleader for 5th respondent and Mr.Cheemalapati Ravi for 6th respondent.

The petitioner prays for mandamus declaring the action of second respondent in not granting licence to petitioner's Tobacco barn at Madyanapuvarigudem village, T.Narasapuram Mandal, West Godavari District as illegal, arbitrary and amounts to refusing to exercise the jurisdiction conferred on respondents 1 to 4 by Tobacco Board Act, 1975 read with Rules, 1976.

The petitioner claims to be owner of an extent of 686 square yards of Madyanapuvarigudem for short "subject matter". The petitioner is an agriculturist and has been raising tobacco crop. The petitioner purchased Barn Licence from one J.Ramarao on 7-10-2013. On 19-10-2013, admittedly, the 5th respondent issued tobacco/construction certificate in favour of petitioner. 5th respondent on the complaint given by one Singuluri Durga Prasad initiated the proceedings in M.C.No.314/2013 (C) dated 5-12-2013 under Section 133 of Criminal Procedure Code against petitioner. The petitioner filed CrI.P.No.14912 of 2013 challenging the notice issued in Form 20 of 5th respondent.

On 16-12-2013, this court has granted stay of all further proceedings in M.C.No.314 of 2013(C) in Crl.P.No.14912 of 2013.

Now the case of petitioner is that once the proceeding issued under Section 133 of Criminal Procedure Code is stayed by this court, respondents 1 to 4 are under obligation to consider the request of petitioner for granting licence under the Act. The respondents 1 to 4 were about to consider the application. But the 5th respondent on 20-12-2013, informed the respondents 1 to 4 that the establishment of Tobacco at subject site is subjudice in this court. The 5th respondent herein through reference No.TB/32/1(1)/2013-14/pdn. Dated 1-11-2013 without considering the application of petitioner for grant or release of licence forwarded all the papers to second respondent. Hence, the petitioner challenges inaction as illegal and arbitrary.

After pursuing the writ affidavit, the annexures filed along with writ petition and also counter affidavits of respondent No.5, this court is of the view that the 5th respondent, on being satisfied with the physical construction and existence of a tobacco barn is the subject matter, issued certificate dated 19-10-2013. As already noted, Singuluri Durga Prasad filed complaint against operation of tobacco barn without permission etc. The complainant apprehending establishment of tobacco barn by the petitioner without permission has filed writ petition No.1813 of 2014 complaining inaction against the respondents. Under these circumstances, the 5th respondent had informed the pendency of writ petition in this court and made it

appear that the establishment of tobacco barn by petitioner is subjudice. Further, the 5th respondent issued Form No.20 notice under Section 133 of Criminal Procedure Code.

The petitioner does not dispute the obligation to take licence on respondents 1 to 4 under the Act. The case of petitioner which is supported by 4th respondent by filing counter affidavit is that Tobacco Barn are established in villages and there is no prohibition for establishing a Tobacco Barn in the subject matter. The process is legalized subject to obtaining licence from the competent authority. Once the petitioner is in position to satisfying the authorities under the Act and obtains licence, the jurisdiction of 5th respondent substantially by reference to alleged nuisance is a matter of fact is not attracted. Therefore, whether it is a case of nuisance or otherwise, as rightly pointed out by Mr.Appadar Reddy, depends upon the outcome of consideration by respondents 2 to 4. The petitioner firstly has constructed the tobacco barn and secondly applied to respondents 3 and 4 for grant of licence.

After perusing material and taking note of effort of petitioner to lawfully do processing activity, I am satisfied that the writ petition can be disposed of by this order.

- a) Respondents 2 to 4 are directed to consider the application of petitioner in accordance with the Act and the rules for granting of tobacco barn licence within four weeks from the date of receipt of copy of this order without reference to the

communication No.M.C.No.314/2013 (C) dated 5-12-2013 of 5th respondent.

b) The petitioner shall not undertake the activity for which permission is sought unless and until the permission is granted by respondents 2 to 4 as directed by this court.

c) The petitioner is given liberty to communicate the order of this court if advised by enclosing other documents within one week from today.

It is made clear that the petitioner after obtaining licence from the authorities under the Act is directed to obtain permission from the local body before starting the tobacco drying activity at the subject matter.

The Writ Petition ordered as indicated above. No order as to costs.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.V.BHATT

Dated 20-3-2017.

Dvs

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Dated 20-3-2017.

Dvs