

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12-09-2018

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.4307 of 2017

And

W.M.P.Nos.4502 and 4503 of 2017

M/s.Sam Water,
Represented by its Proprietor,
B.Samuvel,
No.2/161, C.P.Thomas Avenue,
East Coast Road, Injambakkam,
Chennai-600 115. Petitioner

...Vs...

- 1.The Revenue Divisional Officer and
Sub-Divisional Magistrate,
Tambaram Revenue Division,
Chennai-600 045.
- 2.The Principal Secretary and Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, Pumping Station Road,
Chinthathripet,
Chennai-600 002. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to the impugned order dated 8.8.2016 Ref.Na.Ka.No.1847/2016A and quash the same, consequently, direct the first respondent to permit the petitioner to run the business in the petitioner's premises.

For Petitioner : Mr.Dhalapathy Vignesh Kumar

For Respondent- 1 : Mrs.A.Shrijayanthi,
Special Government Pleader.

For Respondent-2 : Mr.N.Ramesh

O R D E R

The grievance of the writ petitioner is that the impugned order dated 8.8.2016 was issued by the first respondent without providing any opportunity to the writ petitioner. Thus, the very issuance of the impugned order by the first respondent is in violation of the principles of natural justice.

2. The learned counsel, appearing on behalf of the writ petitioner, states that the writ petitioner is carrying on the business of Packaged Drinking Water and the writ petitioner had obtained necessary license from the competent authority, namely, the Bureau of Indian Standards, Southern Regional Office at CIT Campus, IV Cross Road, Chennai-113.

3. The learned counsel for the writ petitioner states that the writ petitioner is conducting the business in a legal manner and by following the procedures. The petitioner-Company was not extracting the groundwater from the place stated in the impugned order. However, the writ petitioner is purchasing the water from some other persons and processing the same and selling the packaged drinking water to the public at large. Thus, the writ petitioner has not committed any irregularity or illegality in respect of conducting the business in their premises.

4. The learned Special Government Pleader, appearing on behalf of the first respondent, opposed the said contention of the learned counsel for the writ petitioner, by stating that the writ petitioner had illegally extracted the groundwater, nearby the sea area, which caused dangerous situation in that locality. The impugned order also states that the writ petitioner has extracted the water illegally without obtaining proper permission from the competent authority. The writ petitioner-Company is coming under the purview of Act 27 of the Chennai Metropolitan Area Groundwater (Regulation) Act, 1987. Under the provisions of the Act, necessary license is to be obtained from the competent authority for extracting the groundwater for commercial purposes. Thus, the writ petitioner-Company has committed an offence and therefore, there is no infirmity in respect of the impugned order passed.

5. On a perusal of the impugned order, it is stated that the writ petitioner premises are kept under lock and seal until further orders by the Revenue Divisional Officer, Tambaram. Thus the same cannot be considered as a final order and the writ petition is filed challenging the said interim order passed by the Revenue Divisional Officer, considering the

dangerous situation in that locality and considering the nature of allegations against the writ petitioner, the Revenue Divisional Officer passed an interim order to lock and seal the petitioner-premises until further orders are passed. Thus, the writ petitioner would be granted further opportunity to place his defence statements and other facts before the competent authorities.

6. The learned counsel for the writ petitioner cited a judgment of the Hon'ble Division Bench of this Court dated 5.2.2016 passed in W.A.(MD) No.35 of 2016, the relevant paragraphs 3 and 4 read as under:-

"3.The learned single Judge examined the facts on analysis and came to the conclusion that the notice was not properly issued, as it was not accompanied by relevant documents. Thus, while disposing of the writ petition, the learned Single Judge passed the following direction:-

''(a) the first respondent is directed to issue show cause notice to the petitioner along with the copies of the documents sought to be relied on by the first respondent, within a period of 7 days from the date of receipt of a copy of this order.

(b) On receipt of such notice, the petitioner shall give their explanation, within a period of 7 days thereafter.

(c) On receipt of such explanation, the first respondent shall conduct an enquiry, giving opportunity of hearing to the petitioner, the complainants including the fifth respondent and pass orders on merits and in accordance with law, within a period of two weeks thereafter.

(d) till an order is passed by the first respondent as stated supra, the lock and seal affixed on the petitioner industry shall continue.''

4.Once it is held that the notice was not properly issued and a direction is given to issue a fresh show cause notice, the property in question cannot remain under lock and seal, till a fresh adjudication takes place."

7. On perusal of the above, this Court is of a considered opinion that the Hon'ble Division Bench has not settled the legal principles in this regard. Certain reliefs granted based on the factual aspects can never be followed as a precedent.

8. The Hon'ble Supreme Court of India has distinguished the precedents to be followed by the other Courts and the reliefs granted by the Courts on certain factual aspects. This Court is bound by the legal principles settled by the Apex Courts and not certain reliefs, which all are granted based on certain facts and circumstances. In the event of establishing that the legal principles are settled by the Hon'ble Division Bench or by the Supreme Court, certainly this Court is bound to follow the same and not all the orders passed in favour of the litigants based on certain peculiar facts and circumstances. Such orders can never be followed as precedents.

9. In view of the fact that the order impugned is an interim order of lock and seal of the premises belongs to the writ petitioner, the respondents are directed to conduct an enquiry by affording reasonable opportunity to the writ petitioner and thereafter pass final orders in respect of the proceedings initiated against the writ petitioner. The writ petitioner is permitted to submit his representation, defence statements and the documents before the first respondent, who in turn shall conduct an enquiry, considering the materials available on record and pass orders on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order.

10. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Svn

To

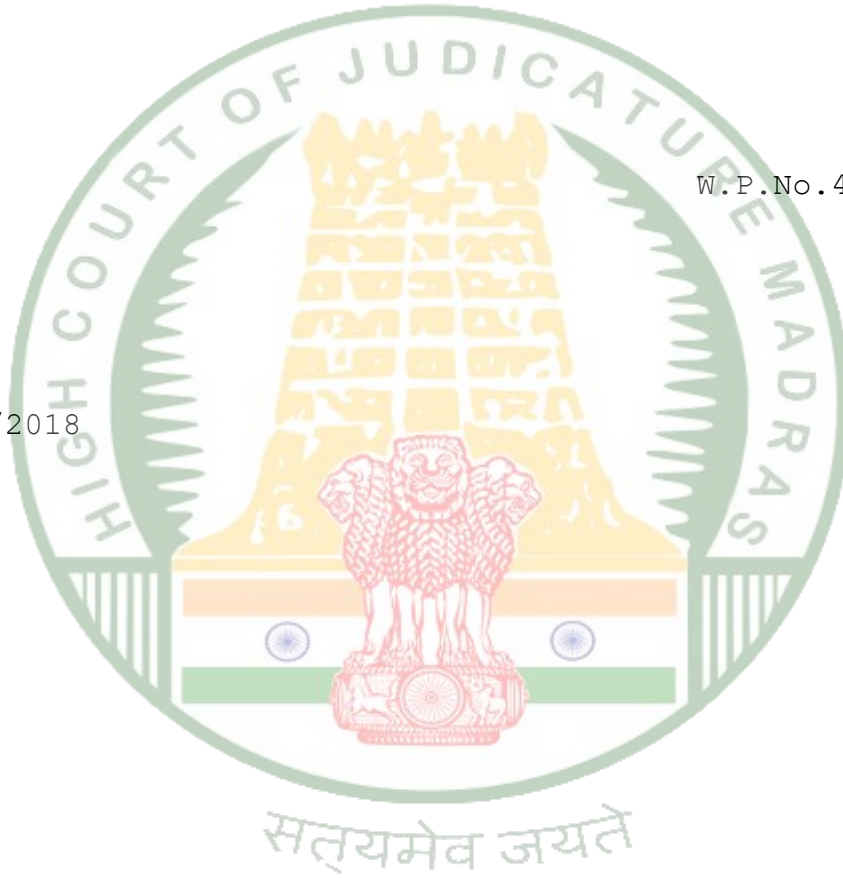
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+lcc to Mr.M.Sriram, Advocate Sr.63729
+lcc to the Government Pleader Sr.63833

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