

IN THE HIGH COURT OF JUDICATURE AT MADRAS

: 13.08.2018

CORAM

THE HONOURABLE Mr. JUSTICE V.BHARATHIDASAN

Writ Petition No. 5614 of 2018

P.C.Dakshinamoorthy

... Petitioner

vs.

The Commissioner,
Corporation of Erode,
Erode

... Respondent

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, to direct the respondent to run a Tea shop in Shop No.AS 2, New Bus Stand Complex, Erode- 638 003 in accordance with the petitioner's application dated 27.02.2017.

For Petitioner : Mr.Ramesh & Bhagavath Krishnan

For Respondent : Mr.M.Rajamathivanan

ORDER

This writ petition has been filed seeking direction to the respondent to permit the petitioner to run a Tea shop in the New Bus Stand Complex, Erode, in Shop No.AS-2.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3. According to the petitioner, he is a lessee in Shop No.AS2 at New Bus Stand Commercial Complex , Erode. He is having a valid lease upto 31.03.2025, and he is running a Bakery in the above said place. He has also obtained a valid license under the Food and Safety Standards Act, 2006 and he is also having a valid trade license under the District Municipalities Act. Now, the petitioner is offering only bakery and confectioneries alone to the customers and he was intending to start a tea stall in the above shop. Earlier the petitioner approached the respondent seeking permission to run a small Kiosk for making tea and coffee. But the respondent did not pass any orders in the application. In the meantime, a show cause notice was issued to

the neighbouring tea shop owners for revoking the lease granted to them on the ground that they cannot run a tea stall , which is hazardous and dangerous business. Challenging the same, the neighbouring tea shop owners filed a writ petition in W.P.No.24313 of 2016 and this Court allowed the writ petition by an order dated 13.03.2017, thereby, show cause notice was set aside. Based on the order passed by this Court in the above writ petition, the petitioner requested the respondent to permit the petitioner to run a kiosk. But, the respondent refused to consider the petitioner's application on the ground that, the respondent has filed a Writ Appeal against the order passed by this Court dated 13.03.2017. Hence, the present writ petition has been filed.

4. The learned counsel appearing for the respondent submitted that against the order passed by this Court in W.P.No.24313 of 2016 dated 13.03.2017, they have filed a Writ Appeal in W.A.SR.No.31457 to 31461 of 2017. He further submitted that since the petitioner wants to run a kiosk for making Tea and Coffee, which is highly hazardous and dangerous, the respondent corporation can not grant any licence to run the Tea Stall.

5. I have heard the rival submissions and perused the materials available on record.

6. Admittedly the petitioner is a lessee under the respondent and he is having a valid license till 2025 and he is also running a bakery therein, after obtaining necessary license from the concerned authority. Now the petitioner approached the respondent for selling Tea and Coffee in the above shop. As per the original order granting lease to the petitioner, there is no condition that the petitioner should not run any tea shop in the said shop and the one and only condition is that he should not run a dangerous and hazardous business. The contention of the respondent is that running a tea stall in the said shop is dangerous and hazardous and hence, permission cannot be granted. Now, this issue has already been considered by this Court in the Writ Petition filed by the neighbouring Tea Shop Owners in W.P.No.24313 of 2016 dated 13.03.2017 and it has been held as follows :

"5. The facts as narrated are not in dispute. The petitioners have been doing their business for quite number of years. The conditions cannot be given a restrictive meaning. It is not, as if, the petitioners are dealing with dangerous or hazardous materials. They are only making coffee or tea by using the gas cylinder and stove. That activity cannot be called as violation of the condition. It

appears that the respondent is over reacting. The shops are situated in the bus stand. Obviously, the general public would like to use the public place for having coffee or tea as the case may be. There is no material to hold that running of tea stall by themselves would be hazardous or dangerous to the locality. In such view of the matter, the orders impugned are hereby set aside and the writ petitions stand allowed. No costs. Consequently connected miscellaneous petitions are closed. ".

This Court has already held that running a tea shop is neither dangerous nor hazardous. Apart from that, even though the respondent said to have filed a Writ Appeal against that order, and they have not any taken steps to number the Writ Appeal so far, In the said circumstances, it is not open to the respondent to deny permission to the petitioner to run a kiosk for selling tea and coffee in the above shop.

7. In the above circumstances, the Writ Petition is allowed and the respondent is directed to consider the petitioner's application and grant permission to the petitioner to run a kiosk for selling tea and coffee in the petitioner's leasehold premises. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

mrp

To

The Commissioner,
Corporation of Erode,
Erode

+1cc to Mr.M. Rajamathivanan, Advocate SR.No.56021

+1cc to Mr.Srinath Sridevan, Advocate SR.No.55952

Writ Petition No.5614 of 2018

GMV (07/09/2018)