

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.02.2018

CORAM

THE HON'BLE Mr.JUSTICE M.VENUGOPAL
AND
THE HON'BLE Mr.JUSTICE S.VAIDYANATHAN

W.P.No.1601 of 2018
and W.M.P.No.2012 of 2018

Gautham Kumar Singh
Proprietor of 'Sri Dosai'
120, Mint Street, Kothaval Chavadi,
Sowcarpet, Chennai-79.

... Petitioner

Vs

1.The Commissioner,
Corporation of Chennai,
Ripon Buildings, Madras-3.

2.The Assistant Revenue Officer,
Corporation of Chennai,
Zone-V, No.61, Basin Bridge,
Chennai-21.

3.The Zonal Officer,
Zone-V, Corporation of Chennai,
No.61, Basin Bridge,
Chennai-21.

4.S.Thiagarajan

... Respondents

Writ Petition filed under Article 226 of The Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the notice dated 29.11.2017 issued by the 3rd respondent under Section 379 [A] of the Chennai City Municipal Corporation Act [Act 4 of 1919] and quash the same and consequently direct the respondents 1 to 3 to permit the petitioner to continue to carry on his business at No.120, Mint Street, Kothaval Chavadi, Sowcarpet, Chennai-79.

For Petitioner : Mr.S.R.Raghunathan
For Respondents : Mr.A.Nagarajan for R1 to R3
Mr.K.Kannan for R4

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Petitioner and the Learned Counsel appearing for the Respondents No.1 to 3 and Respondent No.4.

2. According to the petitioner, he is the proprietor of an eatery 'Sri Dosai' located at door No.120, Mint Street, Kothaval Chavadi, Sowcarpet, Chennai-79. He is a tenant in respect of premises possessing a valid and subsisting licence as per Section 279 of Chennai City Municipal Corporation Act, 1919. The licence bearing code No.05-057-005722-2017-18 was issued by the First Respondent/Corporation of Chennai on 05.10.2017 to the petitioner for running an 'eatery'. The validity period of licence is up to 31.03.2018.

3. It comes to be known that the petitioner was served with a notice issued by the Assistant Revenue Officer/Second Respondent dated 22.11.2017, alleging that his tiffin stall in the aforesaid premises is contrary to the conditions of the licence issued under Section 279 of Chennai City Municipal Corporation Act, 1919.

4. In compliance with the demand made by the Second Respondent, the petitioner's Landlord appeared before the Third Respondent/Zonal Officer, Zone-V, Basin Bridge, Chennai and submitted a representation stating that the 'eatery' of the petitioner is being carried on in accordance with the terms of the licence granted and that, the petitioner had complied with all the requirements under the said notice. The petitioner's representation was accepted and he was informed that all further proceedings will be dropped.

5. To the shock and dismay of the petitioner, even after complying with the aforesaid notice dated 22.11.2017, the version of the petitioner is that he was slapped with another notice dated 29.11.2017, requiring him to stop his trade alleging that he is carrying on business, contrary to the conditions of licence and that, he has not complied with their notice dated 22.11.2017 and running the business, in spite of handing over all the related documents in person to the Zonal Officer.

6. The version of the petitioner is that on 01.12.2017, his shop was sealed by the Zonal Officer of the Corporation of Chennai, despite the fact that all the essentials of licence issued to him under Section 279 of Chennai City Municipal Corporation Act, 1919 were complied with.

7. The Fourth Respondent in the present Writ Petition on earlier occasion, filed W.P.No.24970 of 2017 before this Court, seeking necessary direction to seal the present

petitioner's premises alleging that his shop did not possess proper licence and this was merely an attempt on the part of the Fourth Respondent, for extraneous reasons to prohibit the petitioner from continuing with his business on baseless grounds and allegations.

8. In fact, this Court in W.P.No.24970 of 2017, had directed the Fourth Respondent herein to submit a representation to the Zonal Officer of the Chennai Corporation and to dispose of the said representation thereafter by the concerned authority.

9. In fact, the Fourth Respondent herein, as an Inspector of Commercial Tax department, who lives opposite to the shop of the petitioner and due to disgruntlement and also because of previous enmity against the present Writ Petitioner's Landlord wanted to close the petitioner's shop, had exercised his undue influence upon the Corporation authorities and without making an investigation into the veracity and basis of the allegation of the Fourth Respondent, according to the petitioner, the authorities has sealed his shop on the ground that he did not possess a valid licence under Section 279 of Chennai City Municipal Corporation Act, 1919. But according to the petitioner, he is in possession of a valid licence and the shop is run in strict compliance of the terms of the valid licence, because irreparable hardship was caused to the petitioner.

10. Even after personal representation to the Respondent on several occasions, made by the petitioner, the Third Respondent had not considered the same and his shop remain sealed. Hence, the petitioner has filed the present writ petition.

11. In fact, the stand of the First Respondent/Commissioner, Corporation of Chennai is that the petitioner had applied for a licence from the Corporation for running his trade at door No.120, Mint Street, Kothaval Chavadi, Sowcarpet, Division No.57, Chennai-79, with prescribed fees thereto. After inspection, the petitioner's request was considered and ultimately, a trade licence was issued in his favour as per Schedule-IV under Section 279 of Chennai City Municipal Corporation Act, 1919.

12. Based on the complaint of the Fourth Respondent, the Respondent/Corporation had issued a notice under Chennai City Municipal Corporation Act, 1919 to the petitioner/'Shree Dosai' on 22.11.2017 in regard to the encroachment made on the platform. Since no reply was received from the petitioner and after receipt of notice dated 22.11.2017, issued for violation made by the petitioner, the premises in question was inspected on 27.11.2017 and it came to light that the food was prepared on footpath and the Gas cylinders were kept on road side without any safety to the General Public. Only thereafter,

the Respondent/Corporation had issued a notice to the petitioner on 29.11.2017 under Section 379-A of Chennai City Municipal Corporation Act, 1919 and in reality, the petitioner's trade was sealed on 01.12.2017 by the Respondent/Corporation in the interest of safety of General Public.

13.The Learned Counsel for the Respondent No.1/Corporation submits that the petitioner had not given any assurance that he will not encroach the footpath for running his trade and also that, the Respondent/ Corporation had desealed the petitioner's shop on 25.01.2018 and during inspection, it was noticed that the petitioner is running his trade without any obstructions being made to the pedestrians and without making any encroachment on the footpath.

14.Per contra, it is the submission of the Learned Counsel for the Fourth Respondent that the Fourth Respondent on earlier occasion, filed W.P.No.24970 of 2017 before this Court, stating that the present Writ Petitioner is running Dosai shop in the name and style of 'Sri Dosai' in an area of 100 sq.ft. and the said shop is being run right from 6.00 a.m. to 12.30 midnight at a stretch every day and the petitioner has employed two more employees to prepare dosai and that the Writ Petitioner has kept a very big 'Dosai Thava' in Corporation Land and right from 6.00 a.m., the said 'Dosai Thava' is burning and while preparing Dosai, the petitioner is using Gas cylinders which are being kept in open area. Also that, the petitioner is preparing Poori as well as Vadai by using the Gas cylinders etc.

15.The Learned Counsel for the Fourth Respondent points out that the petitioner had not fixed or erected any 'Fire Extinguisher' which could be used, in case of fire and as such, he is doing the business in a dangerous way.

16.Also that, the petitioner's shop 'Sri Dosai' was sealed and closed on 01.12.2017 for not having licence on 19.09.2017 and after inspection by the Third Respondent, the petitioner paid necessary fees for running the 'eatery' on 05.10.2017 and that too, a new licence alone was given to him and suppressing the nature of writ filed by the Fourth Respondent, the petitioner had obtained licence as claimed by him, but continuing his activities by keeping gas cylinders encroaching the Corporation land and causing nuisance to the General Public and doing the business in dangerous way and he has not provided 'Fire Extinguisher' in the premises. The grievance of the Fourth Respondent is that the petitioner had not complied the Rules and Procedures in conducting such 'eatery' business and as such, the Writ Petition filed by the petitioner is liable to be dismissed.

17.It is to be borne in mind that the term 'Eating House' is not defined in the Municipal Corporation Act and therefore,

one must resort to the ordinary Dictionary meaning of the said expression, as per decision Messrs. Sen Mahasay and Another Vs Corporation of Calcutta [AIR 1966 Calcutta 203]. Undoubtedly, to run any one of the specified shops like Eating House, a Tea Shop, a Coffee House, a Refreshment Room, a Restaurant, or any place or to keep any lodging house or for consumption of any food or drink of any place where food is prepared or sold for sale then. Undoubtedly, a licence is very much required.

18. It is to be pointed out that as per Section 379-A of the Chennai City Municipal Corporation Act, 1919, if under this Act or any Rule or Bye-law, the licence or permission of the Council [Standing Committee] or Commissioner or registration in the office of the Corporation is necessary for doing of any act and if such act is done without such licence or permission or registration or in manner inconsistent with the terms of any such licence or permission, then the Commissioner may by notice require the person so doing such act to alter, remove or as far as practicable restore to its original state the whole or any part of any property, movable or immovable, public or private affected thereby within a time to be specified in the notice. Also that, as per Section 379-A [b], the Commissioner or any officer duly authorized by him may also enter into any building or land, where such act is done and take all such steps to prevent the continuance of the said such act.

19. It is not in dispute that business is only a right to do or continue to do something which, in the absence of licence, such right might be unlawful. Ordinarily, licence is only a privilege and as such, it is neither transferable nor heritable. Also that, a licence is not annexed to the property in respect of which it is enjoyed only it is transferable or heritable right, but is a right purely transferred between the Grantor and the Tenancy.

20. As far as the present case is concerned, the First Respondent/Commissioner of Chennai Corporation has come out with a categorical plea that on inspection, the petitioner is now running the 'eatery' without any obstruction being made to the Public and without committing any encroachment on the footpath. Also that, this Court taking note of a prime fact that the licence was granted by the Corporation authorities till 31.03.2018 and even though, it is captioned as new licence, it cannot be said that the petitioner as on date is running the 'eatery' without any licence. After obtaining the proper licence and carrying on the business, is in the considered opinion of this Court will enure to the benefit of the petitioner.

21. Therefore, this Court is of the considered view that the petitioner in future is hereby directed to obtain

necessary periodical licence for running the 'eatery', viz; 'Sri Dosai' in the premises at door No.120, Mint Street, Kothaval Chavadi, Sowcarpet, Chennai-79 and also to renew that periodical licence soon after its expiry, by making requisite application well in advance, before the Corporation authorities. Also that, the petitioner is directed not to carry on his trade on the footpath on any score and not to cause any obstruction to General Public. Henceforth, the petitioner is to carry on his 'eatery' business only with a licence obtained from the Competent Authority strictly in accordance with Rules. Otherwise, it is open to the Respondents No.1 to 3 to take necessary action against the petitioner, of course in accordance with law. The petitioner is also directed to adhere to the safety measures and also has to provide 'Fire Extinguisher' in his shop to meet any happening of contingency and it is open to the Respondents No.1 and 2 to carry out periodical inspection of the petitioner's 'Sri Dosai' eatery, especially in the interest of safety of General Public and the customers who visits the shop.

22. Consequent to the licence being obtained by the petitioner for the official year ending 31.03.2018 and the said fact is not being disputed by the parties concerned, suffice it for this Court to quash the impugned Notice dated 29.11.2017 issued by the Third Respondent. Consequently, the Writ Petition succeeds.

23. In fine, this Writ Petition is allowed. Resultantly, the impugned Notice dated 29.11.2017 issued by the Third Respondent is hereby set aside by this Court, for the reasons assigned in this Writ Petition. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings, Madras-3.

2.The Assistant Revenue Officer,
Corporation of Chennai, Zone-V,
No.61, Basin Bridge, Chennai-21.

3.The Zonal Officer,
Zone-V, Corporation of Chennai,
No.61, Basin Bridge, Chennai-21.

+lcc to Mr.K.Kannan, Advocate SR.No.11504/18
+lcc to Mr.S.R.Raghunathan, Advocate SR.No.11923
+lcc to Mr.A.Nagarakjan, Advocate Sr.No.11837

AK (CO)
sm:27.2.2018

W.P.No.1601 of 2018
and
W.M.P.No.2012 of 2018



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