

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2018

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

WP.No.19143 of 2010

and

M.P.No.1 of 2010

Mr.Deepak Arya

...Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai 600 003.
 2. The Assistant Commissioner,
Corporation of Chennai, Zone X,
No.115, Dr.Muthulakshmi Salai,
Adyar, Chennai 600 020.
 3. The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
-Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to letter of the 2nd respondent under reference Na.Ka.No.R6/784/2010, dated 04.08.2010 and quash the same and direct the respondents 1 and 2 to consider the petitioner's application dated 24.03.2010 to issue license to run the shop namely "Medi Pride" situated at premises bearing Door No.3, Tiger Vardachari Road, Kalakshetra Colony, Besant Nagar, Chennai 600 090 deeming it as mixed use zone as per Second Master Plan Development Regulations for Chennai Metropolitan Area in accordance with law.

For Petitioner : M/s.A.Thayaparan
For Respondents : Mrs.Karthikaa Ashok, (for RR1 & 2)
Mr.P.Tamilmani (for R3)

ORDER

Heard the learned counsel for the petitioner and the learned Standing Counsels for the respondents 1 & 2 and the learned Standing Counsel for the 3rd respondent.

2. The petitioner has filed this Writ Petition for issuance of a Writ of Certiorarified Mandamus to quash the order of the 2nd respondent, dated 04.08.2010 and direct the respondents to consider the petitioner's application dated 24.03.2010 to issue license to run the shop namely "Medi Pride" situated at premises bearing Door No.3, Tiger Vardachari Road, Kalakshetra Colony, Besant Nagar, Chennai 600 090 deeming it as mixed use zone as per Second Master Plan Development Regulations for Chennai Metropolitan Area in accordance with law.

3. According to the petitioner, he was running a shop in the name and style of "Medi Pride" in an extent of 1000 sq.ft. In compliance of Sections 282 to 304 of the Chennai City Municipal Corporation Act, the petitioner applied for issuance of trade licence. But the application was rejected on the ground that the shop is situated in a residential area and is having an extent of more than 400 sq.ft.

4. The learned counsel for the petitioner submitted that the impugned order has been passed without providing any opportunity to the petitioner, and that Regulation 6(7) of the Development Control Regulations for the Chennai Metropolitan Area, states if the building has access from the road having width of 12 metres, it shall be deemed to be in the mixed residential use zone, hence, the said area is to be considered as mixed residential use zone and a trade licence up to an extent of 5,380 sq.ft can be issued.

5. The learned counsel for the petitioner submitted that if an opportunity is given to the petitioner, he is ready to establish his case before the respondents.

6. Per contra, the learned Standing Counsel for the respondents made submissions in support of the impugned order.

7. The main grievance of the petitioner is that the impugned order was passed in violation of the principles of natural justice and as per the Development Control Regulations for the Chennai Metropolitan Area, the petitioner is entitled to get trade licence from the 2nd respondent. Therefore, I am of the opinion that the respondents ought to have given opportunity before passing the impugned order.

8. In such view of the matter, the order impugned in this Writ Petition is set aside and the same is remitted to the second respondent and he shall pass orders afresh, after providing an opportunity of hearing to the petitioner, as expeditiously as possible.

9. With the above observation and direction, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

arr

To

1. The Commissioner,
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3. The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

+1cc to Mr.A.THIAAYAPARAN, Advocate, S.R.No.27752
+1cc to Mr.P.TAMILMANI, Advocate, S.R.No.28286
+1cc to Mr.A.Karthika Ashok, Advocate, S.R.No. 27834

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NA(CO)
TR(08/05/2018)

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