

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.24923 of 2010

And

M.P.No.2 of 2010

- 1.N.Paramasivam (Deceased)
- 2.Ramani Ammal
- 3.P.Premchandru
- 4.P.Praveen Kumar
- 5.Devi

(P2 to P5 are substituted as LRs
of the deceased P1 vide order
dated 25.07.19, made in
WMP.No.4051/16 in
W.P.No.24923/10 by MDIJ)

... Petitioners

Vs.

- 1.The Commissioner
Arakkonam Municipality,
Arakkonam, Vellore District.

- 2.A.Durairaj

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records made in the impugned order in Na.Ka.No.3432/09/H1 dated 18.10.2010 passed by the 1st respondent quash the same.

For Petitioners : Mr.T.N.Rajagopal
Senior Counsel
for Mr.M.V.Venkataseshan

For Respondents : Mr.J.Ramesh for R1
Additional Government Pleader
Mr.P.Nethaji for R2

O R D E R

The writ petition has been filed seeking issuance of Writ of Certiorari to call for the records made in the impugned order in Na.Ka.No.3432/09/H1 dated 18.10.2010 passed by the first respondent and to quash the same.

2.The petitioner who filed this writ petition died during the pendency of this writ petition and hence, his legal heirs are substituted as petitioners in this writ petition.

3.The case of the deceased petitioner is that he is doing business in cement, iron and steel from the year 1987 onwards after getting proper licence. The petitioner is also the owner of the property at Door No.2/17-B, Hiji Ibrahim Kutty Street, Kriblespet, Arakonam and the said property is used for storing iron and steel rods.

4.It is the further case of the petitioner that he purchased the property bearing Door No.206, Gandhi Road, Palanipet, Arakkonam, by a registered sale deed dated 19.06.2003 from one V.Krishnaswamy. The said V.Krishnaswamy purchased the said property from one A.C.Sundaraj, who is the brother of the second respondent. There was some enmity inbetween the second respondent and the said A.C.Sundaraj and hence the second respondent gave trouble to the petitioner. Therefore, the petitioner filed a suit in O.S.No.250 of 2009 before the District Munsif Court, Arakonam and the said suit was decreed on 29.03.2010.

5.It is the further case of the petitioner that the second respondent developed enmity towards the petitioner and gave a complaint to the first respondent objecting his storing of cement in Door No.206, Gandhi Road, Palanipet, Arakkonam. The first respondent issued a show cause notice dated 16.07.2010 to the petitioner stating that the second respondent had filed a writ petition in W.P.No.17298 of 2009 before this Court and this Court has directed the first respondent to take necessary action after hearing the petitioner.

6.It is the further case of the petitioner that on receipt of the notice from the first respondent, the petitioner gave his detailed explanation to the first respondent on 19.08.2010, however, the first respondent without calling the petitioner for personal inquiry and without even inspecting the premises, passed the impugned order, against which, the present writ petition has been filed.

7.The learned Senior Counsel appearing for the petitioner would submit that the Municipal Engineer cum Commissioner

(incharge) issued the show cause notice dated 16.07.2010 under Sections 41, 42, 43, 44 and 134 of the Tamil Nadu Public Health Act, 1939 and would further submit that Sections 41 and 42 of the Tamil Nadu Public Health Act, 1939, is not applicable to the petitioner since the petitioner used the premises only as a godown and he did not use the same for any commercial activities and invoking said provisions are bad in law. Accordingly, he prayed for allowing the writ petition.

8.The learned counsel appearing for the second respondent did not dispute the facts regarding the suit filed by the petitioner. However, he would submit that the petitioner created nuisance in the residential zone and hence, the second respondent made representation before the concerned Authorities and hence the impugned order was passed by the first respondent.

9.Heard the learned counsel appearing on either side and perused the materials available on record.

10.Perusal of records disclose that the civil suit filed by the petitioner was decreed in favour of him. Thereafter, it appears that the second respondent made representation to the Municipal Authorities to take action against the petitioner on the ground that the petitioner caused nuisance in the residential zone by storing cement and also filed a writ petition before this Court. After the disposal of the writ petition, the Municipal Authorities issued show cause notice dated 16.07.2010 under Sections 41, 42, 43, 44 and 134 of the Tamil Nadu Public Health Act, 1939, to the petitioner. The petitioner submitted his detailed explanation, however, the impugned order came to be passed.

11.Sections 41, 42, 43, 44 comes under Chapter VI of the Tamil Nadu Public Health Act, 1939. Perusal of Section 44 of the Tamil Nadu Public Health Act, 1939 - Power of Health Officer to abet nuisance reveals that if the Health Officer is satisfied, whether upon information given under Section 43 or otherwise of the existence of a nuisance, he may, by notice require the person by whose act, default or sufferance, the nuisance arises or continues, or, if that person cannot be found, the owner or occupier of the premises on which the nuisance arises or continues, to abet the nuisance and to execute such works and take such steps as may be necessary for that purpose.

12.In the present case, the petitioner is doing business from the year 1987 onwards, however, the second respondent made representation to the Municipal Authorities and filed the writ petition only during the year 2009, thereby, the impugned order came to be passed. Hence, the petitioner established that due

to personal enmity, the second respondent has made representation to the Municipal Authorities. Hence, this Court is satisfied that the first respondent without conducting any enquiry as contemplated under the Act, has mechanically passed the impugned order and this Court is inclined to interfere with the impugned order.

13.The writ petition is accordingly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner, Arakkonam Municipality,
Arakkonam, Vellore District.

+1cc to Mr.M.V.Venkataseshan, Advocate, S.R.No.65997

+1cc to the Government Pleader, S.R.No.66748

W.P.No.24923 of 2010

And

M.P.No.2 of 2010

BS (CO)
CS/23/09/2019

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