

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.9250 of 2018
and WMP No.11136 of 2018

N.Sekar

... Petitioner

vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.
2. The Assistant Commissioner,
Zone VII,
Corporation of Chennai,
Ambattur, Chennai.
3. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
77-A, South Avenue Road,
Ambattur, Chennai - 600 053.
4. S.Boopathy ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, directing the respondents to consider the petitioner's representation dated 19.09.2016 to remove the flour mill situated at No.9/76, Sivalingapuram Agraharam, North Railway Station Road, Korattur, Chennai - 600 076 in the name and style of Vinayaka Flour Mill.

For Petitioner : Mr.A.G.Rajkumar

For Respondents: Mr.V.C.Selvasekaran (for R1 & R2)
Standing counsel for Chennai Corpn.
Mr.T.K.Viswanath (for R4)
No appearance for R3

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

N.Sekar, Secretary, Sivalingapuram Residence Welfare Association, Chennai, has sought for a writ of mandamus, directing the Commissioner, Corporation of Chennai, Chennai, the Assistant Commissioner, Zone VII, Corporation of Chennai, Chennai and the District Environmental Engineer, Tamil Nadu Pollution Control Board, Chennai, respondents 1 to 3 herein respectively, to consider his representation dated 19.09.2016 to remove the flour mill situated at No.9/76, Sivalingapuram Agraharam, North Railway Station Road, Korattur, Chennai - 600 076 in the name and style of Vinayaka Flour Mill.

2. Supporting the prayer sought for petitioner has averred as follows:

(i) Petitioner is the Secretary of Sivalingapuram Residents Welfare Association in Reg.No.06/2016, and Sivalingapuram consists of 200 houses and 500 families live in these houses. The area has large number of students and senior citizens.

(ii) Besides contending that the flour mill causes noise and air pollution, and thus affect students and aged people, the 4th respondent is operating the flour mill without obtaining permission and necessary certificate from the Pollution Control Board. Said fact was known from the reply dated 05.03.2016 on an application under Right to Information Act. The 4th respondent has not obtained necessary electricity connection from the electricity Board. Mill is not paying sales tax to the Government. The 4th respondent has filed a vexatious suit, against the petitioner and respondents 1 and 2, in O.S.No.334 of 2015 before the District Munsif Court, Ambattur.

(iii) Various representations were given to the respondents 1 to 3. The Commissioner, Corporation of Chennai, the 1st respondent made a recommendation to the Commissioner, Ambattur Municipality to take action against the 4th respondent under the Local Body Rules, 1920 and General Health Rules, 1939. However, no action has been taken to remove the flour mill. Therefore, petitioner made a representation dated 19.09.2016 to remove the mill. As there was no response to his representation, he has filed the instant writ petition for the relief stated supra.

3. Earlier, when the matter came up on 12.12.2018, Mr.T.K.Viswanath, learned counsel for the 4th respondent submitted that license has been obtained.

4. However, upon perusal of the documents produced before this Court, we find that Greater Chennai Corporation, Revenue

Department has issued notices dated 26.05.2018 and 03.07.2018 to Vinayaka Flour Mill, situated at Door No.9/76, Sivalingapuram Agraharam, North Railway Station Road, Korattur, Chennai - 600 076, calling upon the said mill to comply with the requirements for license within a specified time.

5. Perusal of the notices indicate that said flour mill has been running without a license and therefore, notice under Section 279 of the Chennai City Municipal Corporation Act IV of 1919 has been issued. Thus, the contention of Mr.T.K.Viswanath, learned counsel for the 4th respondent that license has been obtained, is not correct.

6. Observing the same, we directed Mr.V.C.Selvasekaran, learned standing counsel for respondents 1 and 2 to ascertain from Greater Chennai Corporation, Chennai, about the further action taken on the notices.

7. On this day, when the matter came up for further hearing, Mr.V.C.Selvasekaran, learned standing counsel for respondents 1 and 2 submitted that since respondent no.4, was running the flour mill without license, action has been taken under Section 379-A of Chennai City Municipal Corporation Act IV of 1919, and that the premises have been sealed. Supporting the same, learned counsel for respondents 1 and 2 have submitted photographs to that effect.

8. However, Mr.T.K.Viswanathan, learned counsel for the 4th respondent made a preliminary objection to the writ petition as to the locus of Mr.N.Sekar, in filing a public interest litigation, when Sivalingapuram Residence Welfare Association has not passed any resolution authorising him, petitioner to file a public interest writ petition. Reliance was also made to a decision of this Court made in WP No.4464 of 2019 dated 15.02.2019 [Satta Panchayat Iyakkam Vs. State of Tamil Nadu & others].

9. Perusal of the supporting affidavit shows that Sivalingapuram Residence Welfare Association is not the petitioner. Writ petitioner/Mr.N.Sekar has described himself as Secretary of Sivalingapuram Residence Welfare Association and filed the instant writ petition. It is trite law that any individual or an registered association, can file a writ petition, much less a public interest litigation also. In the instant case, Mr.N.Sekar, describing himself as the Secretary of an Association has filed the writ petition in his individual capacity and for the said reason, we overrule the objection of Mr.T.K.Viswanath, learned counsel for the 4th respondent that instant writ petition does not satisfy the requirement of a public interest writ petition.

10. Section 279 of the Chennai City Municipal Corporation Act IV of 1919, reads thus.

279. Prohibition in respect of lodging houses.--

(1) No person shall without or otherwise than in conformity with the terms of a licence granted by the commissioner in this behalf, keep any lodging house, eating-house, tea-shop, coffee-house, café, restaurant, refreshment room, or any place, where the public are admitted for repose or for consumption of any food or drink or any place where food is sold or prepared for sale :

provided that no such licence shall be required for a lodging house as defined in the Tamil Nadu Public Health Act, 1939, if the keeper thereof been registered under that Act.

Explanation.---"Lodging house" means a hotel, boarding house, choultry or rest-house other than a choultry or rest-house maintained by the Government or a local authority, unlicensed emigration depot or any place where casual visitors are received and provided with sleeping accommodation with or without food on payment but does not include a students' hostel under public or recognized control.

(2) The commissioner may, at any time, cancel or suspend any licence granted under sub-section (1) if he is of opinion that the premises covered thereby are not kept in conformity with the conditions of such licence or with the provisions of any by-law made under section 349 relating to such premises whether or not the licensee is prosecuted under this Act.

11. Premises seemed to have been sealed under Section 379-A of the Chennai City Municipal Corporation Act IV of 1919, and the same reads thus.

379-A. Consequences of failure to obtain licences, etc., or of breach of the same.--(1)if under this act, or any rule, by-law or regulation made under it, the licence or permission of the council, standing committee or commissioner or registration in the office of the corporation in necessary for the 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--

(a) 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;

(b) the commissioner or any officer duly authorized by him may also enter into or on any building or land where such act is done and take all such steps as may be necessary to prevent the continuance of such act; and

(c) if no penalty has been specifically provided in this Act for so doing such act, the person so doing it shall be liable on conviction before a magistrate to a fine not exceeding fifty rupees for every such offence.

(2) No claim shall lie against the commissioner or any other person for any damage or inconvenience caused by the exercise of the power given under this section or by the use of the force necessary for the purpose of carrying out the provisions of this section."

12. Inasmuch as the premises has been sealed, there is no need to issue a mandamus, as prayed for, to consider the representation of the petitioner dated 19.09.2016. Respondent No.4, is stated to have submitted an application for grant of license. It is open to respondent No.4, to take recourse under law.

13. With the above observation, writ petition is disposed of. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
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Corporation of Chennai,
Ambattur, Chennai.

3. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
77-A, South Avenue Road,
Ambattur, Chennai - 600 053.

+2cc to Mr.A.G.Rajkumar, Advocate, S.R.No.71977
+1cc to Mr.T.K.Viswanath, Advocate, S.R.No.71877

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and WMP No.11136 of 2018

NRJK (CO)
CS/03/10/2019



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