

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Petition No.17801 of 2019

Mr.Deevik Garg
Proprietor
M/s.Hanuman Pet Flakes
Edapalayam, Alamathi Village,
Ponneri Taluk,
Tiruvallur District. ...Petitioner

Vs.

- 1.The Member Secretary
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 2.The Executive Officer-cum-President,
Alamathi Village Panchayat,
Alamathi Village,
Sozhavaram Panchayat Union,
Tiruvallur District.
- 3.The Principal Secretary to Government,
Housing and Urban Development Department,
State of Tamil Nadu
Fort St.George - Secretariat,
Chennai - 600 009.
- 4.The Tamil Nadu Pollution Control Board,
represented by its Chairman,
No.76, Mount Salai,
Guindy Industrial Estate,
Guindy, Chennai - 600 032. ... Respondents

(R4 -impleaded as per order dated 18/06/2019 in WMP No.12910/19
in WP SR No.31561/2019)

Writ Petition filed under Article 226 of The Constitution
of India praying for issuance of a Writ of Mandamus to direct

the respondents 1 and 3 herein to consider petitioner's representation dated 30.06.2018 for the purposes of re-classification of the land situate in Survey Nos.339/1A, 2A, 339/1A2B and 339/6A, Alamathi Village, Tiruvallur District, for the purposes of continuation of the usage of his land for plastic recycling unit.

For Petitioner : Mr.T.T.Ravichandran

For Respondents: Mr.S.Thiruvengadam for R-1
Mr.E.Balamurugan
Special Government Pleader for R-2

Mr.V.Shanmuga Sundar
Special Government Pleader for R-3

Mr.Abdul Saleem R-4

ORDER

(The Order of the Court was made by R.Subbiah, J)

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents 1 and 3 herein to consider the petitioner's representation dated 30.06.2018 for the purposes of re-classification of the land situate in Survey Nos.339/1A, 2A, 339/1A2B and 339/6A, Alamathi Village, Tiruvallur District, for the purposes of continuation of the usage of his land for the plastic recycling unit.

2. The petitioner is the proprietor of M/s.Hanuman Pet Flakes, having Registered Office at B.No.23, Lawrence Road, Industrial Area, Delhi. He submitted an application under the Export Oriented Scheme 2004-09, dated 15.04.2010 to the Ministry of Commerce and Industry, Department of Commerce, Government of India, for setting up a recycling plastic unit for the purpose of producing pet Flakes from pet bottles and pet grindings with an annual capacity of 7200 Metric tonnes in the said Survey Numbers. The Ministry of Commerce and Industry, Government of India, has given permission on 28.04.2010 under E.O.U. scheme, with certain conditions as enclosed in the annexure therein, to start the unit in the Madras Export Processing Zone at Chennai. Such permission was given for a period of five years from the date of commencement of production, with an option to increase the same. The production was permitted to be undertaken in the Customs bonded area coming within the jurisdiction of the concerned Commissioner of Customs. Only after satisfying about the feasibility of the Export Oriented Unit (E.O.U), the said permission was granted. There was a specific provision to the effect that provisions will have to be made and the Government will have to be satisfied in regard to the process hazards for

ensuring Plant safety. The Government of India issued a Green Card with an approval to start 100% E.O.U and the Unit was entitled to top priority treatment from all concerned of the Central and State Government Departments and other organisations concerned in the matter. The petitioner had also taken all steps to approach the Tamil Nadu Pollution Control Board for the purpose of obtaining their requisite consent.

3. It is the further case of the petitioner that the plastic recycling unit by itself is a project to safeguard environment and pollution. The said pet Flakes are utilised for the purposes of manufacturing textiles, garments and other related products and wasted pet bottles are the raw materials for the manufacture of pet Flakes. The categories of process waste and post consumer waste are converted into pet Flakes through an operational section and the said manufacturing process is 100% effluent free. The recycling of the plastic waste material is an absolutely necessary to prevent environment degradation, since the plastic materials are not bio-degradable.

4. It is also stated by the petitioner that the Unit aforesaid suffered a serious setback in the year 2011 and therefore, it was unable to meet 100% Export Oriented Unit obligations and the Green Card issued by the Ministry of Commerce and Industries was surrendered to the Government. The petitioner continued the manufacture and supply of pet Flakes to the local markets. The petitioner submitted an application on 09.11.2011 to the Tamil Nadu Pollution Control Board under the Water (Prevention and Control of Pollution) Act, seeking consent from the Board to continue the manufacturing process. But without considering the said application, the District Environmental Engineer of the Tamil Nadu Pollution Control Board, Ambattur issued a show cause notice stating as if there was waste water discharge from washing operators without any treatment and causing water pollution. Even before the petitioner could submit his explanation, the District Environmental Engineer through its Assistant Engineer, conducted an inspection and without hearing the petitioner, issued an order on 02.01.2012 stating that the Unit is situated in catchment area, which is restricted for development under the Development Control Rules and Regulations as notified by the CMDA and rejected the application. The petitioner sent a reply to the aforesaid proceedings bringing to the notice of the District Environmental Engineer of the Tamil Nadu Pollution Control Board stating that the order is barred by the Government Order in G.O.No.127, Environment and Forest (EC-III), dated 08.05.1988 and the petitioner also brought to his notice that appropriate STB Plant will be set up shortly. It was also brought to the notice of the concerned authority that approval for the site was obtained from the Government of India, Ministry of Commerce and Industries and only thereafter, production was started after approval.

5. It is further stated by the petitioner that he filed appeal in Appeal Nos.30 and 31 of 2012 before the concerned Appellate Authority, Tamil Nadu Pollution Control Board, under Section 28 of the Water (Prevention and Control of Pollution) Act, which are still pending. In the aforesaid appeals, the Pollution Control Board sought for a direction from the Appellate Authority directing the petitioner to put an effluent treatment plant and the same had also been recorded in the order of the Appellate Tribunal, dated 25.07.2013 and at the relevant point of time, the effluent treatment plant was already set up by the petitioner after incurring cost of Rs.30 lakhs. Thereafter, the officials of the District Environmental Office inspected the plant and at the relevant point of time, the petitioner's unit was not given any notice. The petitioner states that there was no generation of process effluent nor waste water and the plant was also set up as per global standards. The aforesaid facts have been intimated to the Appellate Authority.

6. The petitioner further adds that the said appeals were argued at length before the Appellate Authority during the month of April 2018, at which time, it was brought to the notice of the Tribunal that various industrial units in the Alamathi and Sholavaram area have approached this Court in W.P.Nos.18388, 18396, 18400, 18997 of 2018 seeking for a direction from the State Government and the CMDA for the purpose of de-reserving the areas, apart from the catchment area from the Second Master Plan of the Chennai Metropolitan Area 2026 (Development Regulations) and also as per Section 38(b) of the Tamil Nadu Town and Country Planning Act. The Appellate Authority during the course of arguments, had observed that the power/scope of the appeal is limited and it may not be in a position to issue any direction to the Government for classifying the petitioner's land as an "industrial area", though the said area is no way connected with the catchment area as contended by the Tamil Nadu Pollution Control Board.

7. In the above backdrop, the petitioner sent a representation to the Government on 30.06.2018 stating that the unit of the petitioner was originally a 100% E.O.U. and presently, it is catering to the local markets after surrendering the Green Card and the unit has set up an effluent plant and there is no discharge of waste in and around the unit. The petitioner also brought to the notice of the Government about the order passed by this Court in a batch of Writ Petitions referred to above, dated 27.09.2016 in the matter of B.T.Enterprises Pvt. Ltd., Vs. State of Tamil Nadu and others, in which this Court has directed the Government to consider the representation of the aforesaid unit(s) after affording an opportunity to them and also taking into consideration the parameters of the ecological damage. The aforesaid representation had been acknowledged by the Government, but till

date, the same had not been disposed of, nor the petitioner had been given an opportunity to put forth his case.

8. It is the further stand of the petitioner that he is still operating the recycling plant and there are adjoining units in and around the area where there are commercial establishments including colleges and other residential units. The Chennai-Thiruvallur High Road clearly demarcates the petitioner's land and the catchment area which is more than 500 meters from the unit where they are recycling the plastic bottles. The petitioner has also set up STP plant and there is no discharge of effluents as alleged by the Pollution Control Board. The petitioner reiterates that the Unit is not all situated in the catchment area and if so, it had been wrongly classified. The concerned authority of the Government has not considered the said representation of the petitioner till date and there is also no response from the CMDA. The claim of the petitioner for the purpose of re-classification of his lands for which the Government had granted patta, may be considered by the Government and other authorities. It is the further claim of the petitioner that the patta lands can never be considered as areas comprising the catchment area which is in a different Survey Number. The petitioner had invested huge amount of Rs.1 crore to set up the unit, and therefore, appropriate direction may be given by the State Government, though the Central Government through the Ministry of Industries and Commerce, had already granted permission to start 100% E.O.U. Hence, for all these reasons, the petitioner has filed the present Writ Petition for the relief stated supra.

9. This Court heard the learned counsel for petitioner, the learned counsel appearing for the first respondent, the learned Special Government Pleaders appearing for the respondents 2 and 3 and the learned counsel appearing for the fourth respondent and carefully considered their submissions and also perused the materials available on record.

10. Considering the limited scope of the prayer made in this Writ Petition and also taking into consideration the facts and circumstances of the case, this Court, without going into the merits of the case, directs the respondents to consider the said representation of the petitioner, dated 30.06.2018, conduct enquiry, afford an opportunity of personal hearing to the petitioner and necessary parties, pass appropriate orders and dispose of the said representation, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion on the merits of the claim made by the petitioner and it is for the respondents concerned to decide the same at the time of disposing of the said representation purely on merits.

11. With the above observations and directions, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar (Insp.cell)

//True copy//

Sub Assistant Registrar

gm/cs

To

- 1.The Member Secretary
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai
No.1, Gandhi Irwin Road,
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4. The Chairman,
The Tamil Nadu Pollution Control Board,
No.76, Mount Salai, सतयमेव जयते
Guindy Industrial Estate,
Guindy, Chennai - 600 032.

+1cc to Mr.S.Thiruvengadam, Advocate SR.No.58161

W.P.No.17801 of 2019

NMI (CO)
GMY (20/08/2019)