

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.Nos.9057 & 9299 /2019 & WMP.Nos.9849 & 9602/2019

K.R.Gopinath

... Petitioner in
W.P.No.9057/2019

M.Jayaraj

... Petitioner in
W.P.No.9299/2019

vs.

- 1.State by Chief Secretary to Government of Tamil Nadu
Fort St.George, Chennai-9.
- 2.State by Secretary to Government of Tamil Nadu,
Local Administration Department,
Fort, St.George, Chennai-9.
- 3.The District Collector, Kanchipuram District,
Kancheepuram.
4. The Commissioner, Kanchipuram Municipality,
Kanchipuram.

... Respondents in
both W.P's.

Common Prayer : Petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for records of the impugned Notice of the 4th respondent in Na.Ka.No.1719/2019/F1 dated 26.02.2019 and quash the same or issue any other appropriate writ or direction directing the respondents consequently to remove seal affixed on the premises of petitioner situated at 22/1, Madam Theru Kanchipuram [WP.No.9057/2019] and 109, Kavarai Theru, Kanchipuram [WP.No.9299/2019] respectively.

For Petitioners in both
Writ Petitions

.. Mr.M.Devaraj

For RR 1 to 3 in both WPs

.. Mr.V.Jayaprakash Narayanan
Government Pleader [In-charge]

For R-4 in both W.P's .. Mr.G.B.Rajesh

COMMON ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J)

By consent, both writ petitions are taken up together and are disposed of by this common order. Mr.V.Jayaprakash Narayanan, learned Government Pleader [in-charge] accepts notice on behalf of all the respondents.

2 The petitioners are the owners of the Units which print Digital Banners / Placards. According to them, on 12.03.2019, one of the officials attached to the 4th respondent / Municipality called from his cellphone, asking him to come to the Municipal Office with regard to the certain matters concerning Digital Banners. It was replied by stating that the owner was out of station and however, the caller on the either side asked to depute somebody to come to the Municipal Office. When that person went to the 4th respondent / Municipality office, an Anti-dated Notice dated 26.02.2019 was served and a forceful undertaking was given that no Digital Banners would be printed.

3 On the very next day, i.e., on 13.03.2019, by 8.30 p.m., the official attached to the Kanchipuram Municipality - 4th respondent herein, came to the premises of the petitioners and sealed the premises. The petitioners, challenge the illegality of the notice dated 26.02.2019 issued under Rule 7(1) of the Tamil Nadu Urban Local Bodies (Permission for Erection of Digital Banners and Placards) Rules, 2011, came forward to file these writ petitions.

4 Originally, these writ petitions were listed before the learned Single Judge and it was represented with regard to the erection of Digital Banners, this Court has seized of the matter in WP.Nos.33819/2018 etc., batch and Contempt Petition No.61/2019 and therefore directed the Registry post both these cases before this Bench and accordingly, the writ petitions are listed before this Court.

5 Mr.M.Devaraj, learned counsel for the petitioners has drawn the attention of this Court to Rule 7(1) of the Tamil Nadu Urban Local Bodies (Permission for Erection of Digital Banners and Placards) Rules 2011, and would submit that the said Rule enables the District Collector or Commissioner of Corporation of Chennai, as the case may be, clothing them with the power to confiscate or summarily remove the Digital Banners or Placards erected without permission and recover the cost of removal from the persons who has erected them and under no circumstances, the premises, which house the printing Units of the Digital Banners, cannot be sealed and in the light of the

fact that wrong provision of law has been quoted and that too, without affording any opportunity whatsoever, the premises of the petitioners came to be sealed on the next day on 13.03.2019 and prays for appropriate orders for the reason that the principles of natural Justice have not been adhered to.

6 Mr.V.Jayaprakash Narayanan, learned Special Government Pleader [In-charge] appearing for the respondents 1 to 3 has attention of this Court to the order of interim directed dated 19.12.2018 made in W.P.No.33819 of 2018 etc., batch and would submit that in terms of paragraph No.24 of the said order, an order of interim direction was passed, stating that unless the Government of Tamil Nadu and the concerned Local Bodies come out with clear undertaking that the relevant Rules and various orders passed by this Court will have to be followed strictly and scrupulously or at least in future, the recognised and registered political parties in the State shall not erect any Digital Banners/Placards on either side of the arterial roads, platforms, walkways/major roads and any other roads throughout the State of Tamil Nadu, as it tend to divert the attention of the road users, which include the riders of the two-wheelers and mechanised and other modes of transport and cause hindrance to the pedestrians, until further orders and as such, as a preventive measure, the said action has been taken.

7 This Court has carefully considered the rival submissions and also perused the materials placed before it.

8 It is relevant to extract the following provisions of the Tamil Nadu District Municipalities Act, 1920:-

Section 217:- [1] Any building constructed and used, or intended to be constructed and used, exclusively for the purpose of a plant-house, summer-house [not being a dwelling - house], poultry house, or aviary shall be exempted from the provisions of this Chapter other than section 196 provided the building be wholly detached from and situated at a distance of at least ten feet from the nearest adjacent building.

[2] The [Executive Authority] may grant permission at his discretion on such terms, as he may decide in each case to erect for a specified period, temporary huts or sheds for stabling, for watching crops, for storing tools or materials, or for other similar purposes. On expiry of the period specified, the [Executive Authority] may, by notice, require the owner of such hut or shed to demolish it.

Section 321:- General provisions regarding licences and permissions:- (1) Every licence and permission granted under this Act or any rule or by-law made under this Act shall specify the period, if any, for which, and the restrictions, limitations and conditions, subject to which the same is granted, and shall be signed by the [executive authority].

(2) Save as otherwise expressly provided in or may be prescribed under this Act, for every such licence or permission, fees may be changed on such units and at such rates as may be fixed by the municipal council.

(3) The council may- (a) Place the collection of such fees under the management of such persons as may appear to it proper; or (b) farm out such collection for any period not exceeding three years at a time and on such terms and conditions as it may think fit.

(3-A) Every order of a municipal authority granting or refusing a licence or permission shall be published on the notice board of the municipal council.

(4) Every order of a municipal authority refusing, suspending, cancelling or modifying a licence or permission shall be in writing and shall state the grounds on which it proceeds.

(5) Subject to the special provisions in Chapter X and XII regarding buildings and private markets, and subject to such sanction as may be required for the refusal of a licence or permission, [...] any licence or permission granted under this Act or any rule or by-law made under it may, at any time, be suspended or revoked by the [executive authority] if any of its restrictions, limitations or conditions is evaded or infringed by the grantee, or if the grantee is convicted of a breach of any of the provisions of this Act, or of any rule, by-law or regulation made under it in any matter to which such licence or permission relates, or if the grantee has obtained the same by misrepresentation or fraud.

(6) It shall be the duty of the [executive authority] to inspect places in respect of which a licence or permission is required by or under this Act, and he may enter any such place between sunrise and sunset and also between sunset and sunrise if it is open to the public

or any industry is being carried on in it at the time; and if he has reason to believe that anything is being done in any place without a licence or permission where the same is required by or under this Act, or otherwise than in conformity with the same, he may at any time by day or night without notice enter such place for the purpose of satisfying himself whether any provision of laws, rules, by-laws or regulations, any condition of a licence or permission or any lawful direction or prohibition is being contravened and no claim shall lie against any person for any damage or inconvenience necessarily caused by the exercise of powers under this sub-section, by the [executive authority] or any person to whom he has lawfully delegated his powers, or by any force necessary for effecting an entrance under this sub-section.

(7) When any licence or permission is suspended or revoked, or when the period for which it was granted, or within which application for renewal should be made, has expired, whichever expires later, the grantee shall, for all purposes of this Act or any rule or by-law made under this Act, be deemed to be without a licence or permission until the order suspending or revoking the licence or permission is cancelled or, subject to sub-section(11), until the licence or permission is renewed, as the case may be.

(8) Every grantee of any licence or permission shall at all reasonable times, while such licence or permission remains in force, produce the same at request of the [executive authority].

(9) Whenever any person is convicted of an offence in respect of the failure to obtain a licence or permission or to make a registration required by the provisions of this Act or any rule or by-law made under this Act, the magistrate shall, in addition to any fine which may be imposed, recover summarily and pay over to the municipal council the amount of the fee chargeable for the licence or permission or for registration, [and may in his discretion also recover summarily and pay over to the council such amount, if any, as he may fix as the costs of the prosecution].

(9-A) Save as otherwise expressly provided in or may be prescribed under this Act, every

application for a licence or permission or for registration of the renewal of a licence or permission or registration, shall be made not less than thirty and not more than ninety days before the commencement of the year or of such less period as is mentioned in the application.

(10) Such recovery of the fee under Sub-Section (9) shall not entitle the person convicted to a licence or permission or to registration as aforesaid.

(11) The acceptance by the municipal council of the pre-payment of the fee for a licence or permission or for

registration shall not entitle the person making such pre-payment to the licence or permission or to registration, as the case may be, but only to refund of the fee in case of refusal of the licence or permission or of registration; but an application for the renewal of a licence or permission or registration shall until communication of orders on his application be entitled to act as if the licence or permission

or registration had been renewed; and save as otherwise specially provided in this Act, if orders on an application for licence or permission or for registration are not [received by the applicant within sixty days after the receipt of the application] by the [executive authority], the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the application, and subject to the laws, rules, by-laws, regulations and all conditions ordinarily imposed.

POWER TO ENFORCE LICENSING PROVISIONS, ORDERS, ETC.

338. Consequences of failure to obtain licences, etc., or of breach of the same:- If, under this Act, or any rule, by-law or regulation made under it, the licence or permission of the council or [executive authority] or registration in the municipal office is necessary for the doing of any act,

and if such act is done without such licence or permission or registration, or in a manner inconsistent with the terms of any such licence or permission, then-

(a) the [executive authority] 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 and further,

(b) if no penalty has been specially 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.

POLICE

355. Duties of Police Officers:- (1) It shall be the duty of every police officer - information which he receives of the design to commit or of the commission of any offence under this Act or any rule, by-law or regulation made under it, [and]

(b) [to assist the chairman, the executive authority] or any municipal officer or servant reasonably demanding his aid for the lawful exercise of any power [vesting in the chairman or the executive authority] or in such municipal officer or servant under this Act, or any such rule, by-law or regulation, [...]

(c) [...]

(2) Any police officer who omits or refuses to perform any duty imposed on him by this Act, shall be deemed to have committed an offence under Section 10 or under Section 44 of the [Tamil Nadu] District Police Act, 1859 (Central Act XXIV of 1859).

356. Power of Police officers to arrest persons:- (1) If any police officer sees any person committing an offence against any of the provisions of this Act or of any rule or by-law made under it, he shall, if the name and address of such person are unknown to him, and if the said person on demand declines to give his name and address, or gives a name and address which such officer has reason to believe to be false, arrest such person.

(2) No person arrested under sub-section (1) shall be detained in custody-

(a) after his true name and address are ascertained, or

(b) without the order of a magistrate for any longer time, not exceeding twenty-four hours from the hour of arrest, than is necessary for bringing him before a magistrate.

9 A perusal and consideration of the materials would disclose that a wrong provision of law has been quoted while issuing the impugned notices and that apart, without affording any opportunity whatsoever, the premises which house the printing Units, have been sealed. This Court, during the course of arguments, had put a specific question to the learned counsel appearing for the petitioner as to whether the petitioners had obtained any Trade Licence from the concerned Municipality and the answer given is in negative.

10 Unless, the concerned entity obtain a licence, it cannot run the business and despite if it runs the business, then they have to face the penal and other consequences that may enure out of the said Act. The learned counsel for the petitioners, on instructions, would undertake that in the event of the premises being de-sealed, unless necessary Trade License is obtained, the concerned petitioners, would not carry on the trade of printing the Digital Banners and the said submissions, on instructions, is placed on record.

11 In the considered opinion of the Court, since a wrong provision of law has been quoted while issuing the impugned notices and that apart, before sealing the premises, no opportunity whatsoever has been afforded to the petitioners to explain their stand. Hence, the impugned notices warrant interference. As and when the petitioners apply for Trade License to the 4th respondent / Municipality, it shall be processed as expeditiously as possible in accordance with law and appropriate orders to be passed at the earliest.

12 In the result, these writ petitions are allowed and the impugned notices dated 26.02.2019 in Na.Ka.No.1719/2019/F1 issued by the 4th respondent are hereby quashed. Consequently, the 4th respondent is directed to remove the seal affixed on the premises of the petitioners within a period of two days from the date of receipt of a copy of this order. As already undertaken by the petitioners, in the form of instructions to the learned counsel for the petitioners, after de-sealing of the premises, they shall not commence the business of printing Digital Banners/Placards unless they obtain necessary Trade License from the concerned authorities. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Chief Secretary to Government of Tamil Nadu
Fort St.George, Chennai-9.

2.The Secretary to Government of Tamil Nadu,
Local Administration Department, Fort, St.George, Chennai-9.

3.The District Collector, Kanchipuram District,
Kancheepuram.

4. The Commissioner, Kanchipuram Municipality,
Kanchipuram.

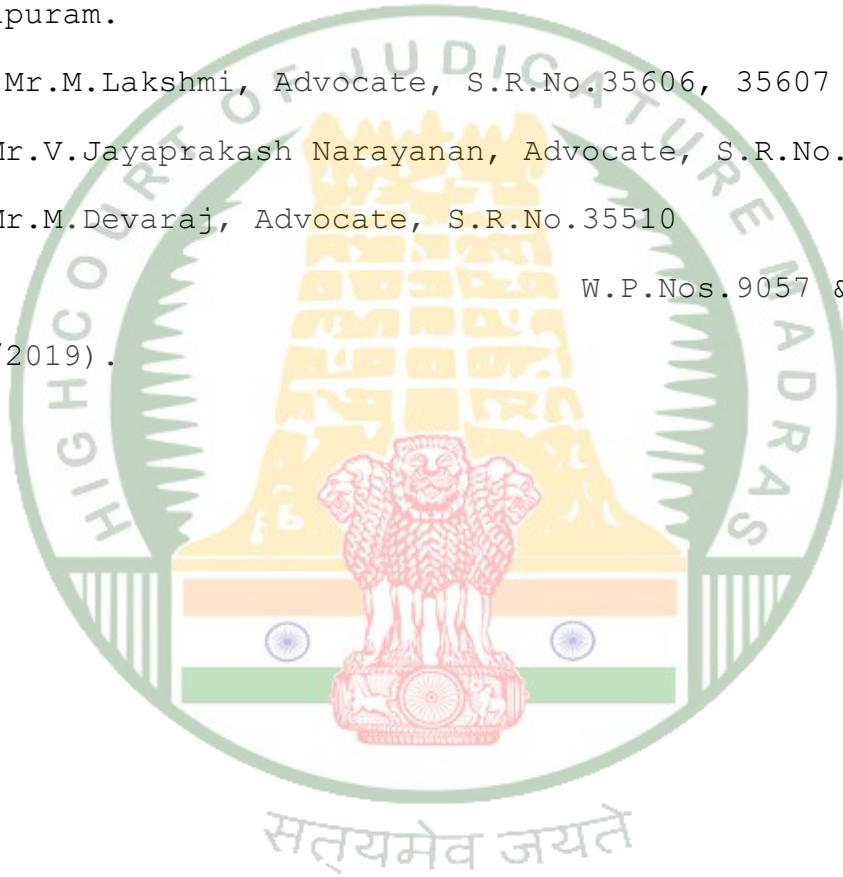
+2 ccs to Mr.M.Lakshmi, Advocate, S.R.No.35606, 35607

+1 cc to Mr.V.Jayaprakash Narayanan, Advocate, S.R.No.35905

+1 cc to Mr.M.Devaraj, Advocate, S.R.No.35510

W.P.Nos.9057 & 9299 /2019

VG-II(CO)
SSM(12/04/2019).



WEB COPY