

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.06.2019

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.9527 of 2019 and
WMP.No.10149 of 2019

Maha Sports Design Apparels Private Limited,
represented by its Director,
D.Dayakar
Registered office at
Mohanarangam Apartments,
Flat No.A2, Old No.117,
New No.122, Habibullah Road,
T.Nagar, Chennai 600 017. .. Petitioner

/versus/

1.The Commissioner,
Greater Chennai Corporation,
Rippon Buildings,
Chennai 600 003.

2.The Revenue Officer,
Greater Chennai Corporation,
Zone 8, Division 99,
No.36B, 2nd Cross Street, Pulla Avenue,
Shenoy Nagar, Chennai 600 030.

3.Sugam Vanijya Holdings Private Limited,
VR Bengaluru, Plot No.118,
Sy.No.40/9, Dyvasandra Industrial Area Stage II
KR PuramHobli Bengaluru 560 048. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India seeking Writ of Mandamus directing the 2nd respondent to consider petitioner's representation dated 13.03.2019 and consequently issue trade license to the petitioner's shop named 'SPEEDO' situated at 'VR MALL' Unit No.F-26, the first floor, Jawaharlal Nehru Salai, Thirumangalam, Anna Nagar, Chennai-600 040.

For Petitioner :Mr.Vijayan Subramanian

For Respondents :Mrs.Karthika Ashok,
Standing Counsel for Corporation
for R1 and R2
Mr.R.Parthasarathy for R3

O R D E R

The Writ Petition is filed seeking Writ of Mandamus directing the 2nd respondent to consider petitioner's representation dated 13.03.2019 for granting trade license.

2.The petitioner herein is a tenant under the third respondent, who is the owner of the premises by name 'VR Mall'. Apart from the petitioner, nearly 170 other tenants are in the building. When the petitioner sought for trade license from the Corporation, his request was rejected on the ground that the shopping mall in which the petitioner's business is located does not have water and sewerage connections.

3.Counters filed by the first respondent/Commissioner of Corporation and the third respondent/owner of the building reveals that the building owner has already made efforts to get water and sewerage connection and he has paid necessary fees. However, till date, Metro Water Department has not provided water and sewerage connections to the premises.

4. It is contended by the learned counsel appearing for the petitioner that having let out the premises and collected rent, the third respondent is bound to provide water and sewerage connections, which will enable them to get trade license. However, the fact remains that the building does not have water and sewerage connections. Whereas it is contended by the learned counsel appearing for the third respondent that the building is having a 'zero discharge' facility which treats sewerage and there is no discharge of sewerage from out of the premises.

5. The Pollution Control Board has inspected the premises and had already certified that 'zero discharge' facility is available in the premises. Whiles, when the procedure for issuing trade license does not specifically indicate that the building should have water and sewerage connections, the refusal of the Corporation to issue trade license cannot be due to any omission or default on the part of the building owner.

6. The learned counsel appearing for the first respondent/Commissioner of Corporation Chennai would submit that it is a mandatory requirement for any building to have water and sewerage connections for the public safety and protection. During inspection, it is found that the premises lacks water and sewerage connections. Sewerage treatment plant is not an alternate for water and sewerage connections to be provided by the Corporation. Therefore, unless the building gets water and sewerage connections, trade license cannot be given. However, the learned counsel would also point out that if the writ petitioner is aggrieved by the refusal order of the Corporation dated 25.04.2019, under the statute he has an appeal remedy before the Standing Committee. Therefore, the writ petition for issuance of trade license challenging the refusal order is not maintainable when statutory appeal remedy is available. Therefore, the writ petition seeking Mandamus has become infructuous, since the order has been passed refusing to grant of trade license and under the statute, the petitioner has to prefer an appeal before the Standing Committee.

7. From the communication of the first respondent with the third respondent, which is dated 12.10.2018, this Court is able to find that the Corporation has informed the third respondent that they have not obtained the Compliance Certificate from the Metro Water Department and therefore, the Sanitary Certificate issued to it, is liable to be cancelled.

8. From the pleadings, records as well as submissions made by the respective counsels, it is seen that there is a wide gap in the attitude of the building owner, the tenant and the government agencies. It is an admitted fact that the building, which is catering 186 tenants including theatre does not have water and sewerage connections provided by the State. Whether the sewerage treatment plant in the premises is the adequate alternate for water and sewerage connections is a matter for consideration by the authorities. The Court cannot express its opinion about that. Having constructed the Massive building where theatres and shops are located and several thousands of public are expected to visit the mall, the safety of the building is a predominant one, vis-a-vis the interest of the individuals who have constructed the building and let out for rent to the persons who want to carry out the trade. The statute indicates that for trade license there must be all necessary public safety measures in the premises which no doubt includes water and sewerage connections. Merely because the guidelines or rules of the Corporation do not specifically

mention that the sewerage connection is a mandatory requirement for the issuance of trade license, one cannot expect the Court to direct the Corporation to issue trade license without water and sewerage connections. It is a very basic requirement for any building for existence. If in any building, more so of shopping mall lacks provision for water and sewerage connections is not available, the authorities cannot allow the building to be occupied and put to use for commercial purpose. Therefore, the writ petition filed seeking Mandamus to issue trade license is liable to be dismissed on two grounds:

- (i) The first respondent has refused to grant trade license for a specific reason; and
- (2) Statute provides for appeal remedy.

9. The third respondent, who is the owner of the building can either approach the concerned authority for getting through its pending applications for water and sewerage treatment connections or convince the authority that the sewerage plant available in the building is adequate substitute, for water and sewerage connections.

10. As far as the tenants are concerned, it is for them to work out their remedy with the landlord or resort to the statutory remedy, challenging the order of refusal.

11. With the above observation, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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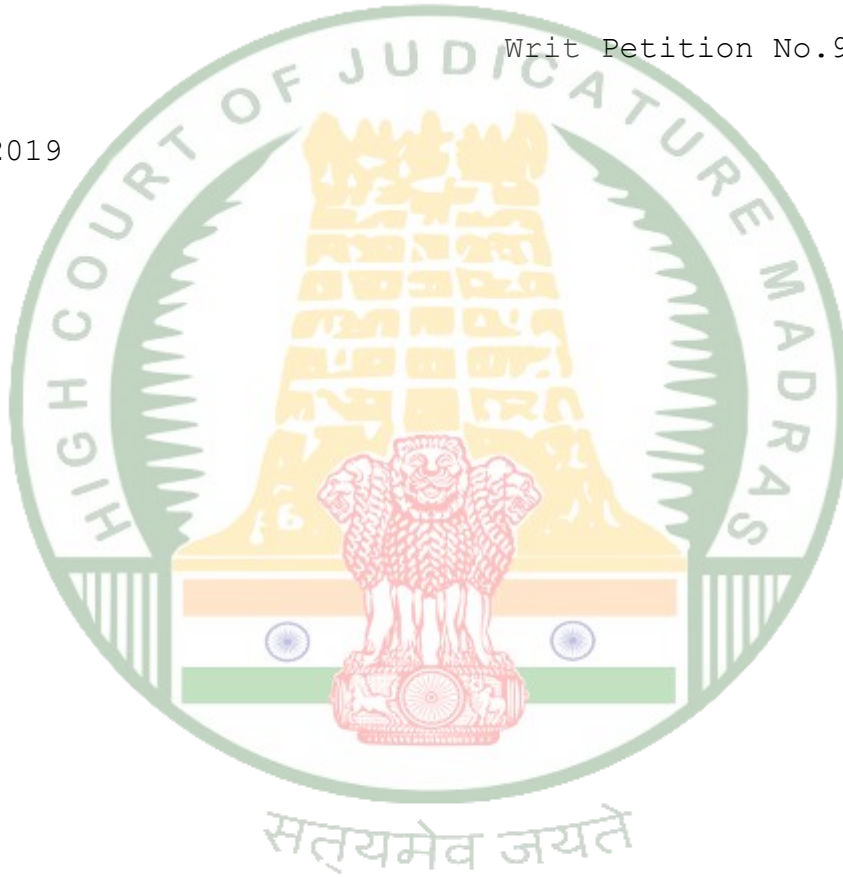
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+1cc to Mr.Vijayan Subramanian, Advocate sr.47742
+1cc to Mrs.Karthika Ashok, Advocate sr.46364
+1cc to Mr.R.Parthasarathy, Advocate sr.46129

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nr 27/06/2019



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