

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. No. 22911 of 2019

Navajeevan Health Care Kerala Ayurvedic Clinic
Rep. By its Proprietor,
Mr.Sajimon LPeter,
No.15/173 B, Kannagi Street,
Fairlands,
Advaidha Ashramam Road,
Near Nathan Hospital,
Fairlands,
Salem 636 016.

... Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by the Secretary,
Home Department,
Fort St.George,
Chennai-600 009.
- 2.The Commissioner of Police,
Salem City,
Salem District.
- 3.The Inspector of Police,
Alagapuram Police Station,
Alagapuram,
Salem District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the Third Respondent from disturbing and interfering with the peaceful conduct of the Petitioner's business offering various massage therapies viz., cross massage in the name and style of "Navajeevan Health Care Kerala Ayurvedic Clinic" at No.15/173 B, Kannagi Street, Fairlands, Advaidha Ashramam Road, Near Nathan Hospital, Fairlands, Salem-636 016.

For Petitioner : Mr.K.Venkatesan

For Respondents : Mr.M.Karthikeyan
Additional Government Pleader

ORDER

This Writ Petition has been filed for a direction to the Third Respondent from not disturbing and interfering with the peaceful conduct of the Petitioner's business offering various massage therapies viz., cross massage in the name and style of "Navajeevan Health Care Kerala Ayurvedic Clinic" at No.15/173 B, Kannagi Street, Fairlands, Advaidha Ashramam Road, Near Nathan Hospital, Fairlands, Salem-636 016.

2. In support of the aforesaid relief claimed, reliance was placed by the Learned Counsel for the Petitioner on the decision of this Court in M/s. Mastil Health and Beauty Private Limited -vs- Commissioner of Police, Chennai (order dated 09.12.2014 in W.P. No. 24629 of 2014 etc., batch). In that decision, this Court has held as follows:-

"67. In the light of the above, all the Writ Petitions are disposed of to the following effect:-

(i) The Respondents shall not, as a matter of routine and without any basis, conduct any raids and interfere with the business carried on by the Petitioners.

(ii) In specific cases where the police have reasonable grounds to believe that an offence punishable under the Immoral Traffic (Prevention) Act has been or is being committed, it is open to the police to take action, after scrupulously following all the steps indicated in Section 15 of the said Act. The steps to be followed by me in paragraph 28 above; and

(iii) Based upon the laws enacted in various States of the United States of America and Singapore, which I have dealt with in paragraphs 39 to 54, the Respondents may take appropriate steps for bringing in either a new legislation or a subordinate legislation in terms of the provisions of the Chennai City Municipal Corporation Act or the Chennai City Police Act, so that public order, decency and morality, which can form the basis for a regulatory law under Article 19(2) of the Constitution, are taken care of. The Government shall file a report on or before 31.03.2015, before this Court, about the decision taken. No costs. Consequently, all connected pending MPs are closed."

3. In response to that contention, Learned Additional Government Pleader appearing for the Respondents submitted that accepting the suggestions made by this Court in the aforesaid decision, amendments have been made to the Chennai City Municipal Corporation Act, 1919, as well as in the laws relating

to other urban local bodies in the State of Tamil Nadu, which have come into force with effect from 01.02.2019 as per which licence is required for carrying on business of Beauty Parlour, Spa and Massage Parlour in any premises within the territorial limits of the respective local bodies.

4. In view of the aforesaid submissions made by the Learned Counsel for both sides, this Court during the earlier hearing on 05.08.2019 passed the following order:-

"3. Learned Additional Government Pleader appearing for the Respondents states that the Petitioner has not made any application for such licence to the competent authority for carrying on business of Spa. Learned Counsel for the Petitioner states that the Petitioner has already applied for licence for carrying on business of Spa. In view of the same, the Petitioner shall produce proof for having applied for such licence on next hearing, failing which the Writ Petition shall liable to be dismissed on that sole ground.

4. Post the matter under the caption 'requirement of license for Beauty Parlours in Tamil Nadu' on 28.08.2019."

5. When the matter is called today, the Learned Additional Government Pleader appearing for the Respondents submits that the Petitioner has not made any application for requisite licence till date. It is a well settled legal position that a mere contemplation or possibility that a right may be infringed without any legitimate basis for that right, would not suffice to give rise to a cause of action. In such circumstances, the question of granting the relief sought by the Petitioner in the Writ Petition does not arise for consideration.

6. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

dna/maya

To

1. The Secretary,
Home Department,
Fort St.George,
Chennai-600 009.
- 2.The Commissioner of Police,
Salem City,
Salem District.
- 3.The Inspector of Police,
Alagapuram Police Station,
Alagapuram,
Salem District.

+1cc to Mr.K.Venkatesan, Advocate SR.No.74175

W.P. No. 22911 of 2019

SS(CO)
GMV(16/09/2019)