

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2019

CORAM

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 27446 of 2019
and
W.M.P. No. 26915 of 2019

Alwin Joseph

... Petitioner

Vs.

1. The Superintendent of Police
Erode, Erode District.

2. The Inspector of Police
Erode Town Police Station
Erode District.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the Respondents from interfering with the peaceful conduct of business i.e. Cross massage in the name and style of "Body Vibe Ayurvedic Centre" at No.5, Palaniappa Street, Erode, Erode District - 638 009.

For Petitioner : Mr. S. Leonard Vasanth

For Respondents : Mr. R. Venkatesh
Government Advocate

O R D E R

This Writ Petition has been filed to forbear the Respondents from interfering with the peaceful conduct of business, i.e., cross massage in the name and style of "Body Vibe Ayurvedic Centre" at No. 5, Palaniappa Street, Erode, Erode District - 638 009.

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. Masti 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. Learned Counsel for the Petitioner submits that the Petitioner has not obtained the requisite licence under the relevant enactment for carrying on business of Beauty Parlour, Spa and Massage Parlour in the premises of the Petitioner.

5. 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 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. In view of the aforesaid legal position coupled with the facts of this case, Learned Counsel for the Petitioner seeks

permission of this Court to withdraw the Writ Petition with liberty to the Petitioner to apply and obtain such licence for carrying on business of Beauty Parlour, Spa and Massage Parlour in the premises of the Petitioner and leave it open to the Petitioner to work out his remedies in that regard and he has made an endorsement to that effect, which is recorded.

7. Accordingly, the Writ Petition is dismissed as withdrawn granting such liberty. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Superintendent of Police
Erode, Erode District.

2. The Inspector of Police
Erode Town Police Station
Erode District.

+1 cc to The Government Pleader Sr.No.80197

AKM/25.09.19/3P-4C /

W.P. No. 27446 of 2019

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