



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2019

CORAM:

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. (MD) No. 5206 of 2013

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M/s.Vasan Feeds,
Represented by Managing Director,
Mr.G.R.Gopalsamy,
No.3/265-1, Surveyor Colony,
Main Road, K.Pudur,
Madurai - 625 107.

... Petitioner

/Vs./

1. The Commissioner,
Prohibition and Excise, Chennai - 600 004.
2. The District Revenue Officer, Madurai.
3. The Assistant Commissioner (Excise),
Madurai.

... Respondents

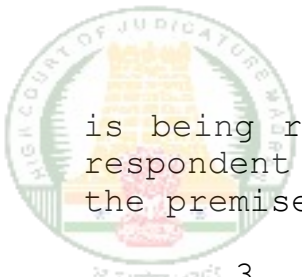
PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent dated 16.04.2012 passed in Na.Ka.Ni.14565/2012/Madhu 5, quash the same and direct the 2nd respondent to pass orders renewing the licence No.28/83-84 of the petitioner for the period 2012-2013.

For Petitioner	: Mr.M.Rajaraman
For Respondents	: Mrs.J.Padmavathy Devi Special Government Pleader

ORDER

The petitioner challenges an order dated 16.04.2012 rejecting an application for renewal of ML-4 Licence for molasses. The petitioner is a proprietary concern manufacturing cattle feeds in respect of which one of the ingredients required is molasses. The petitioner had applied for a licence in Form ML-4 for possessing and using molasses and also for a permit in Form ML-6 for transporting molasses from sugar mills. The Licence in ML-4 was issued on 11.10.1983 for the period 01.10.1983 to 31.03.1984. ML-6 licence was also issued on 11.10.1983 for the same period, viz., 01.10.1983 to 31.03.1984. The petitioner has been in business thereafter.

2. Renewal was sought for the ML-4 licence on 27.02.2012 for the period 2012-13 with all required annexures and requisite licence fees. However, the impugned order has been passed on 16.04.2012 rejecting the application on the ground that the petitioner has not enclosed a lease agreement in respect of the premises where the unit



is being run. This stand appears to have been taken by the second respondent on the basis of a representation given by the landlord of the premises (not arrayed as a party) to him.

3. The petitioner states that civil proceedings are pending as between himself and the landlord in O.S.No.722 of 2011 for permanent injunction restraining the landlord from interfering with his possession and enjoyment of the land except by due process of law. R.C.O.P.No.223 of 2011 is also pending before the District Munsif Court, Madurai Town, for deposit of rent under the provisions of 8(5) of the TamilNadu Buildings (Lease and Rent Control) Act. These proceedings are stated to be on-going as of now.

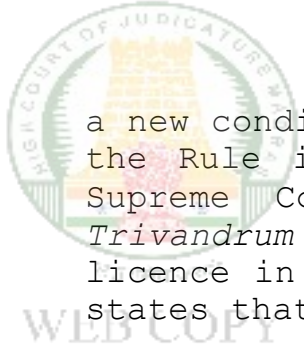
4. Be that as it may, according to the petitioner, the production of a lease agreement is neither required nor mandatory for the issuance of ML-4 licence and as such, the impugned order is bad in law.

5. The learned Special Government Pleader appearing for the respondents defends the impugned order stating that Rule 7(A)(V) of the Tamil Nadu Molasses Control and Regulation Rules, 1958, (in short 'Rules') stipulates that the business has to be carried on in a place which is 'suitable'. Reliance is also placed on Regulation 10 of the Rules to argue that any violation of the conditions imposed or of the Rules, would result in the suspension or cancellation of the licence. Thus, according to her, the cancellation of ML-4 Licence for Molasses is in line with the Rules, as aforesaid.

6. Having heard learned counsel, I am of the view that the impugned order has no legs to stand. Regulation 7 of the Rules which sets out the procedure for grant of licences and permit itself does not stipulate any requirement for production of lease of the premises wherein the activity of production of molasses is carried on or any document in this regard. Be that as it may, the petitioner, admittedly, did produce a copy of the lease agreement between him and the landlord at that juncture and has been granted ML-4 licence.

7. The impugned order has been, admittedly, passed by the second respondent solely on the basis of the representation from the landlord and in my view, is not sustainable. The suitability or otherwise of the premises where the unit is located has to depend on various factors to be taken into account by as detailed in Rule 7 the respondents for issuance of licence. However, the production of a lease agreement as part of the conditions in Rule 7 is not contemplated.

8. Civil proceedings are stated to be pending as between the parties in regard to the possession of the land housing unit in question and in such a situation, it is not conceivable that the landlord would extend the lease. That does not, however, mean, that



a new condition may be imposed by the respondent not contemplated by the Rule itself. I rely in this regard upon a judgment of the Supreme Court in the case of *Sudhakaran vs. Corporation of Trivandrum and another* (2016 14 SCC 263) rendered in the context of licence in terms of the Kerala Municipalities Act, 1994. The Bench states that :-

'9. After due consideration of the issues involved, we find merit in the submission made on behalf of the appellant. The statutory provision already quoted above shows that the requirement of consent of landlord is applicable only when a person intends to obtain a licence for the first time. Renewal or subsequent application for obtaining licence on expiry of the period of the existing licence, during the currency of the tenancy, is not applicable for obtaining licence. Even in the case of application for obtaining licence for the first time, the tenant cannot be deprived of running lawful business merely because the landlord withheld the consent. Valid tenancy itself has implied authority of the landlord for legitimate use of the premises by the tenant.

10. In *Marimuthu & Ors. (supra)*, the Division Bench of the High Court observed :

'18. A statutory tenant under the Kerala Buildings (Lease and Rent Control) Act can be evicted only as per the provisions of the said Act, on the grounds enumerated therein. Since the possession of the tenant is lawful, the landlord is not entitled to withhold his consent for the conduct of the business for which the premises were given on rent. In the instant case, we are satisfied that the landlord is purposefully and with malafide intention withholding consent inspite of the directions from this court. Under such circumstances, the Corporation also cannot insist upon production of written consent from the landlord for the purpose of issuance of licence for the conduct of business in the premises in question. For carrying on business in readymade dresses a licence issued under Sec.492 of the Kerala Municipality Act is necessary. As on date, the petitioner is not having any licence to carry on such business. A person in occupation can be allowed to carry on a trade or business which requires a licence, only after obtaining such licence. In view of the facts and circumstances of the case as above, we direct the Corporation of



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Thiruvananthapuram to consider Ext.P7 application for licence without insisting upon the production of a written consent of the owner of the premises and pass appropriate orders after giving an opportunity to the petitioners or their representative or their advocate, within two weeks from today. The petitioners are at liberty to file any further documents, if need be, before the Corporation authorities. The Corporation shall pass a reasoned order after hearing the necessary parties and communicate the same to the petitioners within two weeks from today. We make it clear that till such time the petitioners shall not conduct the textile business in the premises in question. Ext.P8 order of the Corporation of Thiruvananthapuram is set aside and Ext.P7 is restored to file for fresh consideration as directed above.''

9. In the light of the above discussion, the impugned order is set aside.

10. The learned counsel for the petitioner has not placed on record any order of the civil Court granting him an interim injunction and permitting him to continue in possession of the site in question as on date. Thus, while setting aside the impugned order, I direct the second respondent to grant an opportunity to the petitioner herein and ascertain the exact status of the suit as well as any interim order that may have been granted by the civil Court prior to determination as to whether the site in question is suitable or otherwise.

11. This Writ Petition is disposed in the aforesaid terms. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Commissioner,
Prohibition and Excise,
Chennai - 600 004.



2. The District Revenue Officer, Madurai.

3. The Assistant Commissioner (Excise),
Madurai.

+1 CC to Mr.C.K.M.APPAJI, Advocate (SR-77814[F] dated 26/07/2019)
+1 CC to Mr.C.K.M.APPAJI, Advocate (SR-77781[F] dated 26/07/2019)
+1 CC to SPL GP (SR-78227[F] dated 29/07/2019)

Order made in
W.P.(MD)No.5206 of 2013
Dated:25.07.2019

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MK (16.09.2019) 5P 7C