



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2019

CORAM

THE HONOURABLE **MR.JUSTICE. ABDUL QUDDHOSE**

W.P(MD).No.3095 of 2019
and
W.M.P.(MD)No.2296 of 2019

V.R.Lakshmanan

: Petitioner

Vs.

1.The Additional Director,
Industrial Safety and Health Department,
No.11A/1, Vinayaga Nagar,
Opp.to District Court,
Madurai - 625 020.

2.T.Kannan

: Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari, calling for the records relating to the impugned show cause notice issued by the 1st respondent in his proceedings No.A3/442/2019, dated 05.02.2019 and quash the same as illegal.

For petitioner
For R1

: Mr.B.Saravanan
: Mr.V.R.Shanmuganathan,
Special Government Pleader

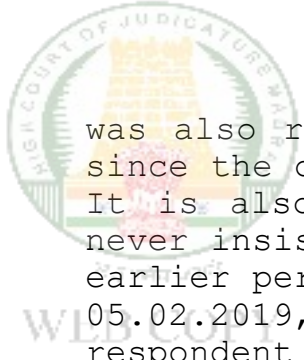
For R2

: Mr.M.Vallinayagam,
Senior Counsel for Mr.Manikandan

ORDER

The instant Writ Petition has been filed challenging the show cause notice dated 05.02.2019, issued by the first respondent in his proceedings No.A3/442/2019.

2.It is the case of the petitioner that he is running a factory in the premises situated at Plot No.24, Madurai Hosieries Industrial SIDCO Estate, Madurai South Taluk, Madurai, measuring an extent of 25 cents comprised in survey No.9/4A3 and 9/4A4. According to the petitioner, he had entered into the rental agreement with the second respondent, on 30.08.1999 and ever since the date of the rental agreement, he has been running the factory in the aforesaid premises. It is the case of the petitioner that the first respondent



was also renewing the license of the petitioner periodically, ever since the date of inception of the lease with the second respondent. It is also the case of the petitioner that the first respondent never insisted for a consent letter whenever the license was renewed earlier periodically. But under the impugned show cause notice dated 05.02.2019, at the behest of the second respondent, the first respondent has insisted upon the production of a subsisting lease deed with the second respondent. According to the petitioner, the show cause notice has been issued without jurisdiction under the Factories Act, 1948 (hereinafter, referred to as 'the Act') or the Rules framed thereunder. According to him, there is no authority vested with the 1st respondent to demand a copy of the lease deed from the petitioner. Since the impugned show cause notice has been issued without jurisdiction, the petitioner has filed this Writ Petition.

3. Heard Mr.B.Saravanan, learned counsel for the petitioner, Mr.V.R.Shanmuganathan, learned Special Government Pleader for the first respondent and Mr.Manikandan, learned counsel for the second respondent.

4. The learned counsel for the petitioner drew the attention of this Court to a judgment of the Honourable Division Bench of this Court in the case of **R.Rajangam Vs. The Commissioner of Prohibition and Excise, Chepauk, Chennai**, in W.A.No.216 of 2008 dated 29.02.2008, regarding the issue of renewal of license. He referred to paragraph 8 of the said judgment and submitted that when the Act or the Rules framed thereunder nowhere suggest that the consent of the landlord has to be obtained for grant of the license or for its renewal, any order passed by the department, seeking for such a consent from the landlord is deemed to be without jurisdiction. Paragraph 8 of the aforesaid judgment reads as follows:

"8. In the Court submissions, it was pointed out that under rule 19 of the Tamil Nadu (Licence and permit) Rules 1981, the conditions to be satisfied have been set out and that such conditions nowhere suggest the consent of the landlord to be obtained for either grant of the License or for its renewal. Under Rule 21, it is specifically provided an application for renewal is to be dealt with in the same manner in which an application for the grant of a licence is to be examined as provided under Rules is to 20. Therefore, when even the statutory rules do not prescribe any such stipulation like obtaining the consent of the landlord, we are unable to sustain the impugned order of the respondent as well as that of the learned single Judge in having rejected the renewal of the F.L.3 License in favour of the appellant on the ground that the landlord has objected to such renewal. In fact, even going by the specific terms of the lease agreement as provided in the lease deed, dated 20.03.2000, we find that the termination of the tenancy and the handing over of the possession by the appellant to the owner can take place



subject to the condition that the owner of the premises return the advance amount of Rs.5 lakh by the specific date, namely 19.03.2007."

5. The learned counsel for the petitioner also drew the attention of this Court to the decision of the Honourable Division Bench of Kerala High Court dated 14.12.2018 passed in **W.P.No.2468 of 2018** in the case of **C.S.Balan Vs. C.Vijayan** and others. According to the learned counsel for the petitioner, as seen from the aforesaid judgment, there was no necessity for the tenant to get consent from landlord for renewal of license, more so, when there is a strained relationship between the landlord and the tenant. Referring to the aforesaid judgment, the learned counsel for the petitioner would submit that in the instant case also there is a strained relationship between the petitioner and the second respondent, who is his landlord and therefore, there is no possibility for him to get consent from the second respondent. But, according to him, there is no necessity to get consent as in the previous years right from 1999 till date, no such requirement was sought for by the first respondent for renewal of the license.

6. Per contra, the learned Special Government Pleader for the first respondent would submit that under Rule 7 (a) 5 of the Tamil Nadu Factories Rules, 1950, the Deputy Inspector of Factories under the first proviso to Rule 7 (5) of the Tamil Nadu Factories Rule 1950, the Deputy Inspector of Factories may call for such other particulars as he may require from the licensee before renewing the license. According to the learned Special Government Pleader for the respondent that the impugned show cause notice was issued only under the aforesaid Rule and therefore, they have got jurisdiction to issue the show cause notice to the petitioner and pass final orders thereafter.

7. This Court also directed the first respondent by its earlier order dated 06.03.2019, to produce the entire file pertaining to the renewal of license granted to the petitioner. As per direction of this Court, the learned Special Government Pleader has placed the file before this Court today i.e, 22.03.2019, in the form of an additional typed set of papers. As seen from the additional typed set of papers, the lease deed between the petitioner and the second respondent was originally submitted to the first respondent at the time of grant of license in the year 2000 and subsequently, for all the renewals, the petitioner has disclosed in the renewal application form that the 2nd respondent is his landlord.

8. According to the learned Special Government Pleader, the second respondent has raised a dispute regarding the existence of a subsistent tenancy and therefore, the first respondent was constrained to issue show cause notice under the Rule 7(5) of the Tamil Nadu Factories Act under Section 6(1) (a)(aa) (b)(c) (d) (3) (e) sub rule 3(5) (a) rule 7(1) (5) Rule 7A (ii) 7AA Rule 12B(5). According to the learned Special Government Pleader, the notice is



only a show cause notice and whatever objections available to the petitioner under law can be raised by him before the first respondent by sending a reply to the impugned show cause notice and only after hearing the objections, the first respondent will pass final orders. Therefore, according to him, the impugned notice being a show cause notice issued with jurisdiction, the writ petition is not maintainable.

9. The learned Special Government Pleader has also produced a copy of the letter dated 08.01.2019 addressed to the 1st respondent by the second respondent, which has been sent even prior to 6 months before the expiry of the lease. As per the said letter, according to the second respondent, the petitioner has agreed to vacate the premises. In the said letter, it was also submitted that the petitioner has not submitted the following documents for renewal of license.

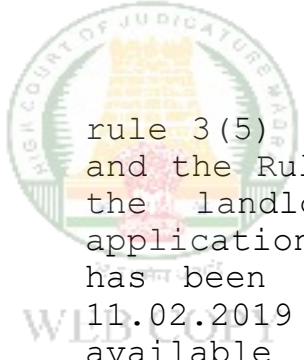
- (a) drawing of machineries were not approved by the 1st respondent,
- (b) machineries are not maintained properly and is not kept in safe place,
- (c) fire safety measures were not taken,
- (d) without his consent, the petitioner has put up structures in the land.

10. According to the learned Special Government Pleader based on the aforesaid letter, the first respondent came to know that there is a dispute between the petitioner and the second respondent regarding the existence of tenancy and that is the reason for issuing the impugned show cause notice to the petitioner.

11. Per contra, learned counsel for the second respondent would submit that the factory building is in a dilapidated condition and at any moment it may fall. The machineries of the petitioner are not being kept in a sound condition and fire safety measures have also not been taken by the petitioner and therefore, in the interest of the public at large, the license granted to the petitioner by the first respondent should not be renewed. Further, he reiterated that the notice under challenge is only a show cause notice and therefore, the Writ Petition is not maintainable.

Discussion:

12. Admittedly, the notice under challenge in this Writ Petition is only a show cause notice. According to the learned counsel for the petitioner, the show cause notice has been issued without jurisdiction and therefore, this Writ Petition is not maintainable. The learned counsel for the petitioner also submitted that only at the behest of the second respondent without authority under law, the first respondent has issued the impugned show cause notice. He also submitted that for the first time, after the grant of license, the first respondent is insisting for a consent letter from the second respondent for renewal of the licence. The impugned show cause notice has been issued under Section 6(1) (a) (aa) (b) (c) (d) (e) sub



rule 3(5) (a) rule 7(1) (5) Rule 7A (ii) 7AA Rule 12B(5) of the Act and the Rules. Since the petitioner has not produced the consent of the landlord, namely, the second respondent along with his application seeking for renewal of factory licence, the petitioner has been called upon to appear before the first respondent on 11.02.2019 by the impugned show cause notice to raise all objections available to him under law. Even before appearing for the said hearing before the first respondent, on 11.02.2019 the petitioner has filed the instant Writ Petition challenging the show cause notice dated 05.02.2019.

13.It is not in dispute that the petitioner at the time of granting the factory license in his favour, furnished a copy of the lease deed entered into between him and the second respondent, who is the landlord. It is also not in dispute that for the subsequent renewals, he has disclosed in the application form that the second respondent is his landlord for the past 20 years. Only for the first time, by his letter dated 08.01.2019, the second respondent has informed the first respondent that there is a dispute with the petitioner and that the petitioner had agreed to vacate the premises within 6 months prior to that letter and they have also lodged a complaint complaining several irregularities in the factory premises like;

- (a) machineries not kept in sound condition,
- (b) fire safety measures not provided and other complaints etc.

14.As seen from the objections raised by the second respondent, the complaint seems to be serious in nature, considering the fact that the premises is used as factory. On receipt of the complaint from the second respondent, the first respondent has issued the impugned show cause notice. As rightly pointed out by the learned Special Government Pleader for the first respondent, the first proviso to Rule 7 of the Tamil Nadu Factory Rules, 1950, empowers the Deputy Inspector of Factories to call for such other particulars as may be required for renewal of the license. Having obtained a copy of the lease deed at the first instance, when the petitioner was granted the license in the year 1999, exercising the powers under the first proviso to Rule 7, the first respondent has issued the impugned show cause notice to the petitioner. Rule 7 of the Tamil Nadu Factory Rules, 1950 is extracted here under:

"7. Renewal of licence: (1) No premises shall be used as a factory nor any manufacturing process carried on in any factory except under, and in accordance with, the licence renewed under these rules.

(2) The occupier of every factory licensed under rule 4, shall submit to the Deputy Chief Inspector of Factories having jurisdiction over the area where the factory is situated, an application in Form No.2 in triplicate, for the renewal of the licence. The application for such renewal shall be made so as to be received in the office of the Deputy Chief Inspector of Factories, not less than two months before the date on which the licence expires



and it shall be accompanied by the original licence if it is not already available with the Deputy Chief Inspector of Factories.

(3) The same fee shall be charged for the renewal of a licence as for the grant thereof:

Provided that if the application for renewal is not received within the time specified in sub-rule (2), the licence shall be renewed only on payment of an additional fee of —

(1) ten percentum of the fee payable, if the application for the renewal is received in the month of November of the year for which the licence is granted or renewed.

(2) twenty percentum of the fee payable, if the application for renewal is received in the month of December of the year for which the licence is granted or renewed.

(3) thirty percentum of the fee payable, if the application for renewal, is received after the expiry of the license.

(4) If the application has been made in accordance with this rule, the premises shall be held to be duly licensed until such date as the Deputy Chief Inspector of Factories may pass orders on the application for the renewal.

(5) The Deputy Chief Inspector of Factories shall renew the licence within thirty days from the date of receipt of application referred to in sub-rule (2).

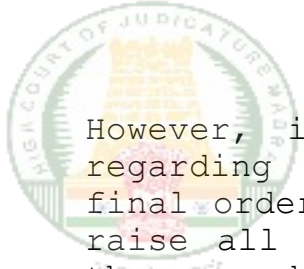
Provided that the Deputy Chief Inspector of Factories may call for such other particulars as he may require before renewing the license:

Provided further that the Deputy Chief Inspector of Factories may renew the licence subject to such conditions as he may consider necessary and which shall be specified in the license.

(6) Suitable entry shall also be made in the Register of Factories regarding the renewal of the licence."

15. Therefore, it is evident that the first respondent has got the authority under law to call for such particulars as may be required for granting or renewing the license. Since they have the authority under law, it is settled law that the show cause notice cannot be challenged under Article 226 of the Constitution of India. However, considering the apprehension raised by the learned counsel for the petitioner that only at the instance of the second respondent, who according to the petitioner is an influential person, the impugned show cause notice has been issued to the petitioner.

16. This Court is of the considered view that the interest of the petitioner will have to be adequately protected. For the forgoing reasons, there is no merit in the instant Writ Petition.



However, in view of the apprehensions raised by the petitioner regarding the second respondent, the first respondent, shall pass final orders after giving adequate opportunity to the petitioner to raise all objections available to him under law and also consider the grounds raised in this Writ Petition by granting the right of personal hearing to the petitioner and pass final orders within a period of 3 months from the date of receipt of a copy of this order.

17. With the aforesaid directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T and P)

// True Copy //

Sub Assistant Registrar (CS)

To
The Additional Director,
Industrial Safety and Health Department,
No.11A/1, Vinayaga Nagar,
Opp.to District Court,
Madurai - 625 020.

+1cc to Mr.S.MANIKANDAN, Advocate, SR.No.56341
+1cc to Mr.B.SARAVANAN, Advocate, SR.No.56235

W.P (MD) .No.3095 of 2019
and
W.M.P. (MD) No.2296 of 2019

DAS/MR
KK/SAR/09.04.2019/ 7P- 4C