



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.10.2019
CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P (MD) No.8501 of 2019
and
WMP (MD) No.6650 of 2019

Matha Explosives,
rep.by its Proprietor
S.Mariyanathan

... Petitioner

Vs.

1. The Joint Chief Controller of Explosives,
South Circle A & D Wing, Block 1 - B,
II Floor, Shastribhavan,
26, Haddous Road,
Nungambakkam,
Chennai - 600 006.

2. The District Revenue Officer and
Additional District Magistrate,
Officer of the Collectorate,
Pudukottai,
Pudukottai District.

3. The Commissioner of Revenue Administration,
Ezhilagam,
Chepauk, Chennai - 5.

... 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 records pertaining to the impugned proceedings of the 2nd respondent vide Na.Ka.No.C5 11699 / 2016 dated 15/12/2017 and the consequential proceedings of the 3rd respondent made in RA.5 (1) / 26927 / 2017 dated 25/04/2018 and quash the same as illegal and consequently directing the 2nd respondent to grant No Objection Certificate for LE-III License (Form-22) at Survey No110/2, Madiyanallur Village, Illupur Taluk, Pudukottai District as contemplated under the Explosives Rules, 2008.

For Petitioner : Mr.R.Murali
for Mr.K.Govindarajan
For R1 : Mr.S.Jeyasingh
For R2 & R3 : Mr.M.Rajarajan,
Government Advocate



ORDER

The petitioner had obtained permit to stock explosives in his godown at Vellanoor Village at Pudukottai District. Since new habitations have come up, he sought to shift his godown from Vellanoor Village to Madhiyanallur Village in the very same District. The Revenue and PWD authorities have granted permission to construct a godown for the said purpose. The second respondent had also endorsed the same, vide proceedings in Na.Ka.C5/3106/2015 dated 04.03.2016 on condition that the petitioner shall acquire private lands for having access to his godown. Accordingly, the petitioner has also purchased the lands for passage. Thereafter, the petitioner's request for grant of "No Objection Certificate" was rejected on 01.09.2017, against which, he preferred WP(MD)No.17543 of 2017, in which, this Court, by its order dated 22.09.2017, set aside the rejection order passed by the second respondent and remanded the matter for re-consideration, after giving opportunity of hearing to all the parties concerned.

2.The petitioner on 06.10.2017 made a representation to the second respondent to re-consider the issue, as directed by this Court dated 22.09.2017. He has also enclosed a copy of the order for ready reference of the second respondent. After conducting enquiry on 10.11.2017 and 16.11.2017, the second respondent rejected the same on the ground that the petitioner has not obtained proper sanction as required under Section 47-A-2(3) of the Tamil Nadu Town and Country Planning Act, 1971 and that the godown is surrounded by water bodies and cultivable Nanja lands. Hence, it is stated that in the interest of public and to protect the agricultural lands, grant of no objection certificate was rejected, against which, the present Writ Petition came to be filed.

3. The respondents would contend that as per Rules 103 and 104 of the Explosives Rules, 2008, the building owner shall obtain prior permission. Without getting prior permission, if he constructs a building for stocking the explosive materials, that cannot be entertained. Therefore, the No Objection Certificate was rejected.

4. However, it is contended by the learned counsel appearing for the petitioner that the Tahsildar has recommended for grant of No Objection Certificate. The building approval was granted by the President of the Village on 18.03.2016 vide approval No.07/2015-16. No Objection was raised by anybody against construction of the said godown. The respondents have invented a new reason and rejected the same without giving opportunity to the petitioner.

5. Even though the petitioner has raised all these points, it was rejected by the appellate authority on the very same grounds.



6. I have heard the submissions of both sides.

7. From the materials produced before this Court, it is seen that prior permission in terms of Rules 103 and 104 of the Explosives Rules, 2008, was obtained as early as in the year 2014 vide approval No.A/E/SC/TN/22/899 (E84446), dated 05.12.2014. Apart from this, approval was granted by the President of Madhiyanallur Village on 18.03.2016, vide approval No.07/2015-16. At that point of time, there was no objection against construction of the godown by anybody, much less, on the ground, it is surrounded by water bodies and cultivable lands. But, surprisingly, these grounds were not informed to the petitioner even at the time of filing of appeal. When the order is passed by the original authority, he should set out all the reasons for rejection and it cannot be done in a piecemeal manner. If the reasons are not given, it will deprive the petitioner from defending himself effectively against the same. Adding new grounds at the appellate stage, or adducing new grounds, after passing the orders, will amount to violation of principles of natural justice.

8. In the instant case, non-disclosure of the reasons adduced now, amounts to violation of principles of natural justice, depriving the petitioner from defending himself or explaining his case, before the authorities effectively. In view of that matter, one more opportunity should be granted to the petitioner to put forward his objections.

9. Therefore, the impugned order passed by the second respondent in Na.Ka.No.C5 11699 / 2016, dated 15.12.2017 and also the consequential proceedings of the third respondent dated 25.04.2018, are set aside and the matter is remanded back for fresh consideration. The second respondent is directed to provide an opportunity of hearing to the petitioner on all grounds in a comprehensive manner and dispose of the petition, within a period of eight weeks from the date of receipt of a copy of this order.

10. The Writ Petition is ordered accordingly. No costs. Consequently, WMP(MD)No.6650 of 2019 is closed.

Sd/-

Assistant Registrar (CS-II)

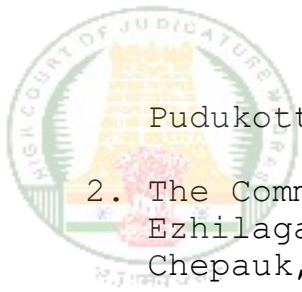
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Sub Assistant Registrar(CS)

To

1.The District Revenue Officer and
Additional District Magistrate,
Office of the District Collector,
Tirunelveli District, Tirunelveli.

<https://hcservices.courts.gov.in/hcservices>



Pudukottai, Pudukottai District.

2. The Commissioner of Revenue Administration,
Ezhilagam,
Chepauk, Chennai - 5.

+1 CC to Mr.S.JEYASINGH, Advocate (SR-93388[F] dated 21/10/2019)
+1 CC to SPL GP (SR-93510[F] dated 22/10/2019)
+1 CC to Mr.K.GOVINDARAJAN, Advocate (SR-93709[F] dated
22/10/2019)

Order made in
W.P. (MD) No.8501 of 2019
Dated: 21.10.2019

MJ/SML

MK (06.11.2019) 4P 6C