



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No. 17101 of 2019

and

W.M.P.(MD).Nos. 13634 and 13635 of 2019

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J. Raju

... Petitioner

vs.

1.The District Collector,
Kanyakumari District
at Nagercoil.

2. The District Revenue Officer,
Kanyakumari District,
Nagercoil.

3. The Sub Collector,
Sub Collector Officer,
Nagercoil,
Kanyakumari District.

4. The Tahsildar,
Agastheeswaram Taluk,
Nagercoil,
Kanyakumari District.

5. Sri Mutharamman Sri Nadarajar Swamy Kovil Trust,
(SMN) Trust, rep. by its Present President
S. Nagalingam Asari.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of **Certiorarified Mandamus**, calling the Impugned Notice in Na.Ka.A3/544/2019, dated 24.07.2019 of the third respondent and to quash the same and consequently direct the third respondent to renew the petitioner licence No.6/EXP/AGM/2017 on the basis of the petitioner renew application, dated 16.03.2019.

For Petitioner

: Mr.F. Deepak

For Respondents-1 to 4

: Mr.M.Rajarajan

Government Advocate

For Respondent-5

: Mr. R.J. Karthick



O R D E R

The instant Writ Petition is filed to quash the Impugned Notice, dated 24.07.2019 vide proceedings in Na.Ka.A3/544/2019 issued by the third respondent and also sought for a direction to the third respondent to renew the petitioner's licence No.6/EXP/AGM/2017 on the basis of the petitioner's renewal application, dated 16.03.2019.

2. The learned counsel appearing for the petitioner submits that the petitioner has applied licence for running a cracker shop to the second respondent and after considering his application, the second respondent has issued licence No.6/EXP/AGM/2017, dated 13.10.2017 and the aforesaid cracker shop is situated at Re-Survey No.E11/13-3, Balamore Road, Nagercoil North Village. He further submits that the license is valid for two years and it expired on 31.03.2018 and hence, he submitted an application for renewal of licence to the third respondent. The third respondent issued the impugned notice, dated 24.07.2019 vide his proceedings in Na.Ka.A3/544/2019, stating that the petitioner has not paid rent promptly to the landlord. Further, the demand of the landlord to hand over vacant possession was not acceded to by the petitioner and the landlord has made a complaint before the authorities concerned to take action for vacating his shop. In this regard, the petitioner has not produced renewal of lease agreement with the landlord before the authorities concerned and therefore, the petitioner was directed to vacate the cracker shop within 7-days, failing which, the crackers will be confiscated by the Government. The said notice, dated 24.07.2019 is under challenge in the present writ petition.

3. Heard Mr.R.J. Karthick, learned counsel appearing for the fifth respondent and he would contend that, as per Rule 103 of the Explosive Rules, 2008, there are certain procedures to be observed for issuance of notice and for grant of licence. **Sub-rule 3 of Rule 103 reads as follows:**,

"The District Magistrate is bound to verify antecedents of the applicant, lawful possession of the site, genuineness of the purpose, interest of public and any other verifications or enquiries as may be specifically required by the licensing authority to be carried out''.

Therefore, once, the petitioner has not renewed the lease or extended the lease, he cannot be deemed to be in lawful possession and his license cannot be renewed under the Explosive Rules, 2008. He would also rely on the prescribed format for grant of licence.

4. He also relies on Rule 113 of Explosive Rules, 2008 which specifies the documents for approval and grant of licence. As per item No.15 of the list of documents, the passport size photograph of the occupier along with documentary evidence of nomination



should be affixed. As per Sub-rule 2 of Rule 103, No Objection Certificate should be produced by the petitioner. Therefore, he would contend that the writ petition should be dismissed.

5. I have considered the submissions made on either side.

6. Rule 103 of the Explosive Rules 2008, is a procedure to be adopted at the time of grant of licence. It does not speak about the renewal of the license records.

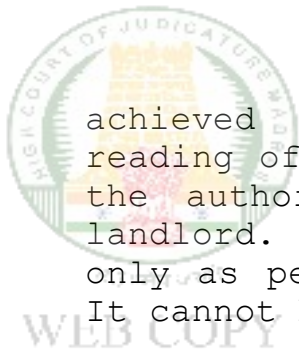
Sub-rule 5 of 112 of the Explosive Rules, 2008 reads as follows:

"5.If the application for renewal reaches the renewing or licensing authority on or before the date of expiry, the licence shall be deemed to be in force until such date as the licensing authority renews the licence or until an intimation that the renewal of the licence is refused has been communicated to the applicant".

7. The Hon'ble Supreme Court in **(2016)14 Supreme Court Cases 263, [Sudhakaran Vs. Corporation of Trivandrum and another]** has categorically held that the requirement of getting consent of the landlord for grant of licence is applicable when he first applies for the same. In Paragraph No.9 of the Judgment of the Hon'ble Supreme Court as observed as under:

"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 the consent of the 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. "

8. The contention of the learned counsel appearing for the petitioner is that the petitioner has paid the rent promptly and in support of his contention, he produced a copy of the Demand Draft for Rs.1,50,000/-(Rupees One Lakhs and Fifty Thousand Only) paid to the landlord. Even assuming that there are arrears, the procedure to be adopted by the landlord is for eviction of the tenant under the Rent Control Act enacted for that purpose. The



achieved indirectly through the official respondents. A mere reading of the impugned order clearly spells out the malafide of the authorities. The authority cannot act as a mouthpiece of landlord. The authorities shall consider the renewal of licence only as per the rules specified under the Explosive Rules, 2008. It cannot be decided on extraneous consideration.

9. In view of the Judgment of the Hon'ble Supreme Court, the impugned Notice in Na.Ka.A3/544/2019, dated 24.07.2019 does not stand scrutiny of law and accordingly, it is set aside. A direction is given to the second respondent/District Revenue Officer to consider the renewal application of the petitioner in the light of the relevant rules and regulations and pass orders on merits, within a period of Six (6) weeks, from the date of receipt of a copy of this order. Till such time, the Sub-rule 5 of Rule 112 of the Explosive Rules, 2008 will hold the field.

10. With the above direction, the instant Writ Petition is disposed of. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To:

- 1.The District Collector,
Kanyakumari District
at Nagercoil.
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3. The Sub Collector,
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4. The Tahsildar,
Agastheeswaram Taluk,
Nagercoil,
Kanyakumari District.

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+1 CC to M/s.F.DEEPAK, Advocate (SR-87626[F] dated 19/09/2019)

+1 CC to M/s.R.J.KARTHICK, Advocate (SR-87819[F] dated 19/09/2019)

+1 CC to M/s.SPL GP (SR-87938[F] dated 19/09/2019)

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