



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2019

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P(MD).No.7463 of 2018
and W.P.(MD).No.13865 of 2019
and W.M.P(MD).No.7124 of 2018
and W.M.P(MD).No.10375 of 2019
and WMP(MD).No.9552 of 2019

W.P(MD).No.7463 of 2018

B.Maheswari

...Petitioner

-Vs-

1.The District Collector,
Madurai District Collector Office,
Madurai.

2.The Commissioner,
The Corporation of Madurai,
Madurai.

3.The City Health Officer,
The Corporation of Madurai,
Madurai.

4.The Commissioner of Police of Madurai City,
Madurai.

5.V.Mahalingam

6.Muthuselvi

7.V.Murugaiah

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct respondents 1,2,3 and 4 to take effective steps to stop these industrial activities by the respondents 5,6 and 7 in their current place of operation and let them be shifted to some other non residential areas.

For Petitioner : Mr.K.Pandiarajan

For Respondents : Mr.P.Kannithevan (for R1 & R4)
Additional Government Pleader
Mr.R.Murali (for R2 & R3)
Standing Counsel
Mr.C.Vakeeswaran
(For R5,R6 and R7)



W.P. (MD) No.13865 of 2019

V.Murugaiah

...Petitioner

-Vs-

1.The City Health Officer,
The Corporation of Madurai,
Madurai.

2.B.Maheswari

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned notice issued by the first respondent dated 25.03.2019 and quash the same.

For Petitioner	: Mr.C.Vakeeswaran
For Respondents	: Mr.R.Murali (for R1)
	Standing Counsel
	Mr.K.Pandiarajan (for R2)

COMMON ORDER

The respective prayers that has been sought for in these writ petitions are as follows:-

"The prayer in W.P(MD).No.7463 of 2018 is for a Writ of Mandamus, to direct respondents 1,2,3 and 4 to take effective steps to stop the industrial activities by the respondents 5,6 and 7 in their current place of operation and let them be shifted to some other non residential areas.

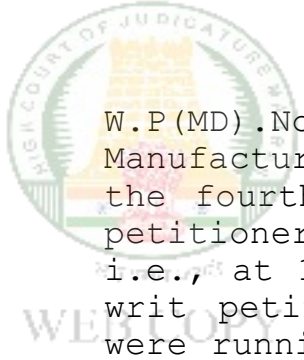
The prayer in W.P.(MD)No.13865 of 2019 is for a Writ of Certiorari, to call for the records relating to the impugned notice issued by the first respondent, dated 25.03.2019 and quash the same."

2.The seventh respondent in W.P(MD).No.7463 of 2018 is the petitioner in W.P(MD).No.13865 of 2019.

3.The petitioner in W.P(MD).No.7463 of 2018 is the resident in particular locality, where the respondents 5, 6 and 7 had been running small industries of Aluminium vessels manufacturing, has come out with the prayer of Mandamus to direct the respondents 1 to 3 therein, to close down those industries run by the private respondents therein, and shift from that locality to some other locality.

4.In W.P(MD).No.13865 of 2019, the petitioner is challenging the order passed by the first respondent i.e., the City Health Officer, Corporation of Madurai, dated 25.03.2019, whereby, the petitioner's industry was directed to be closed, pursuant to the objection raised by the public. That is how, these two writ petitions have been filed before this Court with the aforesaid prayers.

5.The necessary facts are that, the respondents 5, 6 and 7 in



W.P(MD).No.7463 of 2018, are running the Aluminium Vessels Manufacturing Industries in the locality called 'Tagore Nagar' in the fourth street, within the Corporation limit of Madurai. The petitioner in W.P(MD).No.7463 of 2018 claimed to be the resident i.e., at 10/17, Tagore Nagar Main, Sellur, Madurai, filed the said writ petition claiming that, the private respondents' industries were running without valid license to be issued by the respondent/ Madurai Corporation under the provisions of the Madurai City Municipal Corporation Act, 1971. It is the further case of the petitioner therein that, since both day and night the industries were running, it created lot of noise pollution, thereby, the peaceful residence of the petitioner and other similarly placed persons in that locality have been greatly affected. Therefore, in order to close down the industries and shift them to some other area, the aforesaid prayer has been sought for in W.P(MD).No.7463 of 2018.

6.Probably, because of the objection raised by the said petitioner in W.P(MD).No.7463 of 2018 i.e., Maheswari and some other public in that locality, considering the same, the first respondent in W.P(MD).No.13865 of 2019, who is the City Health Officer of Madurai Corporation, issued the impugned order, dated 25.03.2019, whereby, the petitioner in W.P(MD).No.13865 of 2019 has been directed to close down the industry on the ground of complaints of nuisance come from the public. Challenging the same, W.P(MD).No.13865 of 2019 was filed by the petitioner, namely, one V.Murugaiah, who is the seventh respondent in W.P(MD).No.7463 of 2018.

7.Few weeks back, during the hearing of these writ petitions, this Court, by order dated 12.06.2019, directed the Municipal Corporation of Madurai, to constitute a Committee to inspect the locality and file a report, which reads thus:-

"Heard the learned counsel appearing for the parties. In this vacate injunction petition, it has sought to vacate the interim injunction granted by this Court dated 03.04.2019 in W.M.P.(MD) No.7124 of 2018.

2. After hearing the learned counsel appearing for the parties, this Court is of the view that since the area where the seventh respondent industry (Micro Industry/ metal products) is located is predominantly an industrial area (i.e.) 4th street, Tagore Nagar, Madurai and a number of such industries as that of the seventh respondent industry are running there, where no action seems to have been taken by the respondent Madurai Corporation against those industries and the petitioner industry alone has been singled out by issuance of a notice under Public Health Act, 1939 by the Corporation on 25.03.2019, the status of the area where these industries are located shall be inspected/ surveyed by the Madurai Corporation and after ascertaining the views of the residents in that locality as well as the views



of the industries similar to that of the seventh respondent and other industries in that locality, the Corporation shall file a report based on which, this Court can proceed further in this matter.

3. In view of the above, there will be a direction to the respondent Madurai Corporation to constitute a team for inspection under the Chairmanship of the City Health Officer of the respondent Madurai Corporation to ascertain the views of the industries located in that locality as well as the views of the residents in that locality as to whether the area is predominantly occupied by industries or residents, and to file a comprehensive report by giving suggestions as to the measures to be taken by the Corporation in future to protect the interest of the residents and also to free them from nuisance, at the same time how to save these industries which have been located for years together, without being affecting the residents of the same locality by way of noise pollution and other health hazards, as alleged.

4. The said comprehensive report shall be filed by the Committee within a period of two weeks from its constitution and such Committee shall be constituted by the respondent Madurai Corporation within a period of one(01) week from the date of receipt of copy of this order. Post this writ petition along with the vacate stay petition on 04.07.2019."

8. Pursuant to the said directive issued by this Court, the Committee constituted by the Corporation, headed by the City Health Officer, after having inspected the entire area of Tagore Nagar, filed a report. Based on such report, the second respondent in W.P (MD).No.7463 of 2018 i.e., the Commissioner, Corporation of Madurai, has filed a report, dated 16.07.2019, wherein, the Commissioner, Corporation of Madurai, stated as follows:-

"The Tagore Nagar is the part of Ward No.7 of Madurai Corporation. In Tagore Nagar there are about 376 houses available. As per Corporation records Tagore Nagar is classified as residential area.

b) On inspection it was found that 8 Stainless Steel Utensil manufacturing and polishing units are functioning in the Tagore Nagar area.

c) Two Aluminium Utensil Manufacturing and polishing units are functioning in the Tagore Nagar Area.

d) All the above units are functioning in the own building and in all the buildings part of the building alone utilized for manufacturing purpose and the remaining portion are utilized for residential purpose. Either the owner or the employee is residing in the same building."



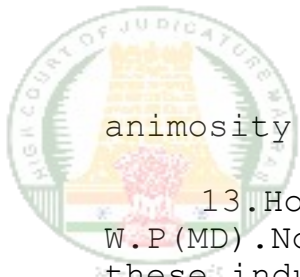
9. The said report of the second respondent also pointed out that, apart from the industries of the private respondents 5 to 7, some other industries run by various individuals had been functioning in that locality. In the report, the second respondent has also given a table, where details with regard to eight other industries run by different individuals had been given. Out of eight, two industries are Aluminium product foundry remaining 6 industries are stainless steel product foundry. Therefore, apart from the industries run by the respondents 5 to 7, there are about 8 industries functioning in the very same locality i.e., the Tagore Nagar in Madurai Corporation Limit and in this regard, a map has also been filed by the second respondent, wherein, details have been disclosed stating that, according to the records of the Municipal Corporation, the Tagore Nagar is the residential area, where almost in every street, such industries are located and they have been primarily manufacturing either the Aluminium vessels/products or stainless steel vessels/products by using labourers as well as power.

10. The report of the Corporation also stated that, all these industries had been running only during day time and these industries have been running for the past 10-20 years in that locality or in the same place.

11. The report also stated that, the Committee also interacted with the people residing around the manufacturing units. However, the report does not disclose any specific objection from any public, who claimed to have been interacted by the Committee and the relevant portion of the report of the second respondent in this regard reads thus:-

"I respectfully submit that during inspection the committee members inspected the manufacturing units and also interacted with the people residing around the manufacturing units. The units are functioning during the day time only. The above manufacturing activities have been taking place for the past 10 to 20 years in the same place.

12. With these documents, the learned counsel appearing for the petitioner in W.P(MD).No.13865 of 2019, who is the seventh respondent in W.P(MD).No.7463 of 2018 submitted that, his industry has been running for more than 20 years and for running the said industry, license has been given by the respondent /Madurai Corporation and during night hours, these industries would not run and it does not create any noise pollution. Since these industries have been located in that locality, almost in every street, run by the various individuals and those industries have been functioning for a decade or more, the learned counsel would further submit that, the petitioner in W.P(MD).No.7463 of 2018, who is the resident in that locality, had filed this writ petition with ulterior motive, as he is the adjoining resident of the industry of the seventh respondent in that writ petition. Therefore, he filed a writ petition with the aforesaid prayer only with personal



animosity with the neighbor.

13. However, learned counsel appearing for the petitioner in W.P(MD).No.7463 of 2018 would make a submission that, because of these industries, including the industries run by the respondents 5 to 7 in that locality, there has been huge noise pollution. Therefore, the nearby residents are not able to reside there peacefully and moreover, since these industries are special category, for which, special license under Section 361 of the Madurai City Municipal Corporation Act (hereinafter referred as the "Act") has to be obtained from the Corporation and this licence seems to have not been issued for continuous running of such industries, which are unlawful. For all these reasons, with a prayer to close down the industries or to shift the industries, especially, the industries of the respondents 5 to 7, the learned counsel for the petitioner, in the first petition, seeks indulgence of this Court for suitable direction.

14. I have heard the learned Standing counsel appearing for the respondent Corporation Madurai, who would submit that, after having inspected the entire Tagore Nagar in Madurai Corporation, the said report was filed by the inspection team constituted by the Corporation, pursuant to the order passed by this Court and according to the report submitted by them, which is reflected in the report of the second respondent by way of affidavit filed before this Court, these industries have been functioning in that locality for more than 10-20 years and not only the private respondents 5 to 7 in the first writ petition, but also, other individuals have been running the industries in the same locality and the details of the industries have been made in the report and all these issues would comprehensively go to show that, in the residential area, these industries also have been functioning for long years and if at all, the industries have to be regulated, within the meaning of Section 361 of the Act, necessary steps would be taken by the Corporation and after taking into consideration the input to be supplied by each of the industry by making an application to get license under Section 361 of the Act, suitable decision would be taken within the time frame and according to the decision to be taken by the Corporation, as to whether this kind of license to be issued under Section 361 of the Act or not, the industries' fate is, either entitled to continue or close down or shift to some other place would be decided and till such time, the industries can be permitted to go on, as these industries have already been functioning for several years with the consent of the Corporation.

15. I have considered the said submission made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

16. In order to meet the point raised by the petitioner in W.P (MD).No.7463 of 2018, as to whether these industries have to be given license or have to obtain license under Section 361 of the



Act, I have perused the said provision i.e., Section 361 of the Madurai City Municipal Corporation Act, 1971. The said section upto Sub-clause 4, which are relevant, are extracted herein:

"Application to be made for construction, establishment or installation of factory, workshop or work-place in which steam or other power is to be employed-(1) Every person intending-

(a)to construct or establish any factory, workshop or work place in which it is proposed to employ steam-power, water-power, or other mechanical power or electric power: or

(b)to construct any building, hut or structure which is intended to be used for any of the purposes mentioned in Schedule IV ; or

(c)to install in any place, any machinery or manufacturing plant driven by steam, water, electric or other power as aforesaid, not being machinery or manufacturing plant exempted by rules, shall before beginning such construction, establishment or installation make an application in writing to the Commissioner for permission to undertake the intended work.

(2)The application in respect of matters specified in clauses (a) and (c) of sub-section (1) shall specify the maximum number of workers proposed to be simultaneously employed at any time in the factory, workshop, work-place or premises and shall be accompanied by-

(a)a plan of the factory, workshop, work-place or premises prepared in such manner as may be prescribed by rules made in this behalf by the Government; and

(b)such particulars as to the power, machinery, plant or premises as the council may require by by-laws made in this behalf.

(3)The application in respect of matters specified in clause (b) of sub-section (1) shall contain such particulars as the council may require by by-laws made in this behalf.

(4)The Commissioner, with the previous sanction of the standing committee, shall, as soon as may be, after the receipt of the application-

(a)grant the permission applied for either absolutely or subject to such conditions as he thinks fit to impose; or

(b)refuse permission if he is of opinion that such construction, establishment or installation is objectionable by reason of the density of the population in the neighbourhood or is likely to cause a nuisance."

17.On reading of Section 361 of the Act, it makes abundantly clear that, if an industry or factory or workshop, proposed to



employ stream power, water power, mechanical power or electric power, has to obtain a license from the Corporation by way of permission under Sub-Clause 4 of Section 361 of the Act.

18. The Commissioner of the Corporation, with the sanction of the standing committee, can decide the application submitted by such industries proposed to have power i.e., stream, water, mechanical or electric for the manufacturing process and while giving such permission, condition can also be imposed by the Corporation. If the corporation decides such industries cannot be permitted to be located or to run in a particular locality, for the reasons to be recorded, permission can be refused by the Corporation.

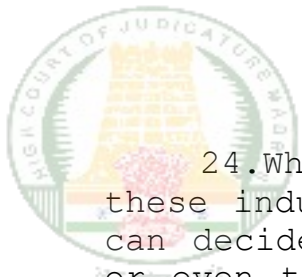
19. In this context, it become quite clear that, these industries i.e., the industries run by the private respondents as well as the other industries, which have been indicated in the report of the second respondent, located in Tagore Nagar area, Madurai Corporation limit, are necessarily to get such license or permission from the Corporation under Section 361 of the Act, since these industries certainly using the power for either manufacturing process or running of the factory.

20. The learned Standing counsel for the respondent Corporation submitted that, pursuant to D&O license, which has been given to these industries, they have been running for two decade/years or more, however, admittedly, the permission under Section 361 of the Act were not given and this issue had not been, so far, engaged/confronted for the decision of the respondent Corporation.

21. He further submitted that, however, since these industries, by using the power, have been running for manufacturing purposes, certainly, they have to be permitted only within the parameter of Section 361 of the Act and therefore, all these industries can be directed to apply before the Corporation under Section 361 of the Act to seek for a permission under Section 361(4) of the Act and once such application is made, the same would be decided by the respondent Corporation, within the time frame to be stipulated by this Court and depending upon the outcome of the decision to be made by the Corporation, the fate of these industries can very well be decided.

22. I have considered the said submission made by the learned Standing counsel appearing for the respondent Corporation and also have gone through the import of the provisions of Section 361 of the Madurai City Municipal Corporation Act.

23. Admittedly, these industries, including the industries of the private respondents, had been running with only D&O license and since these industries admittedly using the power for running their factories, they have to necessarily get permission under Section 361 of the Act and without such permission, these industries cannot run.



24. While deciding the application to be made in this regard by these industries for giving such permission, since the Corporation can decide to impose condition to be followed by these industries or even to refuse to give such permission, whatever the objection raised by anyone, including the petitioner in W.P(MD).No.7463 of 2018 or any other resident in that locality, can also be taken care of by the respondent Corporation and accordingly, a comprehensive decision can be taken for reason to be recorded in writing by the Corporation in either way i.e., to give or refuse the license or permission under Section 361 of the Act.

25. In that view of the matter, this Court is inclined to pass the following directions, in these two writ petitions:-

"(i) that the private respondent in W.P(MD).No.7463 of 2018 i.e., the seventh respondent, who is the petitioner in W.P(MD).No.13865 of 2019 shall give an application to the respondent Corporation seeking necessary permission/license under Section 361(4) of the Madurai City Municipal Corporation Act, 1971, within a period of two weeks from the date of receipt of a copy of this order and on receipt of such application from the seventh respondent/petitioner in W.P(MD).No.13865 of 2019, the same shall be decided by the respondent corporation within a period of three months thereafter and accordingly, orders to be passed under Sub-Section 4 of Section 361 of the Act, either to grant permission sought for or to refuse the permission ;

(ii) Once such permission is granted, the seventh respondent/petitioner in W.P(MD).No.13865 of 2019 can continue to run the industry in that locality, where it is already located and once such permission is rejected, the said industry has to be shifted to some other suitable place ;

(iii) Apart from this, the respondent Corporation is directed to instruct the other industries, which have been pointed out by the inspection team as reflected in the report of the second respondent, located in that locality, to make such similar applications under Section 361 of the Madurai City Municipal Corporation Act and in those cases also, after getting an application within a period of two weeks from the date of such instructive information given, the respondent Corporation have to decide the respective application to be filed by those industries, within a period of three months thereafter and running of those industries also would depend upon the decision to be taken by the Corporation and such an application shall be filed by each of such industry within the time frame as stipulated above ;

(iv) In view of the aforesaid directions issued, the impugned order made in W.P(MD).No.13865 of 2019, dated



25.03.2019 by the City Health Officer, Corporation of Madurai, shall not be given effect to.

(v) In view of the said impugned order dated 25.03.2019 in W.P(MD).No.13865 of 2019 is kept in abeyance, the industry run by the petitioner in W.P(MD).No.13865 of 2019, who is the seventh respondent in W.P(MD).No.7463 of 2018 can also be permitted to run, till the decision, as indicated above, is taken by the respondent Corporation in the application to be submitted by the petitioner in W.P(MD).No.13865 of 2019 under Section 361 of the Act.

(vi) If the respondent Corporation ultimately decide to grant permission to any of these industries including the industries of the private respondents, conditions can be imposed, which includes the conditions with regard to the timings of the industry as to from which hour to which hour the industry can run. However, till such an imposition of condition, during the interregnum i.e., till the decision taken by the respondent Corporation, the industry of the seventh respondent in W.P(MD).No.7463 of 2018 and all other industries mentioned in the report of the second respondent, shall only be permitted to run between 09.00 a.m., and 05.00 p.m.,.

(vii) These directions shall be scrupulously followed by the parties concerned in these writ petitions and after having decided these issues, as indicated above, the respondent/Madurai Corporation shall file compliance report before this Court on 02.12.2019.

26. With these directions, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

27. Post the matter on 02.12.2019 "for reporting compliance".

Sd/-

Assistant Registrar(AD-I)

// True Copy //

Sub Assistant Registrar(CS)

rmk

1. THE DISTRICT COLLECTOR
MADURAI DISTRICT COLLECTOR OFFICE, MADURAI

2. THE COMMISSIONER
THE CORPORATION OF MADURAI, MADURAI



3. THE CITY HEALTH OFFICER,
THE CORPORATION OF MADURAI, MADURAI

4. THE COMMISSIONER OF POLICE OF MADURAI CITY, MADURAI

5. THE SECTION OFFICER,
WRIT SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+2CC TO MR.K.PANDIARAJAN, Advocate Sr. No. 75533

+1CC TO MR.R.MURALI, Advocate Sr. No.75627

+2CC TO MR.C.VAKEESWARAN, Advocate Sr. No.75545 & 75546

W.P(MD) .No.7463 of 2018
and W.P.(MD)No.13865 of 2019
16.07.2019

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