



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.20458 of 2019

WEB COPY

M.Rajakumar

... Petitioner

Vs.

The Commissioner of Police,
Tiruchirapalli City,
Tiruchirapalli.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents to accept the petitioner's application dated 18.6.2019 along with the Annexures and to grant temporary Cracker License to the petitioner to possess and sell from a shop at any one time not exceeding to 100 Kilograms of manufactured Fireworks of Class-7, Division-2, Sub Division-2 and 500 Kilograms of Chinese Crackers or Sparklers at his Shop situated at No.24/109, Gandhi Road, Srirangam, Trichy strictly in consonance with Rule-113 of the Explosive Rules 2008.

For Petitioner : Mr.N.Anandakumar

For Respondent : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

ORDER

This writ petition is filed seeking a direction to the respondent to grant temporary license to the petitioner to run a crackers shop.

2.The petitioner is a license holder for running crackers shop. He filed an application for renewal of his license to the respondent. The Commissioner of Police, Tiruchy, by his letter dated 07.08.2019, directed the petitioner to produce no objection certificate from the landlord of the shop premises.

3.The learned counsel for the petitioner would submit that the petitioner has filed a suit in O.S.No.62 of 2017, restraining the landlord from evicting him under due process of law. Pursuant to the same, the landlord filed RCOP Nos.40 and 41 of 2017 for eviction and fixation of fair rent and the same are pending. The petitioner has produced an undertaking affidavit as per the directions of this Court in WP(MD)No.18699 of 2017 and produced a third party insurance policy to the value of Rs.10,00,000/- and another insurance policy for a sum of Rs.15,00,000/- towards building for renewal. Further,

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the petitioner has given a representation dated 14.08.2019, requesting to issue temporary cracker license. But the said representation was not at all considered by the respondent. Hence, the petitioner is before this Court.

4.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. "

5.In view of the same, the respondent is directed to pass appropriate orders for renewal of license without insisting no objection certificate from the landlord. Till such time, Sub Rule 5 of Rule 112 of the Explosive Rules, 2008 will hold the field.

6.The writ petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The Commissioner of Police,
Tiruchirapalli City,
Tiruchirapalli.



+1 CC to Mr.N.ANANDA KUMAR, Advocate (SR-89313[F] dated 25/09/2019)

+1 CC to Spl.GP (SR-89795[F] dated 26/09/2019)

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