



WEB COPY

W.A.(MD)No.1096 / 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)No.1096 of 2019

and

C.M.P. (MD)Nos.9843 to 9845 of 2019

A.Rangarajan

... Appellant/3rd party

Vs.

1.The Commissioner of Police,
Thiruchirapalli District,
Thiruchirappalli.

...1st Respondent/Respondent

2.M.Rajkumar

..2nd Respondent/petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order passed in W.P.(MD)No.20458 of 2019 dated 25.09.2019 on the file of this Court.

Prayer in WP(MD). 20458/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Mandamus praying this Court Directing the respondents to accept the petitioner 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 exceedings 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 Appellant

: Mr.S.Muthuvinayagam

For R1

: Mr.A.Muthukaruppan

Additional Government Pleader

For R2

: Mr.N.Anandkumar

JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.S.Muthuvinayagam, learned counsel for the appellant,
Mr. A. Muthukaruppan, learned Additional Government Pleader for the

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first respondent and Mr.N.Anandkumar, learned counsel for the second respondent. By consent on either side, this writ appeal is taken up for final disposal.

2. This appeal is filed by a third party challenging the order, dated 25.09.2019 in W.P.(MD)No.20458 of 2019 filed by the second respondent herein.

3. The writ petitioner filed the said writ petition seeking to direct the second respondent to accept his application filed for grant of temporary cracker license. The appellant is the owner of the shop, in which the second respondent is carrying business. It appears that the appellant has not given any consent for the second respondent to run a cracker shop. Admittedly, eviction petition is pending in R.C.O.P.No.41 of 2017 on the file of the District Munsif (Rent Controller), Tiruchirapalli.

4. Apart from that a suit is also pending, in O.S.No.812 of 2019 filed by the second respondent to restrain the appellant from evicting him without following due process of law. Since the landlord has also filed eviction petition under the provisions of the Tamil Nadu Building (Lease and Rent Control) Act, 1960, the suit has become infructuous, because the landlord has also resorted to legal procedure for evicting the second respondent. It is open to the landlord to move to civil Court for obtaining appropriate orders.

5. The writ petition was disposed of by directing the first respondent to pass appropriate orders for renewal of license without insisting of 'No Objection Certificate' from the appellant / landlord. Direction was issued by referring to the decision in the case of **Sudhakaran Vs. Corporation of Trivandram and another** [(2016) 14 SCC 263]. The question would be as to whether the application filed for grant of temporary license to run a cracker shop would have been granted without the consent of the appellant / landlord. The decision in the case referred above, was rendered taking note of the factual position therein and it was held that at the time when the application is made for the first time, consent is required to be obtained and for subsequent renewals, it cannot be compelled to obtain consent from the landlord.

6. This decision in our considered view is wholly inapplicable to the case of the second respondent, because the second respondent applied for temporary cracker license, which is issued during Diwali season. Therefore, every application for temporary license is a fresh application and it cannot be considered as renewal, even otherwise every application for renewal would have to be treated as a fresh grant, since, application has to fulfil all the conditions. Therefore, the writ Court is not right in issuing a direction by directing the first respondent to pass orders without insisting 'No Objection Certificate', it appears that the learned



writ Court was of the opinion that it is the renewal of the license, whereas factually it is not renewal of license and it is a fresh application for grant of temporary license.

7. Considering the fact that the Diwali festival has already commenced and temporary license is only for a brief period, we do not propose to cancel the license issued to the second respondent / writ petitioner. However, the finding rendered by the learned writ Court in the order impugned, dated 25.09.2019 is set aside and the same cannot be relied on by the second respondent, when he applies for license for the next year, which would be considered strictly in accordance with the relevant Rules.

8. This writ appeal is allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Commissioner of Police,
Thiruchirapalli District,
Thiruchirappalli.

+1 CC to Mr.N.ANANDAKUMAR, Advocate (SR-94396[F] dated 24/10/2019)

+1 CC to Mr.D.CHRISTENSON JUGUNU, Advocate (SR-94409[F] dated 24/10/2019)

ORDER MADE IN
W.A. (MD)No.1096 of 2019
23.10.2019

VB(06.11.2019) 3P 4C