



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.11788 of 2019 and 2221 and 7782 of 2020

and

WMP(MD)Nos.8918 and 8919 of 2019 and

7317 of 2020 and 1874, 7263 and 7264 of 2020

W.P. (MD)No.11788 of 2019:-

K.Diana

... Petitioner

Vs.

1.The Health Officer,
Madurai Corporation,
Madurai.

2.L.Thiyagarajan

... Respondents

(R2 impleaded vide Court order dated
11.12.2019 in WMP(MD)No.13314/2019 in WP(MD)
No.11788/2019)

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the impugned notice of the respondent made in Ma.1A7/002828/19 dated 03.05.2019 and quash the same as illegal.

For Petitioner	: Mr.M.Jegadeesh Pandian
For R1	: Mr.J.Gunaseelan Muthiah
	Additional Government Pleader
For R2	: Ms.AL.Ganthimathi

W.P. (MD)No.2221 of 2020:-

L.Thiyagarajan

... Petitioner

Vs.

1.The Commissioner,
Madurai Corporation,
Madurai.

2.K.Diana

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent herein to forthwith take action against the 2nd respondent pursuant to the representation dated 12.12.2019 by the petitioner.



For Petitioner : Ms.AL.Ganthimathi
For R1 : Mr.T.S.Mohammed Mohideen,
Standing Counsel
For R2 : Mr.M.Jegadeesh Pandian

W.P. (MD)No.7782 of 2020:-

K.Diana

... Petitioner

Vs.

The Assistant Commissioner,
Zone-I,
Madurai Corporation,
Madurai.

... Respondent

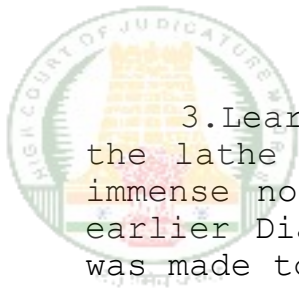
Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the respondent made in No.Nil dated 15.06.2020 and quash the same as illegal and consequently direct the respondent to issue renewal of license within the time limit stipulated by this Court.

For Petitioner : Mr.M.Jegadeesh Pandian
For Respondent : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

C O M M O N O R D E R

K.Diana and L.Thiyagarajan are neighbours. Diana is running a lathe workshop at No.90, Ponmeni Main Road, Madurai in the name and style of Merlin lathe Works. She obtained a license and it was valid upto 31.03.2020. The complaint of L.Thiyagarajan is that it is causing nuisance to him. L.Thiyagarajan filed W.P.(MD)No.2221 of 2020 for directing the Commissioner, Madurai Corporation to take action on his complaint dated 12.12.2019. Earlier, the Health Officer by order dated 03.05.2019 had directed the petitioner to comply with certain formalities. Contending that the Health Officer has no jurisdiction to issue such a communication, Diana filed W.P.(MD)No.11788 of 2019. An interim order was granted in the said writ petition. In the mean while, the license period expired. The corporation authority declined to renew her license. The order declining to renew the license has been put to challenge in W.P.(MD) No.7782 of 2020.

2.It is not in dispute that the workshop is located in a residential area. Therefore, this Court called upon the licensee to file an affidavit indicating that she will not carry on her operation in a manner so as to cause nuisance to the neighbours particularly to L.Thiyagarajan. Diana filed an affidavit stating that she will abide any direction that may be issued by the corporation and that she would not cause any nuisance to her neighbours.



3.Learned counsel appearing for L.Thiyagarajan submitted that the lathe workshop is being operated in such a manner as to cause immense noise pollution. The learned counsel would point out that earlier Diana's brother was running the lathe workshop and after he was made to close down the shop, Diana had stepped into his shoes.

4.I carefully considered rival contentions and went through the materials on record.

5.The relevant statutory provision is contained in Sections 361 and 362 of the Madurai City Municipal Corporation Act, 1971. For establishing or running a workshop of this nature, license is required. Admittedly, Diana was originally granted license. Now the only question that arises for consideration is whether the same can be renewed or not. Section 362 of the Act reads as follows:-

"362. Commissioner may issue directions for abatement of nuisance caused by gas, steam or other power.-

(1) If, in any factory, workshop or work-place in which gas, steam power; water-power, or other mechanical power or electric power is used, nuisance is in the opinion of the Commissioner caused by the particular kind of fuel used or by the noise or vibration created, he may issue such directions as he thinks fit for the abatement of the nuisance within a reasonable time to be specified for the purpose.

(2) If there has been willful default in carrying out such directions or if abatement is found impracticable, the Commissioner may -

(a) prohibit the use of the particular kind of fuel;
or

(b) prohibit the working of the factory, workshop, or work-place altogether until such directions have been carried out or between the hours 6 p.m. and 8 a.m. or during any particular time or times between such hours."

6.This Court has to necessarily be mindful of the concerns expressed by L.Thiyagarajan. Therefore, The Commissioner is directed to depute an official to conduct a spot inspection. The inspecting official will note all the relevant features in regard to the running of the lathe workshop by Diana. Thereafter, before passing the orders, the Commissioner will put L.Thiyagarajan on notice. The licensing authority will bear in mind all the requirements that may be laid down not only in the Madurai City Municipal Corporation Act, 1971 but also in other relevant statutes. The Commissioner will thereafter pass a speaking order in the matter.

7.The entire exercise will be concluded within a period of three months from the date of receipt of a copy of this order. Since Diana was already granted license under Section 361 of the Act



and she has also been enjoying interim order, it is only just and proper that the status quo as on date continues till the licensing authority decides on the renewal application.

8.In this view of the matter, the orders impugned in W.P.(MD)No.7782 of 2020 and W.P.(MD)No.11788 of 2019 are quashed and these writ petitions are allowed. W.P.(MD)No.2221 of 2020 is disposed of in the light of the directions already given. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Commissioner,
Madurai Corporation, Madurai.
2. The Assistant Commissioner,
Zone-1, Madurai Corporation,
Madurai.
- 3.The Health Officer, Madurai Corporation,
Madurai.

+1CC to M/s.J.GUNASEELAN MUTHIAH, Advocate SR-16016.
+1CC to Mr.T.S.Mohammed Mohidheen, Advocate, SR.No.16000.

**W.P. (MD)Nos.11788 of 2019
and 2221 and 7782 of 2020
03.09.2020**

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