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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.18867 OF 2021

AND

W.M.P.NOS.20145 AND 23337 OF 2021

S.Kamakshi

...Petitioner

-Vs-

1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat Building,
Fort St.George,
Chennai - 600 009.

2.The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai - 600 003.

3.The Greater Chennai Corporation,
Revenue Department - Zone IX,
Ripon Building,
Chennai - 600 003.

4.The Greater Chennai Corporation,
Public Health Department - Zone IX,
Ripon Building, Chennai - 600 003.

5.Ram

6.Linda Alexander

7.Mahalingapuram Residents Welfare Association,
Represented by its Secretary Mr.G.Pradeep,
S/o.T.N.Gopalakrishnan,
LIC Flats, 29/9, Madhavan Nair Road,
Mahalingapuram, Chennai - 600 034.

...Respondents

(R7 impleaded vide order dated
26.10.2021 made in W.M.P.No.24102 of
2021 in W.P. No. 18867/2021)



PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the second to fourth respondents herein to remove the illegal unlicensed dog kennel in the name and style of "PET PAWS" run by the fifth and sixth respondents herein, at No.4, Mahalinga Ist Cross Street, Mahalingapuram, Chennai - 600 034.

For Petitioner : Mr.S.Prem Auxilian Raj
For Respondents : Ms.Akila Rajendran
Government Advocate for R1
Ms.P.T.Ramadevi
Standing Counsel for R2 to R4
Mr.N.Poovanalingam for R5 & R6
Mr.V.Moorthy for R7

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the second to fourth respondents herein to remove the illegal unlicensed dog kennel in the name and style of "PET PAWS" run by the fifth and sixth respondents herein, at No.4, Mahalinga Ist Cross Street, Mahalingapuram, Chennai - 600 034.

2. The petitioner is a senior citizen aged about 80 years and residing at No.6, Mahalinga 1st Cross Street, Mahalingapuram, Chennai - 600 034 for the past 36 years along with her husband, who is 86 years old.

3. The petitioner's husband is suffering from vision impairment and since two sons of the petitioner are working abroad and are settled there with their family, both the petitioner and her husband alone are living in the said premises.

4. While so, the fifth and sixth respondents herein have taken the property at No.4, Mahalinga 1st Cross Road, Mahalingapuram, Chennai - 34 admeasuring 2400 sq.ft. for lease / rent for the purpose of starting a business called 'dog kennel' in the name and style of "Pet Paws". Accordingly, they brought several number of dogs in the dog kennel and with the result, since it is being a part of the residential area or apartments, there has been always a noise pollution as well as health hazard because of large number of dogs that have been placed in the said dog kennel.

5. In order to verify, whether any such permission was obtained by the fifth and sixth respondents in this regard to have a dog kennel, when the petitioner made an attempt, the petitioner came to understand that, no such permission or license was given by the Local Authority, i.e., respondents



Corporation to the fifth and sixth respondents to run the dog kennel with number of dogs and therefore, in order to remove the dog kennel, the petitioner since had given representations on 09.11.2020 and 29.07.2021, those representations since have not been considered by the respondents Corporation, she has come out with the present Writ Petition with the aforesaid prayer.

6. This Writ Petition when came up for hearing before a learned Judge on 29.09.2021, the learned Judge has passed the following order :-

"There is no representation for the fourth and fifth respondents. Learned Standing Counsel appearing on behalf of the Chennai Corporation submitted that, already a notice has been issued to the fourth and fifth respondents under Section 44 of the Public Health Act.

2. It is brought to the notice of this Court that the fourth and fifth respondents are running a dog kennel without any license and are causing nuisance to the residents in and around the locality.

3. A prima facie case has been made out and it is seen that there is violation of the provisions of the Central City Municipal Corporation Act, which mandates obtaining license for running the dog kennel.

4. Hence, there shall be an order of interim injunction as prayed for. Post this writ petition after four weeks. In the meantime, the respondents are directed to file counter."

7. Pursuant to which, when the case again came up for hearing before me on 08.11.2021, after hearing both sides, I passed the following order :-

"Heard the learned respective counsel appearing for the parties.

2. Mr.A.S.Rahul Adhitya, learned standing counsel appearing for the Chennai Corporation, on instruction, would submit that, in the premises of the 5th and 6th respondents though there was a permission granted to have storage of cattle feed only since it was complained by the neighbours like the petitioner that they were running a dog kennel, after suitable instructions given to them, both the 5th and 6th respondents have vacated the dog kennel and as of now, there is no single dog is being nurtured there in the objectionable premises of 5th and 6th respondents.

3. However, Mr.S.Prem Auxilian Raj, learned counsel appearing for the petitioner would seek a



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short accommodation till Wednesday (10.11.2021) to get instruction from the petitioner as to whether the submission made by the learned Standing counsel appearing for the Chennai Corporation is correct and to that effect, whether the dog kennel in possession of the 5th and 6th respondents have already vacated the premises or not, hence the learned counsel for the petitioner seeks accommodation.

4. Post the matter on 10.11.2021 under the caption 'For Orders'."

8. Pursuant to the said orders, when the case again came up for hearing on 11.11.2021, after hearing both sides, I have passed the following order :-

"Though there has already been an order passed by this Court on 29.09.2021 injuncting the private respondents, i.e., the fifth and sixth respondents from running the dog kennel at the premises of the fifth and sixth respondents, it was the complaint of the petitioner that, continuously they were running the same.

2. At that juncture, this writ petition came up for further hearing on 08.11.2021, where the learned Standing Counsel appearing for the Chennai Corporation, on instructions would submit that, actually the fifth and sixth respondents were given permission to storage of cattle feed only and not to run the dog kennel. Therefore, a strict instruction had already been given and inspection was conducted at the premises of the fifth and sixth respondents, where the officials of the Corporation found that the dog kennel, pursuant to the instruction given by the Corporation had been vacated by the fifth and sixth respondents and that statement of the Corporation Counsel was recorded and for verifying the same on the part of the petitioner to report before this Court, the case has been adjourned today under the caption "For Orders".

3. Accordingly, when the case is taken up for hearing, it is the definite case of the learned counsel appearing for the petitioner as well as the learned counsel appearing for the seventh respondent, i.e., the Resident's Welfare Association that, only at the time of making inspection by the Corporation people, they shown as if that the dog kennel has been vacated and subsequently they restore it and they have been continuously running the same, that is what their



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definite instruction.

4. Though this has been stoutly denied by the learned counsel appearing for the fifth and sixth respondents as well as the learned Standing Counsel appearing for the Corporation, this Court feel that, unless a definite truth is revealed in this matter, the Court cannot proceed further and dispose of this writ petition, therefore, in order to ascertain the exact truth, this Court feels that, a joint inspection can be conducted by the officials concerned of the Chennai Corporation along with the petitioner and his counsel, as well as the seventh respondent and his counsel, by giving an advance notice. It is to be made clear that, even after conducting the inspection, if still either the petitioner or the seventh respondent finds that, the fifth and sixth respondents again restore the same and continue to run the dog kennel, they have been permitted to take photographs with date and time for evidence and produce the same before this Court for further action. To complete the aforesaid task of joint inspection and to file a report to that effect by the Corporation as well as by the writ petitioner and the seventh respondent, two weeks' time is granted.

5. Post the matter on 25.11.2021."

9. Pursuant to these orders, after having conducted joint inspection by the respondents Corporation, now the case has come up for hearing today. The learned Standing Counsel appearing for the respondents Corporation has filed a joint inspection report, wherein the Corporation, i.e., the Zonal Officer, Zone-9, Chennai Corporation has stated the following :-

"The Petitioner in the above Writ Petition prayed for:

"Directing the respondents 2 to 4 herein to remove the illegal unlicensed dog kennel in the name and style of "PET PAWS" run by the respondents 5 and 6 herein at No.4, Mahalinga 1st Cross Street, Mahalingapuram, Chennai - 34 and pass such other suitable orders"

In continuation with the parawar remarks submitted, the GCC Public Health Department had stated that a notice was issued under Section 44 of Tamilnadu Public Health Act, 1939. The respondents or the owner's of the boarding kennel had submitted their report for the notice which is being attached with this report.

It is submitted to state that the "PET PAWS"



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Dog Boarding Centre was inspected on 27.10.2021 by the GCC Public Health Department Officials, wherein the boarding centre had suspended it's activities temporarily and had relocated the dogs to another place and kept the place vacant, but they had one of their own pet dog in the first floor. They were instructed to take their pet to their residence as it was Court Orders to suspend or discontinue to have dogs in that property as it was under prosecution.

It is submitted to state that in response to the last hearing date on 08.11.2021, it was informed that the "PET PAWS" Boarding Centre had still been having dogs in the premises and the Court had ordered for further probe to resolve the situation. In response to which it is stated that the GCC Public Health Department Officials submitted a notification to the Petitioner Mrs.S.Kamakshi at her residence, also inviting the Mahalingapuram Residential Welfare Association Members, that an inspection would be conducted in the "PET PAWS" Boarding Kennel on 13.11.2021 at 11.00 am and where requested to join the surprise visit. The inspection report is being attached with this report. There was one dog present in the premises, this the owner was contacted over phone and told to relocate his pet dog before the next inspection and not to violate the court order further.

It is submitted to state that there is no specific license provided by the Greater Chennai Corporation to run Dog Boarding Kennels. Since the respondents 5 and 6 were running a Dog Boarding Kennel with the license provided for "Storing of Cattle Feed", a note has been sent to the Revenue Department, GCC to cancel the license issued to them. Revenue Department cancelled the license. Copies attached.

In continuation it is submitted to state that, the PET PAWS Boarding Kennel was inspected again on 17.11.2021 by the GCC Public Health Department Officials. The premises was thoroughly inspected and no dogs were found in the property.

The photos for each inspection is being attached along with this report.

Submitted for further perusal and orders."

10. Relying upon this report, the learned Standing counsel appearing for the respondents Corporation would submit that, on



the last inspection conducted on 17.11.2021, the Corporation officials found that, not even a single dog was available in the dog kennel and a direction has already been given to cancel the license since the fifth and sixth respondents have already violated the license condition which has been given to store the animal food and not to run the dog kennel, subsequently the Revenue Department of the respondents Corporation has cancelled the license on 19.11.2021.

11. Having received a copy of this report as well as the fact that, the license given to the fifth and sixth respondents itself has been cancelled by the respondents Corporation, the learned counsel appearing for the petitioner would submit that, in view of the said report submitted by the respondents Corporation since the entire dog kennel has been completely vacated and the license also since has been cancelled, recording those developments, this Writ Petition can be given a quietus, he contended.

12. However, Mr.N.Poovanalingam, learned counsel appearing for the fifth and sixth respondents would submit that, under the provisions of the Chennai City Municipal Corporation Act, 1919, there is no separate provision available to give license to run a dog kennel. Therefore, based on the license given to the fifth and sixth respondents by the Chennai Corporation, the dog kennel was run and because of the objection now raised and as per the orders of this Court, the dog kennel has been removed from the store concerned. However, insofar as the license granted to the fifth and sixth respondents to store the animal food is concerned, that cannot be cancelled unilaterally without giving an opportunity of being heard to the petitioner. Therefore, such kind of cancellation is bad in law and moreover, since there is no separate license available for running the dog kennel, the present license given which is now sought to be cancelled can be utilized by the fifth and sixth respondents to run the dog kennel, he contended.

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

14. Since the report of the Chennai Corporation dated 20.11.2021 as quoted herein above has made it clear that, as on 17.11.2021, not even a single dog was available in the premises concerned and the entire dog kennel has been vacated. Moreover, the Corporation has also brought to the notice of this Court that, the license to store the animal food given to the fifth and sixth respondents also has been cancelled by the Chennai Corporation on 19.11.2021. When that being so, insofar as the grievance espoused by the writ petitioner supported by the



seventh respondent Association since has been resolved, this Court feels that, no further order is required to be passed in that line to give any mandamus as sought for by the petitioner.

15. Insofar as the plea raised by the fifth and sixth respondents' counsel that, the unilateral cancellation of the license is bad in law is concerned, that issue can be questioned in the manner known to law by the fifth and sixth respondents if they are advised to do so. Moreover, in that case, whether there has been any violation on the part of the fifth and sixth respondents of the license condition are concerned, certainly those condition have been violated which has been the admitted facts on the part of the parties concerned and that is vouched by the respondents Corporation being as one of the reasons, the license given to the fifth and sixth respondents has now been cancelled.

16. Be that as it may, since the validity of the cancellation is not questioned here, this Court do not want to go into the merits of such contention raised by the learned counsel appearing for the fifth and sixth respondents with regard to the cancellation of the license is concerned.

17. Accordingly, this Writ Petition is disposed of by recording the aforesaid developments with a further direction to the respondents that, the aforesaid position shall be maintained in the premises concerned, in future unless and until the law permits for having such a dog kennel in the residential apartments, for which, as of now, the respondents Corporation says there is no such license provided or can be provided. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

vji / sp

To

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat Building,
Fort St. George,
Chennai - 600 009.



2.The Commissioner,
Greater Chennai Corporation,
Ripon Building,
Chennai - 600 003.

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3.The Greater Chennai Corporation,
Revenue Department - Zone IX,
Ripon Building,
Chennai - 600 003.

4.The Greater Chennai Corporation,
Public Health Department - Zone IX,
Ripon Building,
Chennai - 600 003.

+1cc to Mr.S.Prem Auxilian Raj, Advocate Sr.No.61379

+1cc to Mr.P.T.Ramadevi, Advocate Sr.No.60996

+1cc to the Government Pleader Sr.No.61965

W.P. No. 18867 of 2021
and

W.M.P. Nos. 20145 and 23337 of 2021

NRL (CO)
RVM(15/02/2022)