



WEB COPY

W.A.(MD)No.914 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2021

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.914 of 2021

and

CMP(MD).No.4154 of 2021

N.Vanjimuthu

... Appellants/Respondent No.4

Vs.

1. R.Rajangam

... 1st Respondent/Petitioner

2. The Commissioner of Prohibition & Excise,
Ezhilagam Main Road,
Chepauk, Chennai - 600 005.

3. The District Collector,
Dindigul District.

4. The Assistant Commissioner,
Prohibition & Excise Department,
Dindigul, Dindigul District.

... Respondents 2 to 4/
Respondents 1 to 3

Prayer: Writ Appeal filed under Clause 15 of Letters Patent,
against the order of this Court made in W.P.(MD) No.20920 of 2017,
dated 16.03.2021.

Prayer in WP(MD). 20920/ 2017 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a writ of
Mandamus directing the respondent No.1 to renew his FL 3 in
respect of my Lodge namely Gowri Tourist Home situated at
Batlagundu, Dindigul District for the period 2016-17 and 2017-18
and consequently direct the respondents 2 and 3 to supply the
liquor bottles to petitioner lodge.

For Appellants : Mr.L.Chandrakumar
for Mr.V.Janakiramulu

For Respondent : Mr.K.P.Krishnadass,
Special Government Pleader
for R2,R3 and R4



Mr.B.Saravanan, Advocate for R1
(Caveator)

J U D G M E N T

न्याय [Judgment of the Court was delivered by **T.S.SIVAGNANAM,J.**]

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We have heard Mr.L.Chandrakumar, learned Counsel appearing for the appellant-fourth respondent, Mr.B.Saravanan, learned Counsel appearing for the first respondent and Mr.K.P.Krishnadass, learned Special Government Pleader appearing for the respondents 2, 3 and 4.

2. This appeal is directed against the order dated 16.03.2021, in W.P(MD).No.20920 of 2017. The said writ petition was filed by the first respondent herein, praying for a direction upon the second respondent, namely, the Commissioner of Prohibition and Excise, to renew his FL3 license to run a bar in the lodge under the name and style 'Gowri Tourist Home', in Batlagundu, Dindigul District, for the period 2016-17 and 2017-18 and to consequently, direct the respondents 3 and 4 herein, to supply liquor bottles to the said facility.

3. The learned Single Bench, by the impugned order, has directed the first respondent herein, to file a renewal application within a time frame and the competent authority was directed to pass orders on the application. The learned Writ Court also took note of the submission made on behalf of the appellant herein, who was impleaded as the fourth respondent in the writ petition, but the appellant has filed R.C.O.P.No.14 of 2016, on the file of the District Munsif/Rent Controller, Nilakkottai, seeking for eviction and the same is pending before the learned Rent Controller/District Munsif, Nilakkottai, and taking note of this submission, the said eviction petition was directed to be disposed of on merits within a period of seven months.

4. Further, the learned Writ Court clarified that the pendency of the eviction proceedings will not be taken note of by the authority while considering the renewal application. The appellant who was the fourth respondent in the writ petition is the owner of the building, where, the first respondent is carrying on a business of running a lodging house and earlier had been granted license to run a bar, for which, FL3 license was granted. There has been dispute between the parties and several writ petitions and writ appeals were filed earlier, and orders were passed and one of which being that the Hon'ble Division Bench of this Court directed that the renewal of the license for much earlier period to be considered without insisting upon a No Objection Certificate from the appellant/landlord, since there was a tenant/landlord dispute.



5. We may not be required to examine all these issues as we are convinced that without filing an application and without alleging that there is a delay in considering such an application, the Writ Court would not have been justified in directing the first respondent to file an application and then issued a direction simultaneously to consider the application. The law is well settled as to when a Writ of Mandamus to be issued. In the instant case, it was the duty of the first respondent to establish that there has been supine indifference on the part of the second respondent herein, to exercise the statutory power though the first respondent has complied with all formalities or that there has been inordinate delay in the second respondent exercising his powers under the provisions of the Act.

6. We find that there is no such allegations made by the first respondent to justify the Writ Court to issue a direction for consideration of application, which is yet to be filed. It is to be noted that the license sought for is to trade in liquor and the first respondent has no fundamental right to trade in liquor and the trading of liquor is regulated by the provisions of the Tamil Nadu Prohibition Act and the Rules framed thereunder. Therefore, subject to fulfilment of conditions and license being granted and then only, first respondent can carry on business of trading in liquor.

7. The learned Counsel appearing for the first respondent would vehemently contend that the appellant has been repeatedly coming before this Court and in spite of having lost before this Court in an earlier round, similar relief cannot be sought for and it would be amounts to abuse of process of Court.

8. The learned Counsel appearing for the appellant on the other hand, would contend that the learned Judge has, while issuing a direction, put a premium on it in the sense that the learned Judge has directed the application to be filed, to be termed as a renewal application, which is incorrect, because, a renewal application could be filed before the expiry of 30 days from the date on which the previous license expires and admittedly, the first respondent did not possess a license earlier and therefore, the question of application to be treated as a renewal application does not arise.

9. Per contra, the learned Counsel for the first respondent would submit that in an earlier writ petition filed by the petitioner in W.P(MD).No.17356 of 2017, a direction was sought for not to grant FL3 license to the first respondent herein, without following due process of law and mandatory statutory compliance of procedure of valid lease for bar premises or renewal of lease by



the petitioner to the fourth respondent, the first respondent herein.

10. The writ petition was dismissed by order dated 14.09.2017 and the operative portion of order reads as follows:

"5. According to this Court, this writ petition itself is not maintainable, since the petitioner's earlier writ petition came to be dismissed as infructuous, pursuant to the clarificatory order passed by the Hon'ble Supreme Court in Arrive Safe Society of Chandigarh v. The Union Territory of Chandigarh and another [Special Leave Petition (Civil) No.10243 of 2017, decided on 11.07.2017]. Further, the fourth respondent's writ petition in W.P.(MD)No.22585 of 2016, seeking renewal of FL.3 licence for the year 2016-17 also came to be dismissed. It is pertinent to mention here that once the renewal of lease for the year 2016-17 was not accepted by the petitioner, then the question of granting FL3 license for the year 2017-18 in the absence of lease deed, does not arise at all."

11. The learned Counsel appearing for the first respondent submitted that a mistake had crept in while passing the above order, as the Court observed that the question of granting FL3 license for the year 2017-2018 in the absence of lease deed does not arise at all. Consequently, the authorities refused to entertain the application and since there was an error, the first respondent was advised to file a petition for clarification and accordingly, the same was filed in WMP(MD).No.3800 of 2018, and the same is still pending.

12. Be that as it may, we are convinced that the Writ Court could not have made any observation and issue direction to the first respondent herein, to file an application and terming the same as a renewal application and then issued a direction to the second respondent herein, the competent authority to dispose of the same. All that the Writ Court could have done is to give liberty to the first respondent to file an application without terming it either as a fresh application or a renewal application, as it is the issue between the first respondent and the second respondent-Department and it is too pre-mature for the Writ Court to take a decision on the issue prior to the statutory authority exercising its power. Therefore, all issues should have been left open and simple liberty should have been granted by the learned Writ Court to the first respondent.

13. For the above reasons, we are of the view that the order and direction issued by the Writ Court calls for interference. Accordingly, the Writ Appeal is allowed and the



order and directions issued stand set aside and modified as follows:

The first respondent is at liberty to file an application to the second respondent in terms of the provisions of the relevant Rules and it is open to the first respondent to term it as renewal application or a fresh application and if such application is filed, it is for the second respondent herein, to take a decision on merits and in accordance with law.

14. The learned Counsel for the appellant submitted that in terms of the directions issued by the Court already, an application has been filed.

15. In any event, since the direction has been set aside and modified in this judgment, the second respondent should take note of observations contained herein, and therefore, it would be advisable to the first respondent to file a representation to the second respondent enclosing a copy of this judgment, enabling the second respondent to take a decision on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2021

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 of Prohibition & Excise,
Ezhilagam Main Road,
Chepauk, Chennai - 600 005.

<https://hcservices.ecourts.gov.in/hcservices/>



2. The District Collector,
Dindigul District.

3. The Assistant Commissioner,
Prohibition & Excise Department,
Dindigul, Dindigul District.

+1 CC to MR.B.SARAVANAN, Advocate (SR-18138[F]
dated 30/04/2021)

+1 CC to MR.V.JANAKIRAMULU, Advocate (SR-18153
[F] dated 30/04/2021)

+1 CC to SGP (SR-18412[F] dated 03/05/2021)

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