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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.37147 of 2016
and W.M.P.No.31915 of 2016

M/s.Janatha Tyre Retreaders,
Represented by its Managing Partner,
A1, North Main Road,
Chidambaram - 608 001.
Represented by its Managing Partner,
Mr.Biju J.Veyccal

.... Petitioner

-Vs-

1.The Director
Directorate of Town and Country Planning,
807, Anna Salai, Chennai - 600 002.

2.The Commissioner,
Chidambaram Municipality,
Chidambaram, Cuddalore District.

3.Asivatham Nagar and GN Nagar
Welfare Association,
rep. by its President,
R.Kasinathan,
No.19, Asirvatham Nagar, Chidambaram Respondents
[R3 impleaded as per order dated 13.03.2017
in WMP.No.36204 of 2016]

Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the respondents from applying the reclassification to the petitioner's premises viz., No.A1, North Main Road, Chidambaram-608001 as "mixed residential zone" in variation to the earlier existing classification as commercial zone and consequently direct the respondents to grant the benefit of exemption as per Section 47 and 51 of the Tamil Nadu Town & Country Planning Act to the petitioner.



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For Petitioner :Mr.S.Thanka Sivan

For Respondents

R1 & R2 :Mr.V.Manoharan

Additional Government Pleader

R3 :Ms.Pooja

O R D E R

The prayer sought for herein is for a writ of Mandamus, forbearing the respondents from applying the reclassification to the petitioner's premises viz., No.A1, North Main Road, Chidambaram-608001 as "mixed residential zone" in variation to the earlier existing classification as commercial zone and consequently direct the respondents to grant the benefit of exemption as per Section 47 and 51 of the Tamil Nadu Town & Country Planning Act to the petitioner.

2.The case of the petitioner as per the affidavit averments of the petitioner is that the petitioner established a small scale tyre retreading unit at No.A1, North Main Road, Chidambaram, which unit was established according to the petitioner in the year 1991.

3.The petitioner obtained license under the Tamil Nadu Factories Act which was valid upto 31.12.2016. The Tamil Nadu Pollution Control Board also issued consent to operate under the Air [Prevention and Control of Pollution] Act, 1981 as well as Water [Prevention and Control of Pollutin] Act, 1974 to the petitioner unit during the year 2001.

4.The petitioner was also having fire license issued by the Fire Department which was valid upto 29.12.2016. The second respondent, Chidambaram Municipality had also issued D&O Trade license after due inspection by the officials concerned of the Municipality which was valid upto 31.03.2017.

5.The petitioner is running a small scale unit of tyre retreading with the power consumption of less than 50HP and 22 employees were working.

6.When that was the position, when the petitioner had approached the concerned authorities for renewal of the license, it was refused or they have not considered or accepted the plea of the petitioner for renewal of the license by the Municipality and the consent to be issued by the Tamil Nadu Pollution Control Board, etc. on the sole ground that initially the land in which



the petitioner unit was located was classified as commercial zone and subsequently sometime in 2007, it has been reclassified as mixed residential zone. In view of such reclassification and since there has been a complaint or objection raised by the third respondent, Residents' Welfare Association in that locality, these authorities including the second respondent had not come forward to renew the necessary license which the petitioner has already been enjoying for several years.

7. In this regard, the Tamil Nadu Pollution Control Board also has not come forward to renew the consent in view of the aforesaid reason only.

8. Only in that circumstances, the petitioner has moved the present writ petition in the year 2016 with the aforesaid prayer.

9. Heard Mr. S. Thanka Sivan, learned counsel for the petitioner, who would submit that, the petitioner unit was registered as a firm on 29.06.1993 and necessary charges had been paid by the petitioner to the second respondent Municipality earliest in 1992-1993, for which receipt has been given and a permanent registration certificate as a small scale industry was given by the concerned authority on 20.10.1999. The Inspector of Factories had issued the license which was valid upto 31.12.2016.

10. In this context, the learned counsel for the petitioner has pointed out that, on 06.08.2001, the second respondent Municipality has issued the certificate with the following effect:

பார்வை: திரு. சி. ஜான் & குட்டியம்மா என்பவரது

விண்ணப்பம் நாள் 18.07.2001

...

சிதம்பரம் நகரம், வார்டு 5, பிளாக் 2, நகரளவு எண் 70/2, வடக்கு மெயின் ரோடு, கதவு எண் ஏ1 - அமைந்துள்ள இடமானது சிதம்பரம் நகர முழுமைத் திட்டத்தில் சி9 - மண்டலத்தின் வணிக பகுதியில் அமைந்துள்ளது என சான்றளிக்கப்படுகிறது.

ஆணையாளர்
சிதம்பரம் நகராட்சி

11. In the records available in the website of the Registration Department also Ward No.3, North Main Road has been



shown as commercial zone.

12. That being the position, the stand now taken either by the second respondent Municipality or any other authority like the Tamil Nadu Pollution Control Board for grant of renewal of license or renewal of consent for the continuous running of the petitioner unit on the ground that subsequently the land in which the petitioner Unit located has been reclassified as mixed residential zone cannot stand in the way under legal scrutiny, for the reason, according to the learned counsel for the petitioner that, Sections 47 and 51 of the Tamil Nadu Town and Country Planning Act [in short 'the Act'] has given the protection to the existing structures, infrastructures, buildings already been created based on the earlier classification as that kind of development shall not be affected because of the reclassification under which if any particular area is reclassified in a different zone, that would not stand in the way of the existing infrastructures.

13. In this context, the learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court reported in [1995] 2 SCC 11 in the matter of Central Coal Fields Ltd. vs. State of Madhya Pradesh and others, where the learned counsel relied upon the following passage:

7. Under Section 24, the State Government have kept the power with them to control and use of the land for overall development as per the plans of the Adhiniyam. Section 24(2) gives power to the State Government to remove difficulties in the implementation of the provisions of the Act. Section 25 postulates that "after coming into force of the development plan, the use and development of land shall conform to the provision of the development plan". In other words, after it has come into force the development of the land shall be only in conformity with the developmental plan. In other words it is confined to building operations. Any constructions if had been made prior to the coming into force of development plan, it does not come within the prohibition contained under Section 26. But thereafter, Section 26 expressly prohibits constructions except under planned development of land with prior permission. For permission, when needed, an application in that behalf shall be made by any person under Section 29 and by the State Government or the Central Government or any local authority or special



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authority under Section 27. The Director has been given power to grant permission either unconditionally or conditionally or refuse the same under Section 30. A right of appeal by the aggrieved person is given under Section 31 to the appellate authority and a further revision to the State Government under Section 32.

14. By relying upon the said decision, the learned counsel would contend that, if at all any reclassification has been made, whatever the developments or building operations which have already been undertaken prior to the reclassification would not stand in the way as the new classification and the new building Rules under the Act would take into effect only prospectively without affecting the earlier development taken place pursuant to the earlier classification of various zones.

15. Therefore the learned counsel for the petitioner would submit and canvassed that, the present stand taken by the respondent in not renewing the license to the petitioner on the sold ground that presently under the reclassification the land in which the petitioner unit is located since has been reclassified as mixed residential zone, cannot stand in the legal scrutiny. Therefore, he seeks indulgence of this Court to issue a writ of Mandamus as prayed for.

16. Heard Mr. V. Manoharan, learned Additional Government Pleader appearing for the respondents 1 and 2 and Ms. Pooja, learned counsel appearing for the 3rd respondent.

17. The learned counsel for the respondents would contend that, in view of the reclassification having been made, under which admittedly the land in question, i.e. the land where the petitioner unit is located since has been reclassified as mixed residential zone wherein industrial unit or activity since cannot be permitted to go on or continue, such a license renewal sought for by the petitioner was not acceded to or considered by the respondents, especially the second respondent and other related statutory authorities like the Pollution Control Board.

18. The learned counsel for the third respondent also submitted that, since lot of residences have come up in view of the reclassification having been made, under which the entire stretch including the land where the petitioner unit is located has been reclassified as a mixed residential zone, the continuous running of the petitioner unit would be detrimental to the residences in the locality and that is the reason why in a place



which is classified as mixed residential zone, that kind of industrial or factory activities cannot be permitted to go on. Therefore, the official respondents rightly refused to accede to the prayer sought for by the petitioner for renewal of the necessary license, of course, at the behest of the third respondent also. Therefore, such a stand taken by the official respondents cannot be questioned by the petitioner. Hence, the learned counsel for the third respondent as well as the learned Additional Government Pleader appearing for the official respondents seek dismissal of this writ petition.

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

20.First of all, the Unit belongs to the petitioner was established as early as in 1993. Even though it was claimed by the petitioner that the unit was started in the year 1991, the documents which are available before this Court make it clear that the unit was established sometime in 1993. All necessary authorities have given their permission or consent or license which includes the license granted by the second respondent Municipality, consent given by the Pollution Control Board as well as the license given by the authority under the Factories Act.

21.The Unit was running for all these years and in the year 2001, there was a specific certificate issued by the second respondent Municipality that the land in which the petitioner unit is located has been classified as commercial zone. Only subsequently it seems, sometime in 2007, there was a reclassification under which the area which includes the petitioner Unit has been categorized as mixed residential zone. No doubt, once such a reclassification has come, whatever the development to be made pursuant to the reclassification, that shall go ahead only in consonance with the reclassification made in this regard.

22.However, as rightly pointed out by the learned counsel for the petitioner, the development taken place or construction already been made prior to the reclassification are saved by the provisions of Sections 47 and 51 of the Act, which reads as thus:

47. Use and development of land to be in conformity with development plan.- After the coming into operation of any development plan in any area, no person other than any State Government or the Central Government, or any local authority shall



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use or cause to be used, any land or carry out any development in that area otherwise than in conformity with such development plan: Provided that the continuance of the use of any land for the purpose and to the extent for, and to which it is being used on the date on which such development plan comes into operation, may be allowed for such period and upon such terms and conditions as may be specified in such development plan.

51. Exemption for works in progress.- Nothing contained in section 48 shall apply to the erection of any building or to the making or extension of any excavation or to the carrying out of any mining or other operation or to the making of any material change or to the construction, formation or laying out of any means of access or of works commenced before the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26.

23.The language used in Section 51 of the Act starts with a non-obstante clause stating that "nothing contained in section 48 shall apply to the erection of any building or to the making or extension of any excavation or to the carrying out of any mining or other operation or to the making of any material change or to the construction, formation or laying out of any means of access or of works commenced before the date of the publication of the resolution under sub-section (2) of section 19 of the Act".

24.Sub-section (2) of Section 19 of the Act makes it clear that, a local planning authority may by resolution decide to prepare a development plan and to adopt with or without modification a detailed development plan. Such resolution shall be published by the local planning authority in the prescribed manner in the District Gazette.

25.Therefore, once the local planning authority prepared a development plan or detailed development plan and if it is published under Sections 19(1) and 19(2), that will come into effect from that day and in that case, there can be no development contra to the said plan as has been contemplated under Section 48 of the Act. However, Section 51 of the Act is an exemption to Section 48, that is the reason why the non-obstante clause, i.e. "nothing contained in Section 48 shall apply".



26. Section 47 of the act also makes it clear that use and development of land is to be in conformity with the development plan.

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27. If it is a development and that has to be undertaken subsequent to the publication of the development plan under Section 19 of the act, then such a development shall be strictly in accordance with the development plan published under Section 19 of the Act.

28. However, if already some development had taken place as per the earlier classification, that is saved by the aforesaid provisions of the Act. This has been reiterated in the afore cited judgment reported in [1995] 2 SCC 11, where the relevant portion in paragraph 7 has already been quoted herein above.

29. Therefore, this Court has no hesitation to hold that, since the land where the petitioner unit has been established sometime in 1993 was originally a commercial zone and it has been reclassified as mixed residential zone only in 2007, such a reclassification if anything is published within the meaning of Section 19 of the Act would not stand in the way of the development already taken place on the earlier classification prior to reclassification.

30. In that view of the matter, this Court is inclined to hold that the present stand taken by the respondents, especially the official respondents in not renewing the license which are required to be renewed for the continuous running of the petitioner Unit, for the reason that subsequent to the reclassification the land in question since has been reclassified as commercial zone that kind of renewal cannot be granted, would not stand in the legal scrutiny and therefore the petitioner is entitled to seek for a Mandamus as prayed for.

31. For the aforesaid reasons and discussion, this Court is inclined to dispose of this writ petition with the following orders.

(i) That there shall be a direction to the official respondents to consider the request/representation/application made or to be made in this regard for grant of renewal of trade license or license to run the petitioner tyre retreading unit as a small scale industry in the existing location where the unit has already been started and running all these years since 1993 and pass necessary orders thereon, on merits and in accordance with law.



(ii) It is made clear that, the said application to be filed or already filed by the petitioner shall be processed and decided on merits where the reason that the land wherein the petitioner Unit has been located since has been reclassified as mixed residential zone that permission cannot be granted, would not stand in the way as that kind of reason shall not be shown by the respondents in deciding the said application, but at the same time, the other requirements under various laws governing the running of the petitioner Unit shall be strictly complied with by the petitioner.

(iii) The needful, as indicated above, shall be undertaken on receipt of such application from the petitioner or from the date of receipt of a copy of this order if the application already been submitted, within a period of eight weeks.

32. With this observation and direction, the writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

cse

To

1. The Director

Directorate of Town and Country Planning,
807, Anna Salai, Chennai - 600 002.

2. The Commissioner,

Chidambaram Municipality,
Chidambaram, Cuddalore District.

+1cc to Mr. S. Thanka Sivan, Advocate SR.No.2625

+1cc to the Government Pleader, SR.No.3057

W.P.No.37147 of 2016

MT (CO)

CB (15/03/2022)