



W.P(MD)No.18498 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2022

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.18498 of 2015

and

M.P(MD)Nos.1 & 2 of 2015

T.Muthukrishnan

... Petitioner

Vs.

Ottanchatram Municipality,
Represented by its Commissioner,
Ottanchatram Taluk,
Dindigul District.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the orders made in Na.Ka.No. 298/2006/A1 dated 26.08.2015 and the consequential reminder in Na.Ka.No.298/2006/A1 dated 21.09.2015 issued by the respondent and quash the same and forbear the respondent from any manner interfering with the petitioner's right to run the hotel under the name and style of M/s. Sree Sakthi Sarvana Hotel situated at Dindigul-Palani Main Road, Ottanchatram, Dindigul District.



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For Petitioner : Mr.P.Arunjayatram

For Respondent : Mr.J.Parekh Kumar

ORDER

The present writ petition has been filed challenging a show cause notice issued by the respondent/Municipality under Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, which was followed by the impugned order, dated 21.09.2015.

2. According to the petitioner, he was running a hotel at Dindigul-Palani Main Road, Ottanchatram, Dindigul District. In view of overflowing of the septic tank, the petitioner hotel has made a request to the respondent/Municipality to supply men and material for removing the sullage from the septic tank by way of an letter, dated 22.03.2006. As per the request of the petitioner, the respondent/Municipality has sent their men and material for clearing the septic tank on 26.03.2006. During the said operation, 2 persons have died due to asphyxiation. Hence, the Municipality has sent a show cause notice on 26.08.2015, directing the hotel to pay a compensation as contemplated under the Central Act 25 of



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2013. The petitioner hotel has sent a reply on 09.09.2015, contending that at the request made by the petitioner hotel, the Municipality officials have sent the men and material to clear the septic tank and hence, they are not liable to pay compensation.

3. According to the learned counsel for the petitioner, the respondent/Municipality has thereafter passed the impugned order on 21.09.2015, stating that in view of non-payment of compensation, they would pay the said amount and recover the amount from the petitioner hotel. This show cause notice and the order impugned are challenged in the present writ petition.

4. Per contra, the learned counsel appearing for the respondent/Municipality had contended that the Municipality has not received any such request from the petitioner hotel for clearing the septic tank. On a public holiday, the petitioner has utilized the services of 2 municipal staffs to clear the septic tank on a private arrangement. Hence, the Municipality is not liable to pay compensation under Central Act 25 of 2013. Therefore, the Municipality has paid the amount and now seeks



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to recover the said amount from the petitioner hotel. Hence, he prayed for dismissal of the writ petition.

5. From the reply submitted by the hotel to the show cause notice issued by the respondent/Municipality on 26.08.2015, it is clear that the petitioner hotel has contended that they have given a letter to the Municipality on 22.03.2006 seeking the help of Municipality to clear the septic tank and only at their request, the staffs have been sent by Municipality to the petitioner hotel. However, the said allegation made in the explanation submitted by the hotel has not been considered by the Municipality in their impugned order, dated 21.09.2015. Hence, this Court finds that a proper enquiry has not been conducted before passing the impugned order.

6. In view of the above said facts, the show cause notice is sustained, but the impugned order, dated 21.09.2015 is set aside. The matter is remitted back to the file of the respondent/Municipality. The Municipality is directed to give opportunity to the writ petitioner and pass orders on merits and in accordance with law.



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7. With the above said observations, this Writ Petition stands partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No
Internet : Yes / No
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To

The Commissioner,
Ottanchatram Municipality,
Ottanchatram Taluk,
Dindigul District.



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R.VIJAYAKUMAR ,J.

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