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Writ Petition No.3596 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2023

PRONOUNCED ON : 17.04.2023

Coram:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.3596 of 2023

C.Rajendran

.... Petitioner

Vs.

1. State rep. By,
The Principal Secretary,
Health Department, St.George Fort,
Chennai – 600 009.

2. The Corporation Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai.

3. The Zonal Officer,
Metropolitan Municipal Corporation,
Zone-4, Tondiyarpur, Chennai.

4. Jiji Mathew.

.... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, directing the respondents to call for the records of the 3rd respondent in Maa.4.va.thu.Na.Ka.No.AAR.3/1726/2022 dated 18.10.2022 and quash the same and direct the respondents 1 to 3 to re-issue the cancelled licenses of the petitioner.



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For Petitioner: : Mr. R.Sivaraman
For Respondents : Mr.R.Kamaravel (for R1)
Additional Government Pleader
Mrs.P.T.Ramadevi (for R2 & R3)
Standing Counsel
Mr.D.Ashok Kumar (for R4)

ORDER

Challenging the cancellation of Trading License, this writ petition has been filed.

2. Mrs.P.T.Ramadevi, the learned Standing Counsel for the respondents 2 and 3/Greater Chennai Corporation, has filed a counter affidavit and the same has been adopted by the 1st respondent.

3. The learned Standing Counsel for the Corporation would submit that based upon the complaint given by the 4th respondent that the petitioner herein is running a Cement storage and selling Shop in the said premises, without due license and without clearance from the Pollution Control Board as required for both air and noise pollution, the official respondents have issued necessary notice under Section 379(A) of the Chennai City Municipal Corporation Act, 1919.



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4. It is also stated by the learned counsel for the 2nd respondent that the petitioner has given a representation stating that he is vacating the said Cement shop and wanted to reside a domestic life there and after issuing notice to him, he has filed the above writ petition.

5. Heard the learned counsel on either side and perused the materials available on record.

6. In the affidavit filed in support of the writ petition, the petitioner has averred as that he is doing business of selling bricks, sand, cement and blue metals in the name and style of “Ananda Agencies” for the past 20 years. He has registered the agency and obtained valid registration certificate at the Commercial Taxes Department. He is having license for the trade of selling of cement and Hardware till March 2023. He is a Professional Tax payer of Chennai Corporation and that he is having No Objection Letter of all other residents except the 4th respondent herein. Further, the petitioner has averred that he is just a trader and not a manufacturer.

7. The other allegations in the writ petition are that the 4th respondent is envious of petitioner's employment and has frequently made quarrel and also



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resulted in filing a complaint before the H3 Police Station, Tondiarpet and the 4th respondent filed WP No.14160 of 2022 for a Writ of Mandamus, directing the official respondents 1 to 3 to take appropriate action to cancel the Trading license and the said writ petition appears to have been allowed and the official respondents, have been directed to pass orders on the representation of the 4th respondent, within a period of four weeks.

8. An enquiry was called on 30.08.2022 and petitioner attended the same and the 3rd respondent closed the sale of the shop on 09.10.2022 and hence the writ petition.

9. The official respondents 2 and 3 filed counter alleging that the 4th respondent herein filed a writ petition in WP No.14160 of 2022 praying for a Writ of Mandamus directing the respondent Corporation to take appropriate action to cancel the Trade license issued to the petitioner namely M/s. Ananda Agencies that is violating rules and specified guidelines and for sealing and closure of its shops that is storing and selling the building construction materials causing Air Pollution, Health Hazard and public nuisance based on his representation (4th respondent herein) dated 13.09.2021.



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10. As stated supra, in the said writ petition, this Court by an order dated 08.06.2022 has directed the official respondents to dispose of the representation in accordance with law.

11. Based on the above order passed by this Court on 08.06.2022, a letter dated 27.08.2022 was addressed to the petitioner and the 4th respondent and they were called for a personal hearing before the Zonal Officer, Zone-IV on 30.08.2022 and instructed them to produce the relevant records.

12. The 4th respondent has stated that the petitioner has dumped the blue metal, sand and bricks in the Adi-Dravidar Samoogar Sangam Boys Hostel and requested to close the trade run by the petitioner.

13. The Officials of the Greater Chennai Corporation on inspection of the shops run by the petitioner viz., C.Rajendran, situated at Door No.77/26 and Door No.19/63, Rathinasabapathi Street, Tondiarpet, Chennai – 600 081 has found that the petitioner is running the storage unit of cement bags without a valid trade license. Hence, the storage unit was locked and sealed by the officials of the Greater Chennai Corporation on 15.09.2022.



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14. Thereafter, the Health Department of the Greater Chennai Corporation inspected the above said shop run by the petitioner, on 15.10.2022.

15. The Health Department, Greater Chennai Corporation in its letter dated 18.10.2022 pointed out that the shop functioning in Door No.77/26 causes air pollution and hindrance to the general public in the neighbourhood and does not have proper ventilation. Further, in the said letter, it is pointed out that the shop functioning in Door No.19/63 does not have proper ventilation and causes traffic congestion to the general public by parking the trucks for loading and unloading of goods in the streets.

16. It is the specific case of the official respondents in the counter at paragraph No.12 that the licenses of the shops run by the petitioner, at Door No.77/26 and Door No.19/63 were cancelled vide letter No.Ma.Aa.4.Va.Thu.Na.Ka.No.R3/1726/2022 dated 18.10.2022 as per Section 287 of the Chennai City Municipal Corporation Act IV of 1919.

17. Thereafter, a notice was issued to the petitioner notifying to stop trade within 24 hours, for running the shop without valid trade license and shall

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take action under Section 379(A) (1) of the Chennai City Municipal Corporation Act IV of 1919, on 18.10.2022 and the shops run by the petitioner was locked and sealed on 19.10.2022.

18. The counsel for the 4th respondent could contend that the petitioner while having the license for selling the cement, he is also storing the cement bags and hence, produced photographs.

19. On perusal of the photographs produced by the 4th respondent, I find that a small quantity of cement bags are placed in the shop for the day's sale, till the purchaser takes the delivery, for which he has obtained the necessary license. For storing the cement bags, he is not having the license. The petitioner appears to have remitted the amount for selling the cement up to the period of 31.03.2023. On 18.10.2022, based upon the direction issued by this Court to dispose of the representation of the 4th respondent in WP No.14160 of 2022, the license was cancelled.

20. When this Court called upon the learned Standing counsel for the Corporation to show as to whether any show cause notice has been issued before cancellation of the license, the learned Government Advocate relied



upon the notice issued under Section 379(A) (1) of the Chennai City Municipal Corporation Act IV of 1919, for sealing the premises.

21. In the order passed in the impugned proceedings dated 18.10.2022, there is no reference as to the alleged issuance of show cause notice and alleged explanation to be submitted by the petitioner, assumes significance.

22. Before cancelling the license, which has already been issued, it is primary that a show cause notice has to precede and explanation has to be sought for from the petitioner as the principles of natural justice, requires the same.

23. In the impugned order, the Health Inspector report is relied upon. No opportunity appears to have been given to the petitioner to countenance or to challenge the said report. Since the Contempt Petition No.1871 of 2022, has been filed for the non-compliance of the order passed in the writ petition filed by the 4th respondent i.e W.P.No.14160 of 2022, on the date of hearing of the Contempt Petition, it appears to have been represented before the Court that the Trade license of the petitioner, for storing and selling of the cement bags has



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been cancelled, however, without following the procedure, much less without issuing any show cause notice and the Contempt Petition No.1871 of 2022, has been closed, recording the compliance on 18.11.2022.

24. Any order of cancellation of Trading License without issuance of a show cause notice is bad in law. Therefore, I have no hesitation in setting aside the impugned order. Accordingly, the order of the 3rd respondent in Maa.4.va.thu.Na.Ka.No.AAR.3/1726/2022 dated 18.10.2022, is set aside and the Writ Petition stands allowed. No Costs.

17.04.2023

Index : Yes/No
Speaking order / Non-speaking order
Neutral Citation: Yes/No.
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RMT.TEEKAA RAMAN,J

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To

1. The Principal Secretary,
Health Department, St.George Fort,
Chennai – 600 009.
2. The Corporation Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai.
3. The Zonal Officer,
Metropolitan Municipal Corporation,
Zone-4, Tondiyarpeth, Chennai.

Pre-delivery order in
Writ Petition No.3596 of 2023