



WP No.17351 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-03-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

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And

MP No.1 of 2009

1.Umaid Mohonot,
Proprietor,
M/s.Jay Plastic Company,
No.5, Charles Campbell Road,
Cox Town,
Bangalore-560 005 Represented
by Power of Attorney Mr.Bijay Singh Mohonot.

2.Nikky Mohonot,
Proprietrix,
M/s.Jay Engineering Industry,
No.5, Charles Campbell Road,
Cox Town,
Bangalore-560 005 Represented
by Power of Attorney Mr.Bijay Singh Mohonot...

Petitioners

VS.



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1.Union of India,
Through Secretary,
Ministry of Industries,
Udyog Bhavan,
New Delhi.

2.Assistant Registrar of Trade Marks and GI
Trade Marks Registry,
IP Building, GST Road,
Guindy,
Chennai-600 032.

3.The Controller General of Patents
Designs and Trade Marks,
Intellectual Property Bhavan,
Near Antop Hill Head Post Office,
S.M.Road, Antop Hillo,
Mumbai – 400 037.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the records relating to the impugned show cause notice No.1711 dated 27.07.2009 passed by the second respondent and quash the same.

For Petitioners : Ms.Vandana Jain for
Mr.Arun C.Mohan.

For Respondents : Mr.K.Gunasekar,
Special Senior Central



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Government Standing Counsel.

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ORDER

The show cause notice dated 27.07.2009 issued by the second respondent under Section 57(4) of the Trade Mark Act, 1999, is under challenge in the present writ petition.

2. The petitioners state that they are the members of the Mohonot Family and belong to M/s.Jay Group of Companies.

3. The first petitioner has been in the business of manufacturing Plastic Tag Pins/Fasteners and Plastic Tag Guns since 28.12.1993. The first petitioner further expanded its business to manufacture Textile Cleaning Spray Guns in the year 1997.

4. The second petitioner is the successor in business and subsequent assignee of the first petitioner's trade mark in respect of Textile



Cleaning Spray Guns'.

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5. The first petitioner has bona fide adopted the tag mark 'ARROW' in the year 1994 for manufacture and sale of 'Plastic Tag Pins' and 'Plastic Tag Guns' and has used the said trade mark as extensively. The first petitioner extended the usage of trade mark 'ARROW' to manufacture and sale of 'Textile Cleaning Spray Guns' in the year 1997.

6. The petitioners have registered their trade mark under the provisions of the Trade Marks Act, 1999. However, the respondents issued show cause notice stating that the registration of trade mark or device is preferable under the Central Government directions being the property of Government of India.

7. Therefore, the Entry relating to the trade mark, which was made wrongly remains on the registration of trade mark without sufficient cause. Accordingly, the petitioners were asked to submit their explanations



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as to why the registration shall not be cancelled.

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8. The learned counsel for the petitioners states that the petitioners had submitted a detailed explanation to the show cause notice and the respondents have not passed any final orders. In the meanwhile, the petitioners have filed the present writ petition and an order of interim stay was granted and thus the Authorities have not passed any orders.

9. No writ against the show cause notice is entertainable in a routine manner. The writ against the show cause notice is maintainable only if the show cause notice was issued by an incompetent authority having no jurisdiction or an allegation of mala fides are raised.

10. However, in the present writ petition, the impugned show cause notice reveals that the Government property has been erroneously registered under the provisions of the Trade Marks Act, 1999. If so, an adjudication is required by affording an opportunity to the writ petitioners.



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The show cause notice was issued providing an opportunity to the writ petitioners and the petitioners also had submitted their explanations to the show cause notice issued to them.

11. That being the factum, the petitioners ought to have participated in the adjudication for the purpose of finalising the issues. Contrarily, the petitioners have filed the present writ petition challenging the show cause notice instead of adjudicating the issues or defending their case before the Competent Authorities under the Trade Marks Act, 1999.

12. The High Court cannot adjudicate the disputed facts on merits under Article 226 of the Constitution of India, which is to be done based on the documents and evidences on record. Therefore, the petitioners are at liberty to adjudicate the issues based on documents and evidences.

13. With the abovesaid liberty, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the



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connected miscellaneous petition is also dismissed.

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Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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To

- 1.The Secretary,
Union of India,
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Udyog Bhavan,
New Delhi.
- 2.Assistant Registrar of Trade Marks and GI
Trade Marks Registry,
IP Building, GST Road,
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