



W.P.No.12476 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.12476 of 2020

R.Tharanipathi

... Petitioner

Vs.

The Commissioner,
Excise and Prohibition,
Chepauk,
Chennai – 600 005.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings No.P&E 2 (2)/8657/2016, dated 08.07.2020, on the file of the respondent herein, and to quash the same, and direct the respondent to grant FL-3 license to the petitioner by considering the application made by the petitioner dated 06.02.2014, to Andal Hotel owned by the petitioner, in Survey No.528/1,2 and 3, Venkateswarapuram Village, Tiruvannamalai Panchayat, Srivilliputtur Taluk, Virudhunagar District.



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For Petitioner : Mr.S.Subbiah
Senior Counsel for
Mr.Elizabeth Ravi

For Respondent : Mr.M.Rajendran
Additional Government Pleader

ORDER

The petitioner has been chasing the respondent for FL3 license since 06.02.2014. Already, the petitioner had approached the Madurai Bench of this Court atleast on two different occasions and thereafter by way of contempt proceedings pursuant to orders of the Court.

2.Earlier, the petitioner had filed a writ petition in W.P.No.15581 of 2016. The petitioner had approached this Court for a mandamus, to direct the respondent therein to consider the petitioner's application for the grant of FL-3 license to the Hotel namely "Andal Hotel" at No.528/1, Venkateswarapuram Village, Tiruvanamalai, Srivilliputtur Taluk, Virudhunagar District. This Court had disposed the writ petition at the time of admission vide its order dated 28.04.2016 and directed the respondent to consider and pass appropriate orders on the application filed by the petitioner. Thereafter, an order came to be passed by the Authorities under the Tamil Nadu Prohibition Act, on 16.08.2016 vide order bearing reference



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No.நீ.மு.ம(ம)ஆ.2(1)/2655/2016. In the aforesaid communication, it was informed that the petitioner's hotel was yet to commence business and therefore the application to process FL-3 license will be considered as and when the hotel starts the business.

3. Thereafter, the petitioner had approached this Court once again challenging the aforesaid order now before the Madurai Bench of this Court in W.P.(MD).No.5218 of 2017. Before the Court, the learned Additional Government Pleader submitted that there was no impediment for the grant of FL-3 license. The respondents under took process the application for grant of FL-3 license within the time limit that may be fixed by the Court. Para 4 of the above said order reads as under:-

4. The learned Additional Government Pleader has filed the copy of the proceedings of the Assistant Commissioner, Excise, Virudhunagar District and in that proceeding, it is stated that the application given by the petitioner is under process on verification, it is also found established that the hotel is situated beyond 500 mts. from the National Highways. **The learned Additional Government Pleader therefore submitted that the respondent has got no impediment for granting FL-3 license and if this Court fixed time limit, the respondent will process the application for granting FL-3 license and grant license to the petitioner.**



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4.Recording the above submission, the writ petition was disposed of

with the following observations:-

6.In such circumstances, the respondent is directed to dispose of the application of the petitioner for grant of FL-3 license in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

5.Despite the aforesaid order dated 25.04.2017 in W.P.(MD).No.5218 of 2017 and the undertaking given by the learned Additional Government Pleader before the Madurai Bench of this Court, series of communication have been sent to the petitioner, whereby, the petitioner has been asked to furnish further details. Meanwhile, the District Collector, Virudhunagar District in his communication dated 16.08.2017 bearing reference Roc.Ex-2/20462/2016 has favorably recommended grant of FL-3 license to the petitioner. Relevant portion reads as under:

It is recommend that a FL-3 licence may be granted in the name of Thiru R.Dharanipathi for Sri Andal Hotel situated at D.No.319/1 in Survey No.528/1,2,3 at Venkateswarapuram Village in Srivilliputtur Taluk, Virudhunagar District with at a time possessional limit of 450 units of IMFL and BEER.



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6. Meanwhile, the Division Bench of the Madurai Bench of this Court had passed an order in respect of certain licenses that had been issued by the Officers of the respondents indiscriminately in Madurai Town in a Public Interest Litigation filed by one I. Mohammed Razvi in W.P.(MD).Nos.23753 of 2016 etc., batch. At the time of disposal of the said writ petition on 12.12.2017, certain directions were issued to the State of Tamil Nadu, represented by its Chief Secretary, the Principal Secretary to Government, Home Department, and the Principal Secretary, Prohibition and Excise, to issue circular to the concerned authorities making it mandatory to the clubs and other public buildings to produce the license from the Competent Authority under the Tamil Nadu Public Buildings (Licensing) Act, 1965 for the grant or renewal of license, including for the retail vending of liquor.

7. Under these circumstances, the respondents have issued another communication dated 21.12.2017, seemingly in compliance with the order/directions dated 12.12.2017 of the Division Bench of the Madurai Bench of this Court in W.P.(MD).Nos.23753 of 2016 etc., batch. The petitioner was called upon to furnish the following details:

(a) that it has twenty lettable bed rooms or forty beds with attached bath rooms;



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- (b)that it has separate dining room and restaurant;
- (c)that it has good quality cuisining both Indians and Continental;
- (d)that it has clean kitchen and washing facilities;
- (e)that it has well trained staff with uniform;
- (f)that it has special facilities like conference hall, recreation facilities (indorr games) and the like;
- (g)that it has adequate parking space

(8)As per the above rules, the certificate of Director of Tourism is a mandatory requirement for the issuance of a new FL-3 licence and the certificate from the Commissioner of Tourism is still awaited.

In the above circumstances, the applicant is hereby informed that his request for the grant of FL-3 licence will be considered on receipt of report from the Commissioner of Tourism, Chennai.

8.The aforesaid communication was processed by the then Commissioner (Prohibition and Excise). Thus, the respondent appears to have been changing the goal post from time to time, perhaps, taking note of the decision of the Division Bench of the Madurai Bench of this Court in W.P.(MD).Nos.23753 of 2016 etc., batch delivered on 12.12.2017.

9.Under these circumstances, the petitioner was constrained to file a Contempt Petition before the Madurai Bench of this Court in Cont.P.(MD).No.65 of 2018 against the respondent herein for willful disobedience of the order of this Court in W.P.(MD).No.5218 of 2017, dated



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25.04.2017. This has now ultimately culminated in the impugned order dated 08.07.2020.

10.By the impugned order, the respondent, the Commissioner (Prohibition and Excise) has informed the petitioner that in compliance with the directions of the Madurai Bench of this Court in W.P.(MD).Nos.23753 of 2016 etc., batch, the petitioner was required to produce copy of the approved building plan, building permit, public building license and stability certificate from the competent authority as it is mandatory for the grant of new license or renewal of existing liquor licenses. Paragraph 8 of the impugned order reads as under:

8.In the instant case, the applicant's hotel Tvl.Sri Andal Hotel is situated at Door No.319 in Survey No.528/1,2,3 at Venkateswarapuram Village in Tiruvanamalai Panchayat in Srivilliputtur Taluk, Virudhunagar District. The applicant has submitted a building plan (Plan No.27/2005 valid till 16.10.2008) for his hotel in an area of 2103.06 Sq.ft approved by the President, Tiruvanamalai Panchayat. But, the Assistant Commissioner (Excise), Virudhunagar vide reference 10th cited has stated that on perusal of the guidelines for approval of building plan as per Tamil Nadu Town and Country Planning Act, 1971, it is mentioned that building plan for commercial buildings can be approved by the concerned Village panchayat only if the area is less than 2000 sq.ft and for commercial buildings within an area of 2000 sq.ft to 12,000 sq.ft, Plan approval can be given only by the Regional



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Deputy Director, Directorate of Town and Country Planning. Since the area of the hotel under question exceeds 2000 sq.ft (2103.06 sq.ft), the Assistant Commissioner (Excise) vide letter cited in the 15th reference has written to the petitioner to submit the building plan duly approved by the Regional Deputy Director, Directorate of Town and Country Planning.

11.The learned Senior Counsel for the petitioner submits that the property is situated at Door No.319 in Survey No.528/1,2,3 at Venkateswarapuram Village in Tiruvanamalai Panachayat in Srivilliputtur Taluk, Virudhunagar District. It is submitted that the plan was approved by the Executive Authority under the provisions of Tamil Nadu Panchayat Rules, 1997 as it stood during the period in dispute. It is submitted that the rules does not contemplated approval from Regional Deputy Director, Directorate of Town and Country Planning for obtaining planning permission. It is further submitted that Division Bench of this Court in ***Tamil Nadu Unaided Polytechnic Management Association (Regd No.117/12) Rep by its President Thiru.S.Selvamani Vs. State of Tamil Nadu*** [2018-2-Writ L.R.293], examined the provisions of the Panchayat Act and Tamil Nadu Town and Country Planning Act, 1971 and has clarified the position that property situated in Panchayat Region are governed by the Panchayat Building Rules, 1997 and has categorically stated that there shall be only one



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window where applications for constructions, alteration of all public buildings in the Panchayat must be made, and this will be Executive Authority of the Panchayat. There is no need for a person to apply for permission for a construction within the Panchayat to the Town Planning Authority under Section 49 of the Tamil Nadu Town and Country Planning Act, 1971.

12.The learned Senior Counsel for the petitioner therefore submits that this is a fit case where the impugned order has to be quashed and a direction should be issued to the respondent to issue FL-3 license to the petitioner.

13.Defending the stand of the respondent, the learned Additional Government Pleader for the respondent submits that the respondent had followed the decision of the Madurai Bench of this Court in W.P.(MD).Nos.23853 of 2016 etc., batch vide its order dated 12.12.2017. It is therefore submitted that without proper approval from Regional Deputy Director, Directorate of Town and Country Planning question of granting FL-3 license to the petitioner does not arise.



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14.It is further submitted that as and when the petitioner produces such building planning approval from the Regional Deputy Director, Directorate of Town and Country Planning, the application for FL-3 license of the petitioner can be scrutinized and issued if the petitioner otherwise satisfies the other requirement of grant of FL-3 license.

15.The learned counsel for the respondent would submit that FL-3 license cannot be granted to the petitioner, as the petitioner is not in possession of a star status from the Department of Tourism and therefore even on this count also the application of the petitioner for grant of FL-3 license cannot be considered.

16.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and also perused the documents that have been filed by the petitioner and perused the provisions of the Tamil Nadu Liquor (License and Permit) Rules, 1981. The petitioner has to comply with requirement for the grant of license as per Tamil Nadu Liquor (License and Permit) Rules, 1981.



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As per the aforesaid rules, the license for liquor used for consumption is to be allowed only if the petitioner is possession of liquor by the Star Hotels.

17.The hotel of the petitioner is located within the jurisdiction of the Srivilliputtur Taluk. Therefore, question of petition obtaining approval from the Regional Deputy Director, Directorate of Town and Country Planning does not arise. The decision of the Division Bench of the Madurai Bench of this Court in W.P.(MD).Nos.23852 of 2016 etc., batch has been rendered in the context of FL-3 license that were issued indiscriminately in the city of Madurai as it evident from a cursory reading of the order dated 12.12.2017 in W.P.(MD).Nos.23753 of 2016 etc., batch. Therefore, the decision which was rendered in the context of hotel which were situated in the Highway near the City of Madurai cannot be applied to the facts of the case. Admittedly, the petitioner's building is only governed by the provisions of the Tamil Nadu Panchayat Rules, 1997 as held in ***Tamil Nadu Unaided Polytechnic Management Association (Regd No.117/12) Rep by its President Thiru.S.Selvamani Vs. State of Tamil Nadu*** [2018-2-Writ L.R.293]. Therefore, the petitioner is not required to obtain approval from the authorities and provision of the Tamil Nadu Town and Country Planning Act,



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1971 was misplaced. The Division Bench of this Court has already clarified

the position in ***Tamil Nadu Unaided Polytechnic Management Association***

(Regd No.117/12) Rep by its President Thiru.S.Selvamani Vs. State of

Tamil Nadu [2018-2-Writ L.R.293] as follows:

“44.To sum up the decision of this Court on this aspect:

- a) There shall be only one window where applications for constructions, alteration of all public buildings in the Panchayat must be made, and this will be the Executive Authority of the Panchayat. There is no need for a person to apply for permission for a construction within the Panchayat to the Town Planning Authority under Sec.49 of the TCP Act.
- b) The Executive Authority shall engage in a consultative process with the Joint Director or Deputy Director, Town and Country Planning providing the latter with all necessary materials and particulars for the latter to form his opinion and advice.
- c) The Joint Director or Deputy director of Town Planning shall then proceed to offer their meaningful opinions and advice by employing the same parameters that they would have adopted if the applications were made under Sec.49 of the TCP Act.
- d) To ensure fairness and transparency in the consultation process between the Executive Authority and the Town Planning Authority, the same shall take place only in writing. Oral consultation is not permitted as it has the potential to hijack the object of self-governance for purposes that may not have been in the contemplation of the Parliament.
- e) If the Executive Authority of the Panchayat decides to override or supersede the opinions/advices of the Joint Director or the Deputy director of Town and Country Planning, then it can be done only on grounds of weighty and justifiable reasons of greater quality.



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f) If the Executive Authority finds any arbitrariness or lack of inadequate application of mind by the consultee, namely the Joint Director or the Deputy Director of Town and Country Planning, it is no reason for the Executive Authority of the Panchayat to supersede such opinions of the consultee Authorities of the TCP Act. In all such instances, the Executive Authority of the Panchayat shall return the opinion received to the consultee Authorities, drawing their attention to the specific aspect/aspects where the former considers the opinion/advice as incomplete or inadequate, with a copy addressed to the Director of Town and Country Planning.

46. In cases, which may include the petitioners herein, where the Executive Authority of the Panchayat might not have consulted either the Joint Director or the Deputy Director of Town and Country Planning before granting permission for construction of public buildings, this Court declares:

(a) In all such cases, the Executive Authority is directed to forward the papers to the Town Planning Authority, who may now consider them, and if required visit the premises in question, and offer his advice if the constructions have complied with all necessary statutory Rules and Regulations, and the latter shall forward his views or opinions to the Executive Authority. If opinions offered are positive, in that if the constructions are found to have complied with the Rules and Regulations and such other legal requirements, then the Executive Authority shall issue an order ratifying his earlier order granting his permission. This will apply only to those public buildings in the Panchayat area constructed after the coming into force of the Tamil Nadu Panchayat Building Rules, 1997 till today, the date of this Order, and not to any future application for constructions.

(b) Where any permission has been granted by the Executive Authority of the Panchayat without consulting the joint or Deputy Director of Panchayat in terms of Proviso to Rule 25, but no construction has yet commenced, it shall not be commenced, till opinion of the Town Planning Authority is obtained. If the opinion is not negative, then the earlier permission granted shall,



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subject to other provisions of law, remain in force. If the opinion of the Town Planning Authority is negative, the Executive Authority of the Panchayat shall forthwith cancel the permission earlier granted after following the due process of law.

(c) In cases of partially constructed buildings, no completion certificate or other amenities be provided unless a favourable opinion is given by the Town Planning Authority.

(d) In all cases falling under (a) and (c), if the opinion of the Town Planning Authority is negative, then such authorities as are empowered to initiate action for illegal constructions shall initiate appropriate actions as per law. The power to grant sanction for construction by the Panchayat is no answer to a builder or a developer violating Rules and Regulations pertaining to construction activities.

47. In conclusion, this Court holds that (a) neither Section 49 nor Section 111(3) (b) of the Tamil Nadu Town and Country Planning Act is unconstitutional; (b) Sec.111(3)(b) of the TCP Act, to the extent it relates to constructions made without permission under Sec.49 of the TCP Act after the commencement of Tamil Nadu Panchayat Building Rules, 1997, is declared inoperable, and accordingly, subject to the declaration/directions given in paragraphs 44 and 46, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.”

18. Thus, there is no impediment for grant of FL-3 license to the petitioner. Subject to the petitioner satisfying the other requirements of Rule 17(a)A of the Tamil Nadu Liquor (License and Permit) Rules, 1981. Additionally, the petitioner to satisfy the requirement of status of the Star Hotel in terms of the relevant Notification issued by the Ministry of Tourism.



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The respondent shall process the application for the petitioner and issue FL-3 license to the petitioner as expeditiously as possible preferably within a period of 45 days from the date of receipt of a copy of this order if the petitioner furnishes proof that the petitioner has necessary certificate regarding its star hotel.

19.This writ petition stands disposed of with the above observations.

No costs.

14.07.2023

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation:Yes/No
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To
The Commissioner,
Excise and Prohibition,
Chepauk,
Chennai – 600 005.

C.SARAVANAN, J.



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