



W.P.(MD)No.16339 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.07.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16339 of 2023

and

W.M.P(MD)Nos. 13677 & 13678 of 2023

P.Murugesan,
Proprietor of Nellai Lodge.

... Petitioner

Vs.

The Commissioner,
O/o.the Prohibition and Excise Department,
Chepauk,
Chennai – 600 005

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records relating to the impugned notice passed by the respondent, vide his proceedings, ட(ம)ஆ.2(1)2176/2016 dated 20.06.2023 and quash the same.

For Petitioner : M/s.Ajmalkhan, Senior Counsel for
M/s.Ajmal Associates

For Respondent : Mr.R.Suresh Kumar,
Additional Government Pleader



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ORDER

This writ petition is filed for *Writ of Certiorari* challenging the impugned show cause notice, dated 20.06.2023.

2. Heard Mr.Ajmalkhan, for M/s.Ajmal Associates, learned counsel appearing for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader, appearing for R-1 to R-4. Perused the material documents placed on record.

3. The contention of the petitioner is that, a property to an extent of 170.36 square meter and 249 square feet both comprised in R.S.No.3/1A3A (Survey No.3/17) Thisaiyanvilai Village, Tirunelveli District, belongs to the petitioner, which were purchased through sale deeds. He intended to run business in the said premises. The petitioner after obtaining permission from the appropriate authorities under Section 197 read with Section 198 of the Tamil Nadu District Municipalities Act, 1920 (Act 5 of 1920), put up construction in the said premises and running Restaurant and Bar. While that being so, the



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Thisaiyanvilai Special Grade Town Panchayat has issued a notice, stating that the petitioner has put up construction without obtaining a planning permission from the authorities under the Town and Country Planning Act. As against the said notice, the petitioner has preferred a writ petition in W.P.No.3177 of 2022, wherein the Hon'ble Division Bench had granted interim order stay vide order dated 18.02.2022.

4. Pending writ petition with interim stay, the respondents had issued the impugned show cause notice, dated 20.06.2023, which states pursuant to the complaint given by some third-party, an enquiry was conducted and the enquiry report states that the construction of the petitioner's building is contrary to the Rules. Thereafter, the District Collector had recommended to cancel the license and in view of the same, an explanation is sought for through the impugned show cause notice as to why the license should not be cancelled. It is pertinent to state that the 3rd party is one Mr.R.Vasanthan, who is relative to the petitioner, due to family feud the said person had preferred complaint.



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5. The impugned notice states that the petitioner has not obtained any permission from the Town and Country Planning Authority, thereby the building is constructed by violating of relevant rules. Against the impugned show cause notice, the petitioner is before this Court. The further contention of the petitioner is that FL3 license was granted on certain conditions and there is no breach of any condition. The license was granted after complying with all the procedural formalities and the same is being renewed every year. Hence non availability of panning permission from the Town and Country Planning Authority cannot be a reason to cancel the license as long as there is no breach of condition of license.

6. The Learned Senior Counsel appearing for the petitioner has relied on the Judgment reported in ***(2006)12 Supreme Court Cases 33 in the case of Siemens Limited Vs. State of Maharashtra and Others***, in which the paragraph Nos. 9 & 10 are extracted here under:

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“9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm



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Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Others v. Union of India and Others (1987) 4 SCC 431: AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show- cause notice.

10. *The said principle has been followed by this Court in V.C. Banaras Hindu University and others. v. Shrikant [2006 (6) SCALE 66], stating (SCC p.60 paras 48-49):*

48.The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.

49. In K.I. Shephard & Ors. etc. etc. v. Union of India & Ors. [AIR 1988 SC 686], (SCC p.449 para 16)

"It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose."

7. On instructions the Learned Additional Government Pleader appearing for the respondent submitted that the show cause notice was issued since there is violation of rules and the respondents are empowered to take action against the



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petitioner. Moreover, the Learned Additional Government Pleader submitted that Show Cause Notice cannot be challenged in a writ petition. The petitioner is bound to submit an explanation, thereafter the respondent would pass an order. If the petitioner is aggrieved by the order, he can choose to challenge the same. The writ petition is premature. The respondent had received the complaint from third party. On enquiry, it was found that there is a violation of rules. The Learned Additional Government Pleader relied on the judgment reported in **2017 SCC Online Mad 37834 : (2017) 354 ELT 483** in the case of **Additional Director, Directorate of Revenue Intelligence, Chennai Vs. Rathakrishnan**, wherein it is held that show cause notice cannot be challenged in writ petition. The relevant portion in the paragraphs Nos.13 to 15 are extracted here under:

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“13. After going through impugned notice and the order of the Writ Court, and after considering the rival submissions, the contention of the appellants that the first appellant is only an investigating authority whose role ends upon issuing a show cause notice on conclusion of investigation and he is not the adjudicating authority and therefore, the words used in the show notices such as “concluded”, “revealed” etc., would not prejudice the case of the respondents, has to be countenanced and such words should be read in entirety. In the instant case, the investigating authority/first appellant is confined to investigating the case and submitting a report to the adjudicating authority and the



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first appellant cannot adjudicate the case as contemplated under the Act. As such, the investigating authority and the adjudicating authority are two different persons. Therefore, the decision relied on by the Writ Court in the case of Oryx Fisheries Private Limited versus Union of India reported in 2011 (266) E.L.T. 422 (S.C.), wherein the investigating authority and the adjudicating authority was one and the same person, is not applicable to the facts of the present case. Therefore, the contention of the respondents herein that the investigating authority has pre-determined and pre-judged cannot be accepted. Hence, the grounds raised by the writ petitioners/respondents are liable to be rejected. Further, the respondents have challenged the show cause notice and whether the same can be examined in the Writ Petitions has to be considered by this Court in the light of the following decision. Moreover, a Writ against a show cause notice is not maintainable.

(I) In Union of India v. Kunisetty Satyanarayana, reported in AIR 2007 SC 906, the Hon'ble Apex Court, at paragraphs 13, 14 and 16, held as follows:

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramdesh Kumar Singh and Ors. [JT 1995 (8) SC 33], Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr. [AIR 2004 SC 1467], Ulagappa and Ors. v. Divisional Commissioner, Mysore and Ors. [2001(10) SCC 639], State of U.P. v. Brahm Datt Sharma and Anr. [AIR 1987 SC 943]etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that, at that stage, the writ petition may be held to be



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premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

(ii) In Ministry of Defence vs. Prabhash Chandra Mirdha, reported in 2012 (11) SCC 565, the Hon'ble Apex Court has held as follows:-

"Ordinarily a writ application does not lie against a chargesheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a



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party is infringed. In fact, charge sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a chargesheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court."

14. The aforesaid decisions were followed by a Division Bench of Madurai Bench of this High Court in Writ Appeal No.342 of 2016 dated 8.3.2016 in M.Sankara Subramanian Versus the Director General of Police and others, wherein one of us was a party to the decision (viz., S.MANIKUMAR, J.).

15. In the light of the above discussions and decisions, we set aside the order passed by the Writ court and the impugned show cause notice issued by the first appellant is sustained with liberty to the respondents to submit their reply to the show cause notice dated 8.5.2015 within a period of six weeks from the date of receipt of a copy of this order and on receipt of the said reply, the first appellant is directed to consider the same on merits and in accordance with law. Accordingly, the Writ Appeals are allowed. No order as to costs. Connected Miscellaneous Petitions are closed."

8. The Learned Additional Government Pleader further relied on the Judgment reported in ***(2020) 12 Supreme Court Cases S72 : 2019 SCC Online SC 1470, in the case of Commissioner of Central Excise, Haldia Vs. Krishna Wax Private Limited***, in which the paragraph Nos.14 & 15 are extracted here under:



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“14. It has been laid down by this Court that the excise law is a complete code in itself and it would normally not be appropriate for a Writ Court to entertain a petition under Article 226 of the Constitution and that the concerned person must first raise all the objections before the authority who had issued a show cause notice and the redressal in terms of the existing provisions of the law could be taken resort to if an adverse order was passed against such person. For example in Union of India and another vs. Guwahati Carbon Limited 5 , it was concluded; “The Excise Law is a complete code in order to seek redress in excise matters and hence may not be appropriate for the writ court to entertain a petition under Article 226 of the Constitution”, while in Malladi Drugs and Pharma Ltd. vs. Union of India 6 , it was observed:-

“...The High Court, has, by the impugned judgment held that the Appellant should first raise all the objections before the Authority who have issued the show cause notice and in case any adverse order is passed against the Appellant, then liberty has been granted to approach the High Court.....in our view, the High Court was absolutely right in dismissing the writ petition against a mere show cause notice.” It is thus well settled that writ petition show cause notice”.

15. It is thus well settled that writ petition should normally not be entertained against mere issuance of show cause notice. In the present case no show cause notice was even issued when the High Court had initially entertained the petition and directed the Department to prima facie consider whether there was material to proceed with the matter.



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9. After hearing rival submissions this Court has given its anxious consideration. It is seen that the show cause notice was issued by the Prohibition and Excise Authorities for violating the rules and the allegation is that the petitioner without obtaining approval from the Town and Country Planning Authority had put up construction. The Prohibition and Excise Authorities are not the appropriate authority to initiate the proceedings for not getting approval from Town and Country Planning Authority and they have no jurisdiction to issue notice. Under Prohibition and Excise Act there is no provision to issue notice and take action for violating building plan approval or put-up construction without planning approval. Even if it is taken that the impugned notice is only show cause notice, the respondents cannot proceed further with the said notice and order for demolition or impose penalty. At the most the respondent can take note of violation and forward the complaint to the Local Planning Authority or Local Authority to initiate an action. Instead of doing so, without jurisdiction, the respondent has issued the impugned show cause notice. It is pertinent to state herein that the Local Authority has granted plan approval under section 197 and 198 of the Tamil Nadu District Municipalities Act, 1920. But the allegation is that the petitioner has not obtained approval from the Town and Country Planning



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Act. Infact the Local Authority has issued notice directing the petitioner to explain why the approval was not obtained from the Town and Country Planning Act and the said notice is challenged in W.P.(MD)No.3177 of 2022 and there is an interim stay of the notice. The appropriate authorities have initiated action under the relevant Acts and Rules. Therefore, this Court is of the considered opinion that the impugned show cause notice ought to be interfered.

10. As rightly pointed out by the Learned Senior Counsel even though the impugned notice is termed as show cause notice, the respondents have predetermined the issue and, on this ground also the impugned show cause notice ought to be interfered with.

11. Even though the writ petition cannot be filed challenging the show cause notice, but if it is issued without jurisdiction, then writ petition would definitely be maintainable. Therefore, this Court is of the considered opinion that the impugned show cause notice is issued without jurisdiction and hence this Court is inclined to quash the impugned show cause notice, dated 20.06.2023, as issued without jurisdiction.



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To

The Commissioner,
O/o.the Prohibition and Excise Department,
Chepauk,
Chennai – 600 005



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S.SRIMATHY, J

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**Order made in
W.P.(MD)No. 16339 of 2023**

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