

(2007) 01 MAD CK 0154

In the Madras High Court

Case No : Writ Petition No. 9009 of 2006

Aakash Anugraha Residents Association

APPELLANT

Vs

Joint Chief Controller of Explosives, Petroleum and Explosives
Safety Organisation (Formerly Department of Explosives) and
Others

RESPONDENT

Date of Decision : 02-01-2007

Acts Referred:

Citation : (2007) WritLR 1077

Hon'ble Judges : A.P. Shah, C.J;K. Chandru, J

Bench : Division Bench

Advocate : G. Krishnamoorthy, for the Appellant; Raja Kalifulla, Govt. Pleader for Respondent Nos. 1 - 3, G.T. Subramanian, for Respondent No. 4, J. Ravindran, for Respondent No. 5, Ramanlal, for Respondent No. 6, V.A. Ananthanatarajan and G. Rajagopalan, SC for Patty B. Jaganathan, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—This writ petition is filed by the Association of the Apartment owners by name, Aakash Anugraha Residents Association, seeking for a direction to the respondents to shift the LPG godown set up by the eighth respondent at Door No. 38 B Soliamman Koil Street, Ayanavaram, Chennai.

2. According to the petitioner Association, by a representation dated 06.01.2006 sent to the respondents 1 to 3, 6 and 7 as well as to the Home Secretary of the Government of Tamil Nadu, they had pointed out that the eighth respondent was storing LPG Cylinders and on 02.01.2006, there was a leak in the storehouse of the eighth respondent and fearing major catastrophe, the residents were forced to run out of their houses and also the fire service was alerted. But the fire service personnel could not reach the place even after three hours. They also reminded the authorities that the fire service personnel cannot reach the location and it is inaccessible because of the narrow stretch of the entries and the entire

godown premises is surrounded by residential apartments and the godown is operated without any licence in the said premises and they also requested the Director of Fire Services not to give any No Objection Certificate to the said premises because of the public safety involved. They also draw to the notice of the authorities the order of the Government passed in G.O.Ms. NO. 329 Rural Development and Local Administration Department dated 24.02.1977 wherein it was pointed out that under the Development Control Rules, storage of gas cylinders is not permissible in the primary and residential zones and the storing of cooking gas has to be in places close to or amidst residential houses and since it is a public utility, there cannot be any objection from placing it in a primary residential zones provided necessary clearance is obtained from the Director of Fire Service and Department of Explosives, Government of India.

3. By a communication dated 02.4.2004, the first respondent had informed the eighth respondent directing them to shift the godown to a suitable site conforming to the requirements of Gas Cylinders Rules 1981 and other local laws. They were also directed to reduce the storage capacity of the godowns. The petitioner also drew the attention of this Court to a letter dated 18.6.2004 written by the Divisional Officer, fire Service and Rescue Department, North Chennai Division, stating that after the eighth respondent shifted the godown to another place, their application for issuance of No Objection Certificate will be considered by them.

4. In the meanwhile, the fourth respondent Chennai Metropolitan Development Authority [for short, "CMDA"] was also informed the Commissioner that there has been a deviation of the plan approved by the Corporation in the building in which the godown has been located and the eighth respondent was directed to submit the approval plan to CMDA.

5. Upon the same, on 03.4.2006, notice was ordered to the respondents 1, 4, 5, 7 and 8 and the for other official respondents, the learned Government Pleader has taken notice and waived service.

6. The eighth respondent entered appearance and filed a counter affidavit dated 26.7.2006 stating that there has been no violation of any Rules in having located the godown in the said premises and they have been running the godown from the year 1982 without any complaint and the petitioner Association itself came into being only in the year 2001 and also the premises has been inspected periodically by the officers of the various respondents in the writ petition and there is no major violation of any rules and regulations except that the authorities have recommended some minor changes and that the first respondent Explosives Department had, in order to give a quietus to the whole issue, directed that the vehicles carrying cylinders should be taken inside the compound in which the godown is situated and, therefore, the eighth respondent was directed to submit a revised plan for alteration of the godown and that the eighth respondent had also obtained a consent from the Government for alteration of the godown and accordingly, the godown in the said apartment has

been altered in accordance with the permission granted by the authorities.

7. With reference to the incident mentioned in the affidavit, it was stated that even before the Police arrival, the cylinder leakage was found and removed. They are also having explosive licence for both the storages and the earlier order of the Chennai Corporation canceling the trade licence was challenged by them for which they also obtained interim stay. However, with reference to the accessibility of the fire service personnel's entry into the premises in which the godown is situated with their vehicles in case of emergency, the counter affidavit was totally silent.

8. On behalf of the first respondent, a counter affidavit dated 11.7.2006 was filed stating that they had advised the eighth respondent to shift the godown only due to wide protest by the petitioner association. But on considering the appeal of the eighth respondent that they will maintain all safety standards, the first respondent allowed them to demolish the portion of the first godown and the storage capacity of the second godown was reduced and both the godowns are conforming the rules and the licence issued by the Explosive Department and therefore, the licences cannot be cancelled.

9. In the light of the stand taken by the respective parties, this Court passed an order dated 07.9.2006 directing the Divisional Officer, Fire Service and Rescue Department, Chennai, to inspect the godown of the eighth respondent where the gas cylinders are stored and to report to this Court whether the storage of cylinders is permitted in the existing godown of the eighth respondent. Accordingly, on 27.9.2006, the Divisional Officer, Fire and Rescue Service, North Division, filed the following report:

2. The Fire Service Department Licence was not issued for the storage of LPG cylinders in the above premises for the year 2005-2006 because the following conditions were imposed by this department were not fulfilled by the applicant i.e. Tvl. Rajammal Gas Agency

a) Explosive meter not provided.

c) The compound wall around the godown is not raised upto 3 meter height.

b) Adequate space is not available for loading and unloading of the LPG cylinders.

2) During the present inspection the following defects are also noticed, and the earlier imposed conditions are not fulfilled Dy the applicant till date.

a) Width of the approach road for the godown is not adequate (12 feet) only for easy movement of fire units in case of emergency.

b) Round the clock security personnel are not available.

3) At present the godown is surrounded by residential complex as such occupants are under threat. So, the storage of L.P.G. Cylinders should not be permitted from the public safety point of view in the existing premises.

10. By a letter dated 30.10.2006, the Divisional Fire Officer informed the eighth respondent that the request for the licence by the Fire Service Department cannot be granted since the matter is pending before the High Court in the writ petition.

11. Thereafter, this Court, by an order dated 23.11.2006, once again, directed the Divisional Fire Officer to inspect the godown and to ascertain the following:

- a) Whether explosive meter is provided;
- b) Whether adequate space is available for loading and unloading of the LPG Cylinders;
- c) Whether compound wall is raised upto 3 meter height;
- d) Whether provision is made for round-the-clock security personnel; and
- e) Whether, having regard to the length of the approach road to the godown from the main road, fire service can reach in case of emergency.
- f) Whether similar LPG Cylinder godowns are located in his division and whether such godowns are allowed in the residential complexes.

12. Pursuant to this, the Officer has inspected the godown and submitted a report dated 27.11.2006 stating that the portable explosive meter was not available in the godown premises and with the space provided therein, only a mini lorry can move to the place. During the inspection, only an untrained security personnel was available and the length of the approach lane is 112 feet while the width is only 12 feet and it is difficult for the fire unit to reach the godown.

13. To this, once again, objection was raised by the eighth respondent by objection dated 05.12.2006. With reference to the access of the fire service personnel, in paragraphs 9 and 10, it was stated as follows:

9) That the statement in Clause 5 is also incorrect. All the Fire Fighting Trucks are equipped with Water hose of length not less than 2000 meters. Further the said hose can also be extended for further lengths without loss of water pressure, since they are made of special materials. Hence the length of 112 Feet is minimal compare to the length of 2000 meters of hose available in their Truck. Though the fire Engine was brought to the site, no attempt was made to take it inside as the persons who brought it was of the opinion that as the passage is only 112 Feet, they can manage with the hose.

10) Further the Fire department has to maintain a safety distance for the parking of their vehicle and will not take the risk of taking the vehicle to the spot of the fire or very near to the source of fire.

14. The Divisional Officer filed a reply dated 14.12.2006 to the objections giving various explanations which we have no reason to reject. But the more pertinent is the reply with reference to the safety unit wherein the Officer has said as

follows:

Objection (9) A demonstration conducted with a fire unit in the spot on 27.11.06 with a team of Fire Officers and found the accessibility was difficult to the Godown and the report submitted. 12 Rubber lined Hoses (15 mts) and 5 unlined Canvas Hoses (25 mts) are kept in an fire unit. L.P. Gas is an highly inflammable material and it can cause building collapse / serious injuries due to explosion near the residential buildings and it is also stated that practically it is not easy to fight fire without sufficient access to the Godown.

Objection (10) Distance for Parking of the vehicle is the discretion of the spot Fire officer due to the class of Fire Risk factors and safety of the public etc., The fire personnel will also be put to risk if they have to take the hose to the Godown. There is no way we can use monitors to fight the fire from the vehicles.

15. We have heard the arguments of Dr. G. Krishnamurthy, learned Counsel appearing for the petitioner, Mr. Raja Kalifulla, learned Government Pleader representing the respondents 1 to 3, Mr. J. Ravindran, learned Counsel appearing for the fifth respondent CMDA, Mr. Ramanlal, learned Counsel appearing for the sixth respondent Pollution Control Board, Mr. V.A. Anantha Natarajan, learned Counsel appearing for the seventh respondent Indian Oil Corporation and Mr. G. Rajagopalan, learned Senior Counsel representing Mr. Patty S. Jeganathan, learned Counsel for the eight respondent and have perused the records.

16. In a matter of this nature, what is important is the safety of the public and the fact that the eighth respondent has located the godown in the year 1982 and they are in possession of the explosive licence and the buildings are also in conformity with the Building Development Control Rules cannot be the only basis to permit them to carry on business. As argued by the learned Counsel appearing for the petitioner, even the Government Order in G.O.Ms.No. 329 Rural Development and Local Administration Department dated 24.02.1977 permitted the location of LPG godowns in residential areas only with licence and that necessary clearance should be obtained not only from Explosive Department but also from the Director of Fire Service.

17. In the present case, the attempt of the eighth respondent to get the licence from the Fire Service Department has not materialised. On the contrary, the inspection carried on by the North Madras Divisional Fire Officer clearly shows that the area is inaccessible to any fire and rescue service. In fact, by the order of this Court, a mock exercise was conducted on the mere spot on 27.11.2006 by a team of Fire Officers and it was found that the accessibility to the godown was difficult. The defence provided by way of theoretical explanation by Mr. G. Rajagopalan, learned Senior Counsel appearing for the eighth respondent that water can be taken by hose pipe and necessarily, the fire fighting vehicles will have to stay at a distance is only stated to be rejected. In the absence of any approval by the officials of the second respondent fire service, the eighth respondent's continuance of the LPG godown at No. 38 B Soliamman Koil Street,

Ayanavaram, Chennai, can be only at the peril of the safety of the people in the residential area of the godown. In view of the same, we have no hesitation in rejecting the arguments advanced by the learned Senior Counsel appearing for the eighth respondent and grant the relief to the petitioner as prayed for in the writ petition.

18. In the light of the above, the writ petition shall stand allowed and the eighth respondent is permanently enjoined from carrying on the activity of locating the LPG godown at the premises bearing Door No. 38 B, Soliamman Koil Street, Ayanavaram, Chennai. However, there will be no order as to costs. Consequently, M.P.Nos. 9973 and 9974 of 2006 will stand closed as no orders are necessary. Time of eight weeks from the date of receipt of a copy of this order is granted to the eighth respondent to shift the godown to any other unobjectionable place in accordance with the rules and regulations in force.