

(2015) 03 KAR CK 0310

In the Karnataka High Court

Case No : Writ Appeal Nos. 898 and 899/2013 (LB-BMP)

B.M. Shivaswamy and Others

APPELLANT

Vs

Bruhat Bangalore Mahanagara Palike and Others.

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Citation : (2015) 03 KAR CK 0310

Hon'ble Judges : N. Kumar, J;B. Sreenivas Gowda, J

Bench : Division Bench

Advocate : L.M. Pandurangaswamy, for the Appellant; B.V. Shankaranarayana Rao, Advocates for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.

1. As common question of law is involved in both these appeals, they are taken up for consideration together and disposed of by this common order.

2. M/s. Energie Inc., a Proprietary concern was given a trade licence by the BBMP for carrying on the business of Beauty and Massage Parlor in a residential premises in Shivajinagar area. Proceedings were initiated against the petitioner for violating the law. In fact the police authorities directed the Corporation to affix a lock on the residential premises, since it was used for commercial purpose of Beauty and Massage Parlor. This was on the basis of the information they were able to obtain. After a raid, when they found that the petitioner has committed certain offences punishable under the provisions of the IPC, she is the proprietrix of the petitioner - proprietary concern was also prosecuted. Thereafter, the petitioner approached the Corporation authorities requesting them to permit her to use the premises for residential purpose till the disposal of the aforesaid prosecution. That was declined as per Annexure "J" dated 23.01.2012.

3. She challenged the same before this Court in a writ petition filed in W.P. No. 13217/2012. The learned Single Judge quashed the said endorsement and

directed the respondents to remove the lock put to the premises. During the course of the order, he was of the view that the Officer, who issued the trade licence deserves to be hauled up. Instead of taking action against the officer concerned, the Commissioner of the respondent - Corporation has shown lackadaisical attitude in allowing the officer to go "Scot-free". The Commissioner of the 1st respondent - Corporation was directed to take action against the officer concerned, who issued the trade licence and impose such punishment as is warranted invoking disciplinary powers and submit a report to the Registrar General of this Court by 30.08.2012.

4. It is in pursuance of the said order, when notice was issued to the appellant he approached this Court challenging that portion of the order and sought for permission to prefer the appeal and prosecute the same as they were not parties to the said order in the writ petition. The Court granted the permission and ordered notice to the respondents. After service of notice, the Corporation is represented, but the appellant has remained absent. Now the only question that arise for our consideration is, "whether the learned Judge without considering under what circumstances, the trade licence came to be issued by the officials of the Corporation could have made the aforesaid observations and issued directions to take action against them?" The material on record discloses that the said licences were issued under a scheme called "Suvarna Paravanige Scheme". In order to get over the application for licence filed, authorities granted licence first, subject to verification of the actual fact and compliance with the rules. The material on record shows that when after issuance of such notice, though the petitioner started functioning when they came to know the real facts, earlier it was cancelled. In spite of it, the petitioner managed to get the licence over once. The police authorities raided the place and found that there is violation of law and also found that the appellant has committed certain offences under the IPC and launched prosecution against her. It has called upon the Bangalore City Corporation to lock the premises and see that the premises is not used again for committing offence. Because of the directions issued by the police authorities and the pendency of the criminal case, the petitioner made a request to use the premises for residential purpose. The Corporation authorities declined to accord such request. When the same was challenged, the learned Single Judge has quashed the same and directed that the lock put to the premises is to be opened and the petitioner should use it for residential purpose.

5. When the appellants were not parties to the writ petition, as the observations made and directions issued affect the interest of the appellants, the principles of natural justice is violated. In that view of the matter, we are of the view that in the facts of this case, though we are not interfering with the order of the learned Judge on merits, we deem it proper to quash these observations, which have affected the interest of the officials of the Bangalore City Corporation, who are the appellants before us. Hence, we pass the following order:

"(a) Appeals are allowed.

(b) The aforesaid observations and the directions issued by the learned Single Judge to take action against the appellants is hereby set-aside."

Parties to bear their own cost.

All the I.A.s are ordered to be filed.