
(1988) 02 MAD CK 0050

In the Madras High Court

Case No : Criminal M.P. No. 3369, 3371, 3373, 3375, 3377, and 3379 of 1985

Ennore Steel Enterprises Limited

APPELLANT

Vs

The Commissioner, Thiruvottiyur Municipality

RESPONDENT

Date of Decision : 12-02-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Tamil Nadu District Municipalities Act, 1920 — Section 230, 249, 249(2), 249(3), 250

Citation : (1988) LW(Cri) 346

Hon'ble Judges : P.K. Sethuraman, J

Bench : Single Bench

Advocate : D. Raju, for the Appellant; K. Sridhar, for the Respondent

Final Decision : Allowed

Judgement

P.K. Sethuraman, J.—All these petitions have been filed by the same petitioner Ennore Steel Enterprises Limited, against the Commissioner, Tiruvottiyur Municipality, under S. 482, CrI.P.C. to call for the records relating to S.T.C. Nos. 189, 234, 235, 237, 321 and 322 of 1985 on the file of the Judicial Second Class Magistrate. Tiruvottiyur, which are the complaints filed by the respondent the Commissioner, Tiruvottiyur Municipality, under the Tamil Nadu District Municipalities Act against the petitioner, and to quash the same.

2. The respondent Municipality has filed the complaints against the petitioner under S. 249 read with S. 313 of the Tamil Nadu District Municipalities Act, 1920 alleging that the petitioner Ennore Steel Enterprises Limited is running a "Forging Unit" with 34 HP electric motor at Door No. 593/1, Thiruvottiyur High Road, Madras without obtaining a valid licence from Executive Authority of Thiruvottiyur Municipality. The Ennore Steel Enterprises Limited was directed to stop the machinery and to remove it within 7 days by the Municipality and in spite of such notice served on the petitioner, they failed to stop and remove the machinery and thereby they committed the offence under S. 249 read with S. 313 of the Tamil Nadu District Municipalities Act.

3. Of these six cases, in S.T.C. No. 237 of 1985 the complaint mentions that the petitioner, who is the owner of the building bearing No. 593/1, T.H. Road, Ernavoor, Madras-57, has commenced the installation in the site of 34 H.P. using hammer in the "Forging Unit" and also running the machinery without the permission of the Executive Authority of the Thiruvottiyur Municipality and hence the petitioner is guilty of the offence punishable under S. 313(1)(c) of the Tamil Nadu District Municipalities Act, in S.T.C. No. 189 of 1985 it has been mentioned that on and from 1.4.1984 the petitioner is running the "Forging Unit" with 34 H.P. electric motor without obtaining a licence from the Municipality, in S.T.C. No. 234 of 1985 the date mentioned is 4.3.1985; in S.T.C. No. 235 of 1985 the dates mentioned are 5.3.1985 and 6.3.1985; in S.T.C. No. 321 of 1985 the dates mentioned are 20.3.1985 and 21.3.1985 and in S.T.C. No. 322 of 1985, the date mentioned is 16th March, 1985 and on the above mentioned dates the petitioner had been shown to have run the machinery without obtaining a licence from the Executive Authority of the Tiruvottiyur Municipality.

4. The petitioner has come forward with these petitions stating that the petitioner company is carrying on the business in Steel Re-rolling Works at Ernavoor within the Tiruvottiyur Municipal limits and it is an existing Industrial Unit registered with the Directorate General of Technical Development, Government of India who have granted industrial licence for additional enhanced capacity as well as for a "Forging Unit". The company was issued necessary permission even in the year 1971 and, licence for the installation of 465 H.P. electric motor in the site in question had been given earlier. The site in question was also reclassified as Industrial area by the Directorate of Town and Country Planning and as per the classification in force the area falls within the special and hazardous industrial use zone.

5. The petitioner has been carrying on the manufacturing activities from the year 1971 and the petitioner wanted to commence the additional unit called "Forging Unit". The "Forging Unit" normally requires facilities of laboratories for chemical and physical testing of raw materials, gas, cuttrage and sizing equipments to cut the heavy raw materials, maintenance and repair of equipments and proof turning arrangements of the forge products. Since all the above facilities are already available with the company's existing plant for the running of there-rolling and are furnace unit, the company decided to install and commission the forging unit. The petitioner already obtained the required sanction and permission from the following authorities-

(a) The Directorate General of Technical Development, Government of India, New Delhi:

(b) The licence from the Factory Inspector;

(c) Sanction from the Electrical Inspector;

(d) Boiler Inspector's approval;

(e)Sanction from the Tamil Nadu Electricity Board;

(f)Urban Land Ceiling exemption; and

(g) Approval of the Plan by the Madras Metropolitan Development Authority, which already directed the respondent Municipality to issue the planning permission subject to the production of Urban Land ceiling clearance certificate.

6. In such circumstances the petitioner applied for additional installation of 48 H.P. for the forging unit. The matter went up to the notice of the Government of Tamil Nadu and after considering the reports of the District Collector of Chengalpattu and the report of the Structural Engineering Research Centre, a unit of the Council of Scientific and Industrial Research, Taramani, Madras, the Government of Tamil Nadu in G.O. Ms. No. 645, Rural Development and Local Administration Department, dated 7th May, 1983, passed orders permitting the Tiruvottiyur Municipality to issue licence to the Ennore Steel Enterprises Limited, Ernavoor, for an additional installation of 35 HP., only as against the claim of the company for 48 HP. for Forging Unit subject to certain conditions, which were also complied with by the petitioner. The petitioner submitted their application on 9th February, 1982 and after G.O. Ms. No. 645, Rural Development and Local Administration Department, dated 7th May, 1984 the petitioner modified the application seeking for licence for 34 HP. electric motors and filed the application on 19-8-1983. The Government and the Metropolitan Development Authority approved the constructions and installations and therefore it was only a matter of mere formality for the issue of licence by the Municipality. The Municipality had no power to go behind the said order sanctioning the claim of the petitioner. company and in terms of S. 252 of the Tamil Nadu District Municipalities Act, 1920 the respondent Municipality is bound to carry out the orders.

7. The respondent without granting the licence was merely writing letters and the application of the petitioner was not refused. Having regard to the provisions of S. 321 of the Tamil Nadu District Municipalities Act, 1920 and the catena of rulings, the petitioner company is entitled to carry out the "Forging Unit" and run the machineries. But the respondent has chosen to act against the orders passed by the higher and competent authorities. The respondent has filed the complaints mentioned above before the Judicial Second Class Magistrate, Tiruvottiyur. The complaints filed by the respondent are without jurisdiction and are liable to be quashed. Having regard to the mandatory requirements of S. 321(11) of the Tamil Nadu District Municipalities Act, 1920, the petitioner shall be deemed to have been granted the licence sought for in terms of the applications made by the petitioner company since within the time stipulated there was no refusal by the competent authority and since there was no refusal by the competent authority the petitioner company is entitled to run the machineries as if they had been granted the required licence. So the petitioner company could not be alleged to have committed any violation or offence under the provisions of the Tamil Nadu District Municipalities Act, 1920. Hence the prosecution and the proceedings instituted against the petitioner are without jurisdiction and are

liable to be quashed.

8. The institution of the proceedings is not by the competent authority. The petitioner filed a writ petition challenging the action of the respondent and the same is pending. Hence the above petitions.

9. The complaints filed against the petitioner relate to installation of 34 HP. electric motor and using hammer in the "Forging Unit" and also running 34 H.P. motor without a licence from the Municipality. The offences are shown to be under S. 249 read with S. 313 of the Tamil Nadu District Municipalities Act. Under S. 249 of the Tamil Nadu District Municipalities Act, 1920, the council may publish a notification in the District gazette that no place within municipal limits or at a distance within three miles of such limits shall be used for any one or more of the purposes specified in Schedule V without the licence of the executive authority and except in accordance with the conditions specified therein. The notification has to take effect only after the expiry of 60 days from the date of publication and such notification to be issued with the previous sanction of the State Government. Under S. 249(2) the owner or occupier of every such place within thirty days of the publication of such notification has to apply for a licence for the use of such place for such purpose and under S. 249(3) the executive authority may by an order and under such restrictions and regulations grant or refuse to grant such licence and the licence is to be for a period of one year and there is a provision for renewal of such licence. Under Schedule V, the purpose for which the premises may not be used without a licence under S. 249 had been given and out of the several purposes mentioned thereunder i.e., (s) and (t) are as follows:-

s. Using for any industrial purpose any fuel or machinery other than such machinery as may, by notification, be exempted by the State Government from time to time; and

t. In general, doing in the course of any industrial process anything which is likely to be dangerous to human life or health or property.

10. It is now to be seen whether on the facts alleged the proceedings instituted by the respondent Municipality against the petitioner are to be quashed. The petitioner has come forward with the case that on 9-2-1982 application was submitted to the municipality under S. 250 of the Tamil Nadu district Municipalities Act, 1920. It is the case of the petitioner that even in the year 1971 they were issued necessary permission and licence for installation of 465 H.P. electric motor and the site in question was also reclassified as industrial area by the Directorate of Town and Country Planning and the area in question as per the classification falls in the special and hazardous industrial use zone and the petitioner has been carrying on the manufacturing activities from the year 1971 onwards without any objection from any one. However, according to them they wanted to commence an additional unit called "Forging Unit" and the Forging Unit requires facilities of laboratories for testing the materials, cutting and sizing

the equipments to cut the heavy raw materials and maintenance and repair of equipments and those facilities were already available with them and in such circumstances they applied for the additional unit called as "Forging Unit" and according to the application the hammer is to run by steam pressure got from a Lancashire Steam Boiler by coal/oil firing. They have also stated that they had obtained permission from the Directorate General of Technical Development, Government of India, and they have observed all other formalities except getting approval of the drawing submitted to the Municipality and they had obtained licence from the Factory Inspector, sanction from the Electrical Inspector, Boiler Inspector's approval, sanction from the Tamil Nadu Electricity Board, and the exemption from Urban Land Ceiling. They have also stated that the plan had been approved by the Madras Metropolitan Development Authority which authority also directed the Municipality to issue the planning permission subject to the production of Urban Land Ceiling clearance certificate. The petitioner has also stated that while the company applied for additional installation of 48 HP. for the forging unit the matter went up to the Government of Tamil Nadu and the Government after considering the report of the District Collector, Chengalpattu, and the report of the Structural Engineering Research Centre, passed orders in G.O. Ms. No.645, Rural Development and Local Administration Department, dated 7-5-1983. The Municipality issued licence for additional 35 HP. only as against the claim of the petitioner company for 48 HP. subject to certain conditions which according to the petitioner had been already complied with.

11. It was submitted by the learned counsel for the respondent Municipality that use of the hammer produces noise of high volume with vibration likely to result in damage to the building. It was also submitted that the locality will be disturbed by the operation of the plant with hammer by disturbing peace during night time in addition to the damage to the buildings in the neighbourhood. Learned counsel for the petitioner contended that the correspondence between the Municipality and the petitioner will clearly indicate how they have made it clear that the buildings in the neighbourhood will not be affected by vibration and how they had undertaken to insure the buildings in the neighbourhood which are apprehended to be affected by the vibration on account of the working of the forging unit and in this connection learned Counsel pointed out the test conducted by the council for Scientific and Industrial Research regarding the vibration due to operation of the hammer and according to the report the vibration produced was not harmful for the human beings working in the neighbourhood. Learned counsel also drew my attention to G.O. Ms. No. 645, Rural Development and Local Administration Department, dated 7th May, 1983, of the Government of Tamil Nadu where-under it has been disclosed that the matter had been examined in detail and ultimately it was directed that the industry may be issued licence for an additional installation of 35 HP. electric motor only and permitted the Tiruvottiyur Municipality to issue licence to the petitioner for additional installation of 35 HP. electric motor as against 45 HP. electric motor applied for by the petitioner company. In the said G.O. it has been

mentioned that the factory should be permitted to use only upto 500 HP. and not to exceed the said maximum limit prescribed under the Rules under any circumstances whatsoever and the forging unit should not be operated during night as assured by the company and the industry should take all possible remedial measures to arrest the vibration and sound to safeguard the interest of the local residents. The Tamil Nadu Government under G.O. Ms. No. 1,000, Revenue Department, dated 31st May, 1983, also had passed the orders with regard to the exemption applied for by the company in respect of excess vacant land held by them under the Tamil Nadu Urban Land Ceiling Act with certain conditions. The petitioner company has informed the Municipality about it on 1-6-1983. The petitioner company also has resubmitted the plans and restricted the application for licence to 34 HP. electric motor. The Member Secretary of Madras Metropolitan Development Authority had written to the Commissioner, Tiruvottiyur Municipality informing that the additional construction of factory building for forging unit with 34 H.P. electric motor had been approved subject to the production of urban land ceiling clearance certificate and also subject to the conditions cited in G.O. Ms. No. 645, Rural Development and Local Administration Department, dated 7th May. 1983, viz., that the factory should not be permitted to run the forging unit during night as assured by the petitioner company and the industry should take all remedial measures to arrest the vibration and sound to safeguard the interest of the local residents. The revised plan was also approved thereafter on 3-1-1985. The Municipality had also written to the petitioner company to take the remedial steps to arrest the noise and vibration and again in the letter dated 8-1-1985 the petitioner company had been instructed to take necessary action as mentioned in the letter dated 3-1-1985 and also to stop forthwith the operation of the forging unit even for trial runs and it has been stated that the machineries should be run only on obtaining the installation permission from the Tiruvottiyur Municipality. Thereafter another letter dated 24-1-1985 had been sent by the respondent informing the petitioner that the personal inspection of the factory by the Town Planning Officer (T.P O.) revealed that the company was running the forging unit and not adhering to the instructions issued in the letter dated 8-1-1985. The company had been asked to stop the running of the forging unit even for trial runs and otherwise prosecution will be launched. Thereafter complaints had been filed. On 21-2-1985 the Municipality appears to have sent the stop work notice to the petitioner. A communication dated 22nd February, 1985 referring to the letters by the Municipality dated 3-1-1985, 8-1-1985 and 24-1-1985 had been sent by Thiru P.S. Narasimhan, Advocate, on behalf of the petitioner company, to the Municipality mentioning the various steps taken by them to get a certificate regarding danger to the neighbourhood due to vibration, about obtaining permission from the Government and also stating about the approval for the unit by the Government of India and bringing to the notice of the Municipality that the delay caused for issuing the licence is hampering the production of the company and requesting the Municipality to issue the licence and drop the prosecution proposed to be launched. The complaints are shown to be dated 4th

March, 1985.

12. It is to be pointed out that the Member Secretary, Madras Metropolitan Development Authority, had written to the Tiruvottiyur Municipality on 13-12-1983 about the approval regarding the additional construction of factory building for forging unit and also mentioning about the remittance of the amount of Rs. 1,840/- for the proposed additional buildings as development charges on 10-12-1983 itself and about the approval of the revised plan submitted by the petitioner. While that is so, keeping quiet all the while, communications have been sent by the Municipality on 3-1-1985, 8-1-1985 and on 24-1-1985. Such communications were followed by stop work notice dated 21-2-1985 by the Municipality.

13. Learned counsel for the petitioner pointing out S. 321 of the Tamil Nadu District Municipalities Act, 1920, contended that an applicant for the renewal of a licence or permission or registration shall until communication of orders on his application be entitled to act as if the licence or permission or registration had been renewed and further contended that the said deeming provision will be a bar against the prosecution launched by the respondent. Under sub-S. (II) of S. 321 of the Tamil Nadu District Municipalities Act, 1920 if orders on an application for licence or permission or of registration are not received by the applicant within 60 days after the receipt of the application by the Executive Authority the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the application. Learned Counsel also placed reliance on the decision reported in S. Govinda Iyer Vs. Municipal Council, Villupuram, The said decision has been rendered by the Officiating Chief Justice M. Ananthanarayanan, J., (as be then was) and Ramakrishnan, J., and the learned Judges have dealt with Ss. 250, 321 and 230 of the Tamil Nadu District Municipalities Act, 1920, and the learned Judges have pointed out that the application for permanent installation attracts S. 250 and the deeming provision under S. 321(11) is not attracted. The learned Judges have pointed out that the Tamil Nadu District Municipalities Act and Rules provide for three types of permission or licence. One is for the installation of the factory or the machinery itself and this may be a prayer for permission in perpetuity, or may be limited to some period of a year or less.; it may be an addition to an existing installation, or may be for the commencement of a factory. Even where such a permission has been granted, another permission must also be obtained for running the machinery from year to year and such renewal permission will have to be obtained from year to year (para 7 at page 292). In paragraph 8 in the same page the learned Judges discussing further, have painted out that it may be very difficult to lay down some criterion of distinction between Ss. 250 and 321(11) based on the kind of installation or the extent to which the initial installation affects the pre-existing plant, the only distinction that could be unhesitatingly declared is that based on the time factor. For permission or for a licence which is for a permanent installation of a factory, S. 250 will apply, and since no time will be specified in the application, the deeming provision in S. 321 will not be

attracted. But, then Their Lordships also pointed out that even in such a context of facts, if a party acts under the bona fide belief that the silence of the authority implies its consent, it might at least be a valid defence against a prosecution of the kind and in that connection the decision reported in *The Public Prosecutor Vs. T. Krishna Rao*, ., rendered by Somasundaram. J., has been referred to. It is also further pointed out that where the application is of a temporary character whatever might be the subject matter of the application, whether it is a small addition or a large addition to existing machinery, the deeming provision will apply, if the reply is not communicated within a month. The decision referred to by the learned Judges reported in *The Public Prosecutor Vs. T. Krishna Rao*, , related to an offence under S. 250 read with S. 313 of the Tamil Nadu District Municipalities Act, 1920 and in that case the accused had applied for grant of permission for installation of a machinery and it has been pointed out therein that an application for the grant of permission for installation of a machinery should be refused by the Municipal Council and such orders should be communicated to the applicant within 30 days of the receipt of the application. In the absence of such refusal the provisions of Cl. (11) of S. 321 of the Tamil Nadu District Municipalities Act, 1920 will apply and permission must be deemed to have been granted as prayed for the installation of the machinery.

14. From the facts discussed above, it could be stated that the petitioner company had obtained permission, and the plans submitted had been approved and they had also given the undertaking not to run the forging unit during night time and all the formalities required to be completed had been done and further the fee had been paid even in the month of December, 1983 and under such circumstances the respondent Municipality sending the communication in the year 1985 and then issuing notice to stop work cannot be accepted and the complaint laid thereafter against the petitioner company cannot also be maintained, having regard to the deeming provision under the Tamil Nadu District Municipalities Act, 1920 viz., S. 321. Thus, on a careful consideration of the materials available I hold that the contentions put forward on behalf of the petitioner to call for the records relating to S.T.C. Nos. 189, 234, 235, 237, 321 and 322 of 1985 on the file of the Judicial Second Class Magistrate, Tiruvottiyur, and quash the proceedings in respect of the same have to be accepted. In the result these petitions are allowed and proceedings in S.T.C. No. 189, 234, 235, 237, 321 and 322 of 1985 on the file of the Judicial Second Class Magistrate, Tiruvottiyur are quashed.