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**(2011) 12 MAD CK 0069**

**In the Madras High Court**

**Case No :** Writ Petition No. 21828 of 2011 and M.P. No's. 1 and 2 of 2011

Kousic and Company

APPELLANT

Vs

The District Collector, Erode, The Block Development Officer,  
Kodumudi, Erode District, Anjur Panchayat

RESPONDENT

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**Date of Decision :** 01-12-2011

**Acts Referred:**

Tamil Nadu Panchayats Act, 1994 — Section 160, 220(5), 220(6)

**Citation :** (2012) WritLR 559

**Hon'ble Judges :** N. Paul Vasanthakumar, J

**Bench :** Single Bench

**Advocate :** Kandhan Duraisami, for the Appellant; N. Sakthivel, Govt. Advocate for Respondent 1, Mr. V. Jayaprakash Narayanan A.G.P. For Respondent 2 and Mr. M. Guruprasad For Respondent 3, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

N. Paul Vasanthakumar

1. The prayer in the writ petition is to quash the order of the 2nd respondent dated 16.08.2011 and the order of the 3rd respondent dated 15.08.2010 and order dated 02.05.2011 communicating the resolution dated 10.01.2011 and forbearing the respondents herein from in any manner interfering with the running of thar manufacturing unit by the petitioner in Survey Nos.291/9, 291/10 and 291/11 of Anjur Village, Erode District by issuing necessary running licence.

2. According to the petitioner, the petitioner is a partnership concern dealing with blue metal and bitumen used for laying roads. The petitioner purchased the land from the 4th respondent and 6 others vide sale deed dated 09.07.2008 to an extent of 1 acre and 52 cents for the purpose of establishing thar mixing unit in the said land. It is stated in the affidavit that the said land is located in a remote area away from the residential limits of village and is near to the licensed blue metal quarry which is situated about 50 meters away from the petitioner site.

3. In the affidavit filed in support of the petition, it is also stated that the petitioner has applied before the authorities for obtaining necessary permits, licences and no objection certificate for the effective and smooth functioning of the petitioner concern. The Village Panchayat passed a Resolution to remove the machinery used in the mixing process, by Resolution No.33 dated 15.08.2010, stating that the petitioner concern is an industrial establishment obtained the consent from the Pollution Control Board and the same is renewed periodically and also obtained No Objection Certificate from the Public Health Department, by order dated 24.02.2011. The petitioner claims that it has also obtained approved plan from the Town and Country Planning Department on 14.07.2011 after obtaining the land classification certificate from the Director of Town and Country Planning on 22.06.2010 certifying that the land is a non classified land. Fire Service Department granted its consent on 16.11.2010. The objection of the third respondent is that without getting Licence/Permission from the Panchayat, the petitioner unit was established and the same is in violation of the provisions of Tamil Nadu Panchayats Act, 1994 and the petitioner is liable to pay fine. Even though, in the affidavit filed in support of this writ petition, the petitioner has averred that the application for permission was submitted, no date of submission of application is mentioned.

4. The first respondent has filed a counter affidavit stating that the petitioner had purchased the property, constructed the superstructure and started the industry without getting permission or approval of licence as per the Panchayats Act, 1994. Complaints were received from the general public of Anjur Village and some individuals on behalf of the villagers from 2008 onwards. Resolution was passed by the third respondent Panchayat on 10.01.2011 refusing licence to the petitioner unit taking note of the health hazards to the general public.

5. Heard the Learned Counsel for the petitioner and the Learned Counsel for respective respondents.

6. The point arises for consideration is whether the petitioner unit can run the manufacturing unit dealing with blue metal and bitumen used for laying of roads without Licence/Permission from the third respondent Panchayat. Section 160 of the Tamil Nadu Panchayats Act, 1994 is the governing statutory provision requiring permission. Section 160 reads thus:

160. Permission for construction of factories and the installation of machinery.-No person shall, without the permission of the panchayat union council in panchayat villages and except in accordance with the conditions specified in such permission,

(a) construct or establish any factory, workshop or workplace in which it is proposed to employ steam power, water power or other mechanical power or electrical power, or

(b) install in any premises any machinery or manufacturing plant driven by any power as aforesaid, not being machinery or manufacturing plant exempted by

the rules.

7. From the above provision namely Section 160, it is evident that no factory and installation of machinery can be established and run without permission from the panchayat. The said Section is prohibiting all persons and it is in effect a statutory injunction or bar. Section 220 (5) and (6) of the Act deals with initiation of proceedings and imposing of penalty etc. which reads as follows:

(5) If an act, for which any such licence or permission is necessary, is done without such licence or permission, or in a manner inconsistent with the terms of the licence or permission obtained, then

(a) the executive authority of the village panchayat or the commissioner or the Substituted for the words "Chief Executive Officer" by Act No.XXVIII of 1998 [Secretary] may by notice require the person so doing such act to alter, remove, or as far as practicable restore its original state, the whole, or any part of any property, movable or immovable, public or private affected thereby, within a time to be specified in the notice; and further,

(b) if no penalty has been specifically provided in this Act for so doing such act the person so doing it shall be punishable with the fine not exceeding fifty rupees for such offence.

(6) Whenever any person is convicted of an offence in respect of the failure to obtain any such licence or permission, the Magistrate shall, in addition to any fine which may be imposed, recover summarily and pay over to the panchayat the amount of the fee chargeable for the licence or permission, and may, in his discretion, also recover summarily and pay over to the panchayat such amount, if any as he may fix as the costs of the prosecution.

Explanation.-The recovery of the fee for a licence or permission under this subsection shall not entitle the person convicted to the licence or permission.

8. Thus, the petitioner is bound to get permission/licence to install machineries and run the unit and the said condition is mandatory as failure to get licence will lead to penal consequences.

9. In the light of the said averment contained in the counter affidavit filed by the first respondent, specifically stating that the third respondent has already issued notice to the petitioner not to run the unit due to health hazard as early as on 15.8.2010 and 6.7.2011, the petitioner cannot run the unit without getting running licence. If the petitioner is interested in running the unit, the petitioner is permitted to submit an application before the third respondent for the grant of running licence and the third respondent is directed to consider the same and pass appropriate orders. The petitioner is granted two weeks time to submit an application and the third respondent is directed to consider the same and pass appropriate orders in accordance with law within a period of four weeks thereafter. While considering the request of the petitioner seeking running licence, the fourth respondent and the public in the locality shall also be heard.

The Writ Petition is dismissed with above directions. No costs. Consequently, connected miscellaneous petitions are closed.