

(1975) 08 MAD CK 0034
In the Madras High Court
Case No : S.A. No. 867 of 1972

K.S. Narayanaswamy Nattar

APPELLANT

Vs

The Kancheepuram Municipality, by the Commissioner

RESPONDENT

Date of Decision : 08-08-1975

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 19

Citation : (1975) 08 MAD CK 0034

Hon'ble Judges : Varadarajan, J

Bench : Single Bench

Advocate : A. Nagarajan, for the Appellant; K. Alagiriswamy, for the Respondent

Judgement

Varadarajan, J.—This appeal is against the judgment of the learned Subordinate, Judge, Kanchipuram, in A.S. No. 199 of 1969 reversing the judgment of the learned District Munsif, Kanchipuram, in O.S. No. 513 of 1966 in which the learned District Munsif had granted a declaration that the Resolution No. 166, d. 30th June 1966 passed by the respondent-Municipality cancelling the Resolution No. 950 d. 16th March, 1962 whereby a licence was granted by the Municipality for installation of 10 H.P. electric motor to work flour huller, a chilly huller and a soap nut huller at No. 16/A/2, Ulagalandar Street, Big Kanchipuram, is illegal and void. In view of this declaration, the learned District Munsif thought that it is not necessary to grant the permanent injunction prayed for is the plaint, viz, for restraining the Municipality from interfering with the working of the mill by the appellant. While granting the declaration, the learned District Munsif has observed that it does not preclude the Government from pursuing action which it instituted for cancellation of the said licence on the objection raised by one Kausalya Ammal in Ex. P-5 and passing final orders under S.36 (1)(c) and S.252 of the Madras District Municipalities Act. On appeal, the learned Subordinate Judge held that the Municipality has right to pass a resolution for correcting a wrong and that the cancellation of the licence already granted by the subsequent resolution is valid and allowed the appeal preferred by the respondent, Hence

this Second Appeal. The appellant applied to the respondent-Municipality on 3rd December, 1961 for a licence to install a 10 H.P. electric motor to work a flour mill with hullers, etc. at the aforesaid premises. The Municipality granted the permission by the Resolution No. 950 d. 16th March, 1962 subject to the condition that the appellant should not run the chilly and soap nut hullers between 10 a.m, and 2 p.m. While the appellant was carrying on his business for some years, he received a communication from the respondent dated 25th May, 1966 enclosing the proceedings of the State Government dated 18th May, 1966 in Ex. A-3 in which the Government has stated that in view of the report of the Asst. Director of Public Health, Madras, the Government consider that the installation and running of the machinery at the site in question is likely to cause injury to public health and that the respondent-municipality should therefore show cause within a period of one month from the date of receipt of that order as to why the Resolution No. 950 dated 16th March 1962 should not be cancelled under S.36 (1) (c) of the Madras District Municipalities Act. This order (Ex. A-3) was communicated to the appellant. The appellant was asked to show cause why the resolution of the Municipal Council for the grant of licences should not be cancelled. During the pendency of the proceeding before the Government, the respondent passed the resolution Ex. P-9, dated 30th June, 1966 cancelling the permission granted by the Resolution No. 980 dated 16th March, 1962. The appellant's contention was that the respondent had no right to cancel the licence already granted, that he has spent large amounts and should not be prevented from carrying on his business and that he is, therefore, entitled to a declaration and injunction. The respondent contended that the licence was cancelled because the Government considered that the installation and the running of the mill in that place is likely to cause injury to the public and hence issued the show cause notice to the respondent.

2. The point for consideration is whether the resolution of the municipality cancelling the earlier resolution is sustainable. The Municipal Council has the power under S.19 of the Madras District Municipalities Act to carry on the administration of the council. Under S.22 of the Act, the Executive Authority is bound to give effect to every resolution of the Council unless such a resolution is modified or suspended or cancelled by the Controlling Authority. It is conceded by the learned counsel for the respondent that there is no direct provision in the Act enabling the Municipality to cancel its own resolution. But, he contends that having regard to Rule of the Rules in S.3 to the Act, the Municipality has the power to cancel its own earlier resolution by another resolution. That Rule lays down that no resolution of the council shall be modified or cancelled within three months after the passing thereof except at a meeting specially convened in that behalf and by a resolution of the council supported by not less than one half of the sanctioned number of members. This rule will show by implication that the Municipality has the authority to cancel its own resolutions. In *A.R.A.N. Thyagarajan Chettiar v. Secretary to Government of Madras and others* (sic) referred to in the lower Court's Judgment, it has been held that if a Municipality

had no power to cancel a wrong, the wrong would be without a remedy and that would be contrary to all principles of law. Therefore, the view of the learned Subordinate Judge that the Municipality has the power to cancel a licence already granted is correct. But, the Government has the power under S.36 of the Act to suspend or cancel any resolution passed, order issued or licence or permission granted subject to the provisos mentioned therein. The reasons for which suspension or cancellation could be made are mentioned in Clauses (a) (b), (c) of sub-clause (ii) of Clause (i) of S.36 of the Act. Clause (c) provides that the suspension or cancellations could be made if the execution of such resolution or order, the continuance in force of such licence or permission or the doing of such act is likely to cause danger to (sic) life, health or safety, or is likely to (sic) a riot or an (sic). It is there (sic) that the Government can order (sic) cancel a resolution already (sic) Municipality only for certain reason. But, the respondent has not given any reason for cancelling the licence already granted in pursuance of the Resolution No. 950, dated 16th March 1962 in the resolution Ex. P-9. No doubt, it appears from Ex. P-9 that the Government's Order dated 15th May 1962, M.S. 1279/R.D. & L.A. the resolution No. 335, dated 30th September 1965 and the Government's Order dated 18th May 1966 had been placed before the Council for its consideration. But, the resolution does not give any reason for the council to come to the conclusion that the earlier resolution should be cancelled. Having regard to the fact that even the Government could under S.36 of the Act, cancel or modify the resolution of the Municipality only for certain reason and no reasons have been given by the respondent in the resolution Ex. P-9 for cancellation of the earlier resolution, it is not possible to uphold that resolution as valid. Under these circumstances, I find that the conclusion of the learned District Munsif that the appellant is entitled to the declaration subject, of course, to the right of the Government to consider the matter and take action under S.36 of the Act is proper. The appeal, is, therefore, allowed with costs. It is no doubt open to the Government to pass necessary orders under S.36 of the Act.