

(2017) 04 MAD CK 0087

In the Madras High Court

Case No : 19069 of 2016 and W M P(MD)Nos 13767 & 13768 of 2016 & 4832 of 2017

LA Bottlers Private Ltd., rep. by its Managing Director,
Mr. Joseph Francis

APPELLANT

Vs

The State of Tamil Nadu, rep. by its Secretary to
Government, Housing and Urban Development Department,
& Ors.

RESPONDENT

Date of Decision : 26-04-2017

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981, Section 21 - Restrictions on use of certain industrial plants
Water (Prevention and Control of Pollution) Act, 1974, Section

Citation : (2017) 04 MAD CK 0087

Hon'ble Judges : V.Parthiban

Bench : SINGLE BENCH

Advocate : V.Parthiban

Judgement

1. This writ petition has been filed by the petitioner challenging the Government Order in G.O(2D)No.91, Housing and Urban Development

(Na.Va.4(i)) Department, dated 30.06.2016, passed by the first respondent and for a consequential direction to the first respondent to vary the

classification of the petitioner's land in S.F.No.469/1A1, 469/1A2 Part (old No.469/1A) and 496/1B1 of Suriyur Village, Thiruverumbur Taluk,

Tiruchirappalli District, from ""Mixed Residential Zone"" to ""Controlled Industrial Zone"".

2. The case of the petitioner is that the petitioner company is incorporated under the Companies Act, 1956. The company had proposed to set up

a plant/factory at Suriyur Village, Tiruchirappalli District. This was to function as

a bottling unit for Pepsico India Holding Private Limited. The plant was planned to be constructed at S.Nos.469/469/1A2 and 469/1B1 of Suriyur Village over an extent of 24 acres. The required land has been purchased by the petitioner under the sale deed dated 04.10.2010 registered as Document No.8347 of 2010 in the office of the Sub-Registrar, Tiruverumbur.

3. According to the petitioner, the land in question is classified as ""Mixed Residential Zone"". Since the petitioner was intending to put up plant / factory in the said property, the land in question was required to be reclassified from ""mixed residential zone"" to that of ""Controlled Industrial Zone and the competent authority, who is empowered to reclassify the land, forwarded the same to the first respondent. It appears that an application was made by the petitioner on 25.11.2010 for the change of land use by changing its classification to ""Controlled Industrial Zone"" along with the necessary documents, fee, etc., to the third respondent which was required to be forwarded to the first respondent for appropriate order. On receipt of the petitioner's application for change of land use by the third respondent, the fourth respondent issued a notification in English and Tamil Newspapers on the direction of the third respondent inviting objections and suggestions for the proposed variation of the land use. According to the petitioner, no objection or suggestion was received in response to the notification.

4. The third respondent, however, wanted some more details from the petitioner in respect of the application for change of land use and according to the petitioner, the same was duly complied with by the respondent on 28.02.2011. In the meanwhile, the petitioner as per the averment in the affidavit have obtained the following documents as enumerated therein.

a) ""No Objection"" Certificate from the Fire Service Department, which was dated 03.11.2010.

b) A Licence and Certificate from the Inspector of Factories, vide order dated 29.04.2011, in proceedings bearing No.2914/11, for the commencement of production in the factory premises of the petitioner.

c) Certificate of Registration from the Department of Labour, dated 27.03.2012.

d) License from the Food Safety and Standards Authority of India, dated 09.05.2012.

e) Letter from the Revenue Divisional Officer, Trichy, dated 29.06.2012 in O.Mu. A2.545-2012, stating that the lands in Survey

Nos. 469/1B1 were not covered under the Land Reforms Act, 1961.

f) License from the Boiler Inspection Department bearing No.T9277, dated 23.07.2014;

g) Stability Certificate from the Chief Inspector of Factories, T.N. Government dated 21.10.2013;

h) Machinery Certificate from the Deputy Director, Industrial Safety and Security, dated 04.09.2014;

I) License issued by the Petroleum & Explosives Safety Organisation (PESO), Ministry of Commerce and Industry, Government of

India, dated 30.12.2011 & 03.12.2013, for storage of Petroleum:

j) License issued by the Petroleum & Explosives Safety Organisation (PESO), Ministry of Commerce & Industry, Government of

India, dated 30.12.2011 & 01.04.2015, for storage of Carbon Dioxide:

k) License under the Prevention of Food Adulteration Act, issued by the Deputy Director of Health Services & Family Welfare,

Trichy, dated 12.05.2011;

l) NOC from the District Revenue Officer, dated 02.07.2011 for grant of a license for installation of one under-ground petroleum

storage tank and

m) High Tension Service Connection from TANGEDCO bearing Service No.209.

n) The petitioner's industry has been classified as an "Orange" industry by the Tamil Nadu Pollution Control Board. The petitioner

applied to the Tamil Nadu Pollution Control Board for necessary approvals and obtained the necessary consents for the operation of

its new plant under Section 21 of the Air (Prevention & Control of Pollution) Act and for discharge of sewage under Section 25 of

the Water (Prevention & Control of Pollution) Act.

o) All requirements in respect of registration with the Tamil Nadu Commercial Taxes Department and the Central Excise Department

were done and the certificates were obtained by the petitioner from the said Departments.

5. Since the petitioner's company was involved in the business of bottling of soft

drink, mineral water, drinking water etc., in order to facilitate their business, they entered into an agreement for ground water utilization with the Executive Engineer, Public Works Department, Ground Water

Division, Trichy, on 12.11.2010 and the petitioner was permitted to draw 1.50 lakh liters of ground water per day from three bore wells.

Subsequently, the permit for drawal of water was enhanced by a revised agreement dated 19.07.2011 permitting the petitioner company to draw

2.40 Lakh liters per day, after taking into account the hydro-geological status of the area. Thereafter, the petitioner was also permitted to have six

bore wells by the competent authority with increased drawal of water.

6. In the above said circumstances, the petitioner had commenced their operation of the plant in May 2011. Except an order for change of land

use, all other required licenses and clearances had been obtained by the petitioner and also due to the fact that they have not received any

suggestion or objection to the public notification and all the documents required for the change of land use had been submitted by them, they were

under the impression that in a matter of course, their application would be favourably considered. According to the petitioner, they had employed

about 150 persons both directly and indirectly from the local villages and invested huge amount of money for the establishment of the plant / factory

and post operation of the plant / factory. According to the petitioner, the Pollution Control Board also has been taking samples of the water

periodically and there was no complaint of any harmful discharge of any chemical prohibited or declared as hazardous by any authority concerned.

7. All the while, according to the petitioner, their application for conversion of land was under process with the first respondent. While matter

stood thus, there was a complaint from the Suriyur Village Panchayat Union in 2012 pertaining to the petitioner's drawal of water from the bore

wells. The complaint is on the basis of the apprehension on the part of some of the villagers that the drawal of the water for bottling Unit of the

petitioner company would deplete the ground water sources. In order to avoid unnecessary confrontation between villagers and the petitioner

company, a peace committee meeting was held wherein, the Revenue Divisional Officer, Trichy, Block Development Officer, Tiruverumbur,

members of the public, representatives of the petitioner etc. participated. After

the outcome of the meeting, the petitioner agreed not to draw water from three of its six bore-wells. While so, the fifth respondent vide proceedings in Na.Ka.No.533.2013 dated 25.04.2013 ordered closure of petitioner company on the ground that the same was being run without any approval. According to the said proceedings, the factory lands were agricultural lands and as the petitioner was drawing water from the bore-wells, agricultural operations were being affected. The fifth respondent invoked the provisions of Section 159 of the T.N Panchayats Act, 1994, for passing closure order. It appears that the order has been challenged by the petitioner in W.P(MD)No.4498 of 2014 and the an order of interim stay was granted by this Court and the writ petition is still pending for final consideration.

8. The petitioner having obtained all required licenses and clearances from the competent authorities but was not allowed to operate the plant/factory for which the same was established. Inspite of the petitioner satisfying all the authorities and fulfilment of the norms required for carrying out their activities as proposed by them, still there was no decision forthcoming from the competent authority, particularly, the first respondent about the request of the petitioner for change of land use. In this connection, the petitioner pointed out that the land in question is only Mixed Residential Zone and there was no agricultural activities happening in and around the area and therefore, there would not be any impediment for considering the request of the petitioner for change of land use as it would benefit 700 local villagers directly and indirectly in the matter of providing employment to them. After passage of considerable time, the third respondent herein appears to have returned the petitioner's application by proceedings dated 13.05.2014 on the basis of objections from the fifth respondent as well as complaints from the general public of the area. Therefore, the petitioner was constrained to challenge the said proceedings in W.P(MD)No.9632 of 2014. This Court, by an order dated 19.06.2014, directed the petitioner to resubmit its application to the third respondent. The third respondent was directed to forward the application to the first respondent along with the objections received by him. Thereafter, the third respondent then directed to consider the same after affording opportunity of hearing to the 6th respondent and pass appropriate

orders thereon.

9. While matters are pending consideration before the competent authority, on 28.01.2015 the Revenue Officials came to the factory and sealed

the factory without any notice to the petitioner. This action by the revenue officials, according to the petitioner, was invalid in view of the permission

granted by the competent authority, namely, Chief Engineer, Public Works Department, for drawal of ground water in the subject land and ""No

Objection Certificate"" issued by the authority was valid till 22.06.2015. In the said circumstances, the petitioner was once again constrained to file

W.P(MD)No.1156 of 2015 seeking a direction to remove the seal from the bore-wells and the said writ petition is still pending. Simultaneously, a

notice was issued by the Block Development Officer to the petitioner on 28.01.2015 under the provisions of Tamil Nadu Panchayats Act calling

for the explanation from the petitioner as to why action should not be initiated against the petitioner factory as the same was functioning without

permission. This was also challenged by the petitioner by filing W.P(MD)No.1334 of 2015. This Court, by an order dated 05.12.2015 was

pleased to record the undertaking given on behalf of the Block Development Officer, Thiruverambur, that he will not proceed further till the

disposal of W.P(MD)Nos.1156 and 1334 of 2015. Both the writ petitions are pending.

10. According to the petitioner, some vested interest from the local villagers had been continuously interfering with the operational activities of the

factory and therefore, the petitioner was forced to approach this Court by way of Crl.O.P(MD)No.2956 of 2015 and this Court, by an order

dated 31.03.2015, granted police protection for running the petitioner's factory. However, the operation of the factory could not be resumed in

view of the continued opposition from the 5th and 6th respondents, as averred by the petitioner.

11. As stated supra, the petitioner had earlier approached this Court in W.P(MD)No.9632 of 2014 wherein, an order was passed by this Court

on 19.06.2014, directing the authorities concerned to pass orders on the re-submission of the application by the petitioner, which was not

complied with. Therefore, a contempt petition in Cont.P(MD)No.502 of 2016 was filed and the same directed to be listed on 01.07.2016.

Immediately before the contempt application could be taken up for hearing on 01.07.2016, an order was passed on 30.06.2016 in

G.O(2D)No.91 rejecting the petitioner's application for land conversion. The said order is impugned in the present writ petition.

12. Having aggrieved by the impugned order passed by the first respondent in G.O(2D)No.91, dated 30.06.2016, the petitioner is before this

Court assailing the same on several grounds that were enumerated in the affidavit filed in support of the writ petition.

13. A counter affidavit has been filed on behalf of the first respondent, dated 31.01.2017, resisting the writ petition filed by the petitioner herein.

14. When the matter was taken up for hearing, Mr.P.S.Raman, learned Senior Counsel appearing for the petitioner would submit that he would

give up the 6th respondent as she is not a necessary party and she was no more an office bearer of the Panchayat Union. In view of the

submission, this Court granted permission giving up the 6th respondent.

15. On behalf of the petitioner, the learned Senior Counsel had also submitted and filed an affidavit of undertaking that they would not draw water

from the subject lands and they would find alternative source of water by other means. The said affidavit of undertaking is taken on record. Since

according to the learned senior counsel, the entire bone of contention is only on the issue of drawal of water from the subject land which is going to

affect the so called agricultural operation of the nearby villages, in view of the undertaking they would not be any further oppositions for operating

the plant.

16. The learned Senior Counsel appearing for the petitioner would further submit that the impugned order rejecting the request for change of land

use was primarily and principally on the basis that there was complaint from the public and any consideration of the petitioner's request for change

of land use may lead to law and order situation and therefore, their application cannot be considered in their favour. Such conclusion by the first

respondent, according to the learned Senior Counsel, cannot be valid in the eye of law, as these issues are extraneous and it cannot be the basis

for taking a decision in regard to the request of the petitioner for land conversion for their legitimate business activity. According to the learned

Senior Counsel, the application ought to have been considered within the

framework of relevant rules and regulations and the decision cannot be coloured by such consideration of so called public opinion or their needless intervention and their motivated complaints at the instance of some vested interest.

17. The learned Senior Counsel appearing would therefore, submit that the impugned rejection by the first respondent cannot be countenanced

both on law and facts as there was no proper consideration on the basis of the rules and records that governed the situation. Be that as it may, one

Suriyur Vivasayigal Pathukappu Sangam, which is a registered as society under the Tamil Nadu Societies Registration Act, 1974, has filed an

impleading petition for impleading themselves the writ proceedings. According to the said sangam, the petitioner cannot be allowed to establish

their factory in the subject land as it would seriously affect the agricultural activities of Suriyur village. According to the proposed impleading party,

the factory has been running without proper approval and conversion of land use and such illegal existence cannot be given any seal of approval.

They have also averred that the village people are suffering due to acute water scarcity and in such situation, the petitioner factory cannot be

allowed to carry on its operation and their main operation would depend on the availability of water and sourcing of water in the land under their

occupation.

18. According to the counter affidavit filed by the first respondent, without obtaining proper permission from the competent authority, the petitioner

had started the factory operation and Government considered the request made by the petitioner with reference to the objection raised by the

public and the local body and passed final orders by proceedings dated 30.06.2016. From the entirety of the averment in the counter affidavit filed

on behalf of the first respondent, it appears that the first respondent has considered the objections from the public and the objections from the

public is primarily and principally ended in the decision against the petitioner holding that agricultural activities of the villagers would be affected.

The tenor of the impugned order dated 30.06.2016 and the counter affidavit would show that there was little application of mind on the part of the

first respondent while discharging his statutory. The application filed by the petitioner has not been considered with reference to the rules and

regulations governing the subject matter and de hors the same, the request of the petitioner company has been considered only on the basis of public perception and complaints without any critical examination whether such public perception / complaint was well informed or well intentioned or legitimate or otherwise. Such summary disposal of the request by the petitioner before the first respondent tantamount to abdication of the statutory power vested in the authority and subordinating such power to public measure and tactics which does not advance to rule of law, which alone must govern the situation on hand. Of course, this Court is conscious of the fact that the public interest is paramount while considering any individual request, but at the same time the rules of governance cannot be allowed to be stifled or violated and the decision of the statutory authority cannot be governed by mere objections from the public on the basis of street sentiments who may be driven by vested interest or camouflaged as public interest, beneath lie a personal agenda of some pressure groups.

19. Be that as it may, now that the petitioner has come forward with the affidavit of undertaking that water would not be drawn from subject land

and they would also source the supply of water by other means, in all fairness, the issue has to be re-considered by the first respondent by giving

fresh consideration on the basis of the affidavit of undertaking given by the petitioner dated 17.03.2017, which is taken on record by this Court.

20. In the above said circumstances, this matter is remanded back to the first respondent for fresh consideration on the basis of the above facts

after giving due opportunity to the petitioner and proposed impleading party and other persons concerned and pass reasoned order by taking into

consideration the relevant facts, rules and regulations within a period of ten weeks from the date of receipt of a copy of this order. It is also made

clear that the first respondent shall evaluate the public perception / opinion in proper perspective to ensure a balance between the rule of law and

over bearing public opinion with dispassionate mind.

21. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

22. In view of the order passed above, no order is necessary in the impleading petition. Therefore, the impleading petition in

W.M.P(MD)No.4832 of 2017 is closed.