
(2014) 10 MAD CK 0238

In the Madras High Court

Case No : Writ Petition No. 19013 of 2007 and M.P. No. 2 of 2007

M. Kailasam

APPELLANT

Vs

The Additional District Magistrate

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 145, 147, 149, 302, 341

Citation : (2014) 10 MAD CK 0238

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Judgement

C.S. Karnan, J.—The short facts of the case are as follows:-

The petitioner submits that he is an enterprising agriculturist and his lands are situated in hilly area wherein much damage to the crops is being caused by the wild animals and also endangering of human life. He applied for the grant of licence to possess SBBL gun and the same was granted by the Licensing Authority and renewed periodically, after due enquiry and he has been in possession of the Single Barrel Breach Loading gun for the past 15 years without any complaint of misuse from any circle. His request for renewal of the licence for the possession and use of a Single Barrel Breach Loading gun beyond 31.12.2003 was rejected by the 1st respondent namely District Revenue Officer, Namakkal on frivolous and untenable grounds on 30.12.2005 in his proceedings in Pa. Mu. 46582/2003/M3. Aggrieved by the rejection by the 1st respondent, he has preferred an appeal before the 2nd respondent namely the Commissioner of Revenue Administration and the 2nd respondent without properly appreciating the materials placed on record and without considering the fact that the District Forest Officer, Namakkal has reported that there are no forest offences against him and that he has never misused the weapon for the past 15 years, during the period of licence and its renewal, has rejected his appeal in the 2nd respondent's proceedings in Rc. No. RA. 5(2)/7706/2006, A.A. No. 014/2006, dated 18.01.2007, thus confirming the erroneous order passed by the 1st respondent.

Hence, the above writ petition has been filed.

2. While the above matter came up for final hearing, then the petitioner has filed a Supplementary better affidavit and stated that the respondents in their counter statement stated that there are no charges against him under the Arms Act and the fact remains that he conducted himself involving in Criminal Cases attracting the Punitive Provisions of Sections 147, 341 and 302 of IPC which are grave in nature and eventhough the District Forest Officer had given a No Objection Certificate to the effect that there are no Forest Offences, the fact remains that he is involved in Criminal cases and was punished by the trial Court. The wrong doing is there but his moral turpitude was shattered on account of his involvement in a Criminal Case.

3. The petitioner additionally added that the respondents have failed to note that there is no connection with the Criminal case to refuse the renewal of his Arms License since the charges alleged against him in Crime No. 251/97 are only under Indian Penal Code and not under Arms Act and has been acquitted by the Hon"ble Division Bench of this Court in CrI. A. No. 1107 of 2002, dated 25.04.2006, which shows that there is no offence pending against him before any Court till now, thereby he has every right to possess a licensed gun for protection of himself and his crops and domestic animals from forest wild animals. It is relevant to consider that the District Forest Officer whose opinion is quite relevant in the context of granting a licence in favour of an individual for the protection of crops, domestic animals and his life from undomesticated wild animals since his residence and fields are located near the hilly regions and the forest area, wherein the places in and around are infested with wild animals and only being conscious of the threat, the District Forest Officer has rightly recommended for the issue of a licence in his favour.

4. The petitioner additionally stated that so far as non-recommendation for the issuance of the licence for a single barrel breach loading gun by the Superintendent of Police in his favour is concerned only on the reason of the pending of the Criminal Appeal against him, on being convicted by the trial Court and this pending appeal came to be heard and came to be decided in his favour by this Court and allowing his Criminal Appeal No. 1107 of 2002 and setting aside the Judgment of the trial Court since being opposed to the facts and circumstances of the case and the position of Law covering the subject and the appeal was allowed, consequently, the petitioner has been acquitted from the said criminal case, as such he is innocent and the stigma attached to his character has become erased. Even the Superintendent of Police had offered his opinion after the Judgment of the High Court, he would not oppose the grant of licence in his favour which he did during the pendency of the appeal when the trial Court Judgment was in force.

5. There is also no significance attached to the rejection of his request for the grant of the licence for being in possession of a Single Barrel Breach Loading gun by the Additional District Munsif and District Revenue Officer, who is the licensing

authority acting purely on the opinion offered by the Superintendent of Police during the pendency of the Criminal Appeal and for no other better reason the Licensing Authority had rejected his request, as such the rejection order passed by the Licensing Authority amounts to irrelevancy. Further, the 2nd respondent had rejected the appeal on the grounds that the petitioner is facing a criminal case besides after acquittal of the criminal case, till now there is no allegations against him especially under the Arms Act, further he is a senior citizen and law abiding and maintaining his status in the society. Further, he undertakes and will not misuse the single barrel breach loading gun. Hence, the petitioner entreats the Court to allow the writ petition.

6. The 1st respondent has filed a counter statement on behalf of the 2nd respondent herein and on his behalf. It is submitted that the petitioner Thiru. M. Kailasam S/o. Thiru. Muthugounder, Naraikkinaru Village, Rasipuram Taluk, Namakkal District, the writ petitioner herein was granted an arms licence bearing No. R247/180 under the provisions of Arms Act and Rules to possess a SBBL gun and duly renewed Upto 31.12.2003. In his application dated 10.11.2003.

Thiru. Kailasam submitted an application to the Additional District Magistrate and the District Revenue Officer, Namakkal District on 10.11.2003 for renewal of his SBBL licence beyond 31.12.2003. His application was forwarded to the Superintendent of Police, Namakkal and District Forest Officer, Namakkal for enquiry and report. The Superintendent of Police, Namakkal District in his reports dated 26.05.2004 and 11.09.2004 did not recommend for grant of licence since a writ appeal is pending in High Court, Chennai, against him in Crime No. 251/97 under Sections 145, 341 and 302 IPC. The District Forest Officer, Namakkal District, in his letter dated 23.12.2003 has reported that, as per records there are no forest offence against the applicant and hence issued No Objection Certificate for the renewal of licence to the petitioner. The Additional District Magistrate and the District Revenue Officer, Namakkal personally heard the petitioner on 21.11.2005 and passed orders in his proceedings dated 30.12.2005 rejecting the request of the petitioner on the grounds that the Superintendent of Police did not recommend for renewal of arms licence beyond 31.12.2003 in view of public safety. Aggrieved by the order of the Additional District Magistrate and District Revenue Officer, Namakkal the petitioner preferred an appeal to the Principal Secretary/Commissioner of Revenue Administration, Chennai. The Principal Secretary/Commissioner of Revenue Administration, Chennai, after giving an opportunity of personal hearing to the writ petitioner and after perusing the records and other materials, rejected the appeal in his proc. Roc. No. V(2) 7706/06 (AA No. 014/06) dated 18.01.2007 with the observation that there was no reason to interfere with the orders of the Additional District Magistrate and District Revenue Officer, Namakkal. Against the above orders of the Special Commissioner and Commissioner of Revenue Administration, Chennai the petitioner has filed the writ petition No. 19013/2007 before this Court at Madras. The writ petitioner has not narrated the magnitude of the damages if any caused by the wild animals and their description and the crops damaged by them. The

petitioner has made mere allegations without any basis. It is submitted that the allegations made in Ground 1 of the affidavit are not correct. Since the orders of the High Court referred to has not been furnished, the grounds of the orders are not known to the Respondents. Even though it is a fact that there are no charges under the Arms Act, the fact remains is that the petitioner has conducted himself by involving in criminal cases attracting the punitive provisions of Sections 147, 341 and 302 of IPC which are grave in nature. It is submitted that the allegations made in Ground 2 are not correct. Though it is fact that the District Forest Officer has given a No Objection Certificate to the effect that there are no forest offences, the fact remains that the writ petitioner was involved in criminal cases and was punished by the trial Court. The black mark is there that the writ petitioner's moral turpitude was shattered on account of his involvement in criminal case. Further submits that the allegations in Ground 4 are made in a tactical way to defend the necessity for the possession of a gun licence under the guise of safe guarding the crops from wild animals and for self protection. Though this Court has acquitted the writ petitioner from the offence and they also do not fall under the purview of the Arms Act, the fact remains that he conducted himself in a manner attracting criminal offence and the circumstance under which he was acquitted is not known in the absence of the verdict of this Court. No complaints from any quarter and no breach of conditions of the licence by the writ petitioner for 15 years would speak well of trust worthiness among the people. However, on that pretext, the writ petitioner cannot insist upon the renewal of the licence. Only after taking into account the various factors, the renewal of the licence was rejected by the 1st and 2nd respondents and after careful consideration of materials and facts and after providing an opportunity of personal hearing. The writ petitioner, even though not charged with any offences under Arms Act, the fact remains that he conducted himself by involving in criminal activities which is a material ingredient to tarnish the public tranquility in the area.

7. The respondent additionally added that the request of the petitioner was rejected in accordance with the provisions of Arms Act and Rules. Only after applying the mind duly prospective, the order was passed rejecting the renewal of licence. The orders passed by the respondents are just and proper and maintainable under law. The writ petitioner though in possession of the licence under Arms Act is his request for renewal of licence was rejected on the grounds that he has conducted himself in having being involved in a criminal case that to in the local area and even though his conviction by the trial Court was set aside by this Court was acquitted the black mark has tarnished his image and future conduct. However, it would be seen that the involvement of the writ petitioner in the local feud and the enmity prevailing between two communities in the locality and there are ample opportunities, if not in near future, it will erupt on any day. Hence, the request for the renewal of the licence was not considered. Further, the respondents orders are well considered one and passed after considering all aspects. Hence, this respondent request this Court to dismiss the above writ

petition.

8. The highly competent counsel Mr. K. Vellayaraj submits that the petitioner is an agriculturist and his lands are situated in Delhi Region wherein the Forest animals damage his standing crops on the said land, besides for his own self defence and for safety of his domestic animals which are quite near the habitat of wild animals. The petitioner had been granted licence for a single barrel breach loading gun and the same had been periodically renewed. Thereafter, the petitioner had levelled a renewal application for renewing his gun licence before the 1st respondent herein beyond the period from 31.12.2003, the same was rejected on 30.12.2005 after assigning frivolous and untenable grounds. Against the said rejection order, the petitioner made an appeal before the 2nd respondent herein/Commissioner of Revenue Administration, who also rejected the said appeal and confirmed the rejection order passed by the 1st respondent. The 2nd respondent had assigned the reason that the Superintendent of Police, who is attached to the Namakkal District did not recommended for the grant of licence since a criminal appeal is pending against him and others for an alleged offence under Sections 145, 341 and 302 IPC. Subsequently, the criminal appeal was allowed and set aside the trial Court order of conviction and sentence, as such the petitioner is acquitted from the said charges in Crime No. 251/1997. Therefore, the petitioner is entitled to receive renewal from the respondents since he is an innocent person and his name was falsely implicated in the said criminal case. As per the prosecution case, the petitioner's gun has not been involved. It clearly proves that the petitioner is having a steady mind and can control himself in any anticipatory dangers.

9. The very competent counsel further submits that the petitioner had possessed the single barrel breach loading gun for the past 15 years in continuity without any adverse blemish. He is a law abiding citizen and maintaining communal harmony with all sections of people. Further, he is having a vast cultivable land and also possessing cattle farm including domestic animals, like dogs. In order to protect the damage of his standing crops life of the domestic animals and himself from the wild forest animals, therefore, the gun licence for the general protection is imperative.

10. The District Forest Officer had issued a no objection certificate for the renewal of gun licence for a further period on the basis of a comprehensive enquiry and after scrutinizing the records of the Forest Department. However, the District Superintendent of Police did not recommend a renewal of his gun licence, during the relevant period, the criminal appeal filed by the petitioner and others which are pending on the file of this Court. Subsequently, the petitioner and others were acquitted from the criminal case after allowing the criminal appeal No. 1107 of 2002 on 25.04.2006. Therefore, the present prevailing position of the petitioner that he is an innocent person. The petitioner is a broad minded person with no class differences and a peaceful affectionate person.

While the petitioner was possessing the gun in the authority of possessing a

licence no criminal case under the Arms Act or any unusual comments against his activities, further the petitioner is a senior citizen and fully occupied in agricultural operations and most of his wakeful life he spends on his lands which is situated in the hilly and forested regions. Therefore, what he enjoyed through a gun licence for the past 15 years should not be deprived now in view of his clean past career.

11. The very competent Additional Government Pleader Mr. M.S. Ramesh submits that the petitioner's renewable application for gun licence dated 10.11.2003 to the 1st respondent herein who in turn towards the said application to the Superintendent of Police, Namakkal and the District Forest Officer, Namakkal for inquiry and report. The Superintendent of Police, Namakkal District in his report dated 11.09.2004 did not recommend for the grant of gun licence since criminal appeal filed by the writ petitioner in C.A. No. 1107 of 2002 is pending on the file of this Court, against his conviction for the offence under Section 302 read with Section 149 of IPC and granted life sentence. As such, the petitioner had committed a heinous crime. Even though, he was acquitted from the said murder case by this Court, the image and confidence from the local public has diminished. This situation may not be removed from the public mind. The District Superintendent of Police is the most important authority for recommending no objection certificate since the area is under his command, who did not recommend his case for the renewal of gun licence. On his view the 1st and 2nd respondents passed the said impugned orders, which is more suitable to proceed with.

12. The highly competent counsel further submits that the petitioner's mind appears to be a tainted one since he had faced a felonious crime. Further, as per the prevailing situation in his locality, there is no imminent danger to his life or his cattle farm or damage to growing crops. Hence, the learned Additional Government Pleader entreats this Court to dismiss the above writ petition.

13. From the above discussions, this Court is of the opinion:-

(1) The petitioner had already enjoyed the single barrel breach loading gun licenced to him for about 15 years. During that period no adverse comments about his activities coming under suspicion. Further, the gun licence had been renewed periodically for 15 years. As such, a stoppage of this regular procedure would be unjustified.

(2) The District Forest Officer is also equally responsible as a top most officer of the District, who had recommended to the 1st respondent for the renewal of his gun licence. Since, the petitioner's land situated at the fringes of hilly and forested land, hence, it is of paramount importance to protect domestic animals, petitioner's self protection and growing crops from the marauding wild animals which we often read about in many similar areas in our vast country.

(3) The petitioner is a senior citizen, as such his physical strength and movements have been reduced, therefore, the possession of a licenced gun

becomes all the more a dire necessity.

14. On considering the factual position of the case and arguments advanced by the learned counsel on either side and on perusing the impugned orders of the respondents, the opinion mentioned above in 1 to 3, this Court is inclined to allow the writ petition perforce. Consequently, this Court directs the 1st respondent herein/District Revenue Officer, Namakkal to receive fresh application from the petitioner for renewal of the gun licence within a period of thirty days from the date of receipt of his application, after observing necessary formalities. Consequently, connected miscellaneous petition is closed.

Accordingly, ordered.