(2005) 01 MAD CK 0051

In the Madras High Court

Sundaram Brake Linings Ltd., rep. by its Financial Controller and Secretary	APPELLANT
Vs	
Corporation of Chennai	RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2005) 01 MAD CK 0051

Hon'ble Judges : R. Banumathi, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : P.S. Raman for P.R. Raman and C. Seethapathy in W.P. No. 35483 of 2002 and Nalini Chidambaram for S. Silambannan in W.P. No. 37462 of 2002, for the Appellant; Nalini Chidambaram for S. Silambannan for R5, P. Bagyalakshmi, for R1, V. Perumal, for R2, S. Srinivasan, G.A. for R3 and Rita Chandrasekar, for R4 in W.P. Nos. 35483 and 37462 of 2002, for the Respondent

Judgement

N.V. Balasubramanian, J.—W.P. No. 35483 of 2002 is filed by Sundaram Brake Linings Ltd., No. 81, First Main Road, R.A. Puram,

Chennai represented by its Financial Controller and Secretary (hereinafter referred to as ''the Company) for the issue of a writ of Mandamus

directing the respondents 1 to 4 in the writ petition, namely, Corporation of Chennai, Chennai Metropolitan Development Authority, The Deputy

Commissioner of Police, Traffic (South), Vepery, Chennai and Tamil Nadu Pollution Control Board to initiate action against the fifth respondent,

namely, Suriya Sweets, the petitioner in the other writ petition for operating a full fledged commercial establishment in No. 66, First Main Road,

R.A. Puram, Chennai 600 028 causing inconvenience and hardship to the residents of the locality, without necessary approvals and licences of the

statutory authorities.

2. W.P. No. 37462 of 2002 is filed by M/s. Suriya Sweets, represented by its Managing Partner, No. 47, I Main Road, R.A. Puram, Chennai

600 028. The writ petition has been filed to quash the order of the Tamil Nadu Pollution Control Board made in proceedings

No.T1/TNPCBD/F.1070/CHN/2002 dated 9.9.2002 and to direct the respondents in the writ petition, namely, the Tamil Nadu Pollution Control

Board and its District Environmental Engineer, to pass orders on the consent application dated 1.7.2002 filed u/s 25 of the Water (Prevention &

Control of Pollution) Act, 1974 (hereinafter referred to as ''the Water Act'').

3. Both the writ petitions were heard together and the points raised in them are almost common and hence, we are disposing of both the writ

petition by this common judgment.

4. In so far as W.P. No. 37462 of 2002 filed by M/s. Suriya Sweets (hereinafter referred to as ''Suriya Sweets'') is concerned, it is stated in the

affidavit filed in support of the petition that Suriya Sweets is a partnership concern and it commenced its business of selling sweets in the year

1998. It is stated that Suriya Sweets is a sweet shop wherein sweets, snacks and chat eatables are made and sold. It is also stated that it has a

small kitchen for the preparation of sweets and snacks which are sold in the sale area in the front side of the building. It is stated that the activities

carried on by Suriya Sweets are not causing any pollution. It is stated that due to the commercial nature of the business of selling sweets and

eatables prepared, Suriya Sweets complied with all the formalities and procedures and obtained necessary licences for running the concern. It is

also stated that Suriya Sweets obtained a food licence u/s 279 of the Chennai City Municipal Corporation Act, 1919 from the Revenue

Department of the Corporation of Chennai. It is also stated that Suriya Sweets has a commercial sewerage pipe connection from the Chennai

Metropolitan Water Sewerage Board (CMWSSB). It is stated that Suriya Sweets has all other permissions like, Parking Licence from the police,

Certificate from the Department of Industries and Commerce as the activity of Suriya Sweets falls under the classification of Cottage Industry and

a copy of the Certificate from Chennai Metropolitan Development Authority (CDMA) stating that the activity of manufacturing sweets is a

permissible activity in the Zone under the CDMA Rules and Regulations is also produced.

5. Suriya Sweets referred to the show-cause notice issued by the District Environmental Engineer, Tamil Nadu Pollution Control Board

(hereinafter referred to as ''the Pollution Control Board) dated 2.4.2002 as to why penal action should not be taken against Suriya Sweets for the

offence u/s 44 of the Water Act and also issued directions u/s 33A of the Water Act for the closure of the unit, stoppage of power supply, etc.

Suriya Sweets sent a reply on 23.4.2002 wherein it is stated that all permissions from other authorities have been sought and granted and there

was no trade effluent discharged in the activity of sweet making by Suriya Sweets. It is also stated that the discharge water from sweet making was

filtered before being let into the sewerage of CMWSSB. It is stated that Suriya Sweets has constructed three chambers with filter points into which

water is let and undertakes to abide by any direction to comply with the requirements of the Water Act and Rules. It is also stated that Suriya

Sweets applied for consent from the Pollution Control Board under the Water Act and under the Air (Prevention and Control of Pollution) Act,

1981 (hereinafter referred to as ''the Air Act'') by letter dated 1.7.2002 with necessary documents. Suriya Sweets referred to the proceedings of

the Pollution Control Board dated 9.9.2002 wherein it is stated that complaints have been received from the residents of First Main Road, R.A.

Puram, Chennai regarding odour and noise nuisance emanating from the operations of Suriya Sweets. It is also alleged that the odour from the

preparation of sweets and savouries created odour nuisance and the vehicular movement due to the activity caused congestion and noise nuisance.

It is also alleged that the trade effluent generated from the unit is discharged without treatment. The further allegation is that the premises is located

in the primary residential area and the operations are without the consent of the Pollution Control Board. Hence, Suriya Sweets was directed to

relocate its unit within two months from the date of receipt of the order dated 9.9.2002.

6. Suriya Sweets admitted that it is located in a primary residential area, but it is stated that in that area, there is a primary school and Suriya

Sweets is not responsible for the traffic congestion. In the affidavit, Suriya Sweets also stated that there is a Country Club situate close to it and it has a restaurant and other activities and there is also a dental clinic and other commercial activities in the First Main Road, R.A. Puram, Chennai. It

is stated that major sweet concerns in the City are located in residential localities and sweet shops are not considered as polluting industries and

Suriya Sweets has been functioning without any complaint from 1998. It is therefore stated that without passing any order in the consent

application under Water Act and Air Act, the Pollution Control Board passed the impugned order directing Suriya Sweets to relocate its unit.

Hence, the writ petition has been filed challenging the order on various grounds raised in the writ petition.

7. W.P. No. 35483 of 2002 is filed by the company (Sundaram Brake Linings Ltd). As already noticed by us, it is for the issue of a writ of

Mandamus directing the respondents 1 to 4 in the writ petition to take action against Suriya Sweets which, according to the company, is running a

full-fledged restaurant-cum-snack bar-cum-sweet stall-cum-departmental store in primary residential locality. It is stated that Suriya Sweets is

functioning just opposite to the residence of the Chairman and Managing Director of the company.

8. In the affidavit filed in support of the petition, it is alleged that First Main Road, R.A. Puram, Chennai is a primary residential area and Suriya

Sweets has a full-fledged catering establishment with full table service, a huge sweet and savouries shopping centre, a huge vegetable and fruit

market, etc., and it has the staff of several cooks, servers, washing staff, sales personnel and other watch and ward apart from managerial staff. In

the affidavit various problems are listed such as, garbage disposal and sewerage problems coupled with 50 employees living in the same premises.

It is stated that due to its popularity, the road is filled with motor cars, motor cycles, etc. leading to lack of any space in the road for free movement

of vehicles. It is stated that nearly 600 vehicles per day are visiting Suriya Sweets. It is further alleged that excessive movement of vehicles is also

causing great noise pollution in the area apart from causing dust pollution and smoke emission causing problems to the neighbours. It is also stated

that Suriya Sweets is functioning for 12 hours per day. A reference is made to the complaint made by the company and neighbours. The writ

petition has been filed alleging that Suriya Sweets is located in the area which is classified as primary residential use zone and the commercial activities carried on by Suriya Sweets are impermissible. The petitioner company also referred to the licence obtained by Suriya Sweets from the

Corporation of Chennai which was meant for trading as Sweet Meat Stall, valid till 31.3.2002. It is stated that the licence for running Sweet Meat

Stall should not be renewed as Suriya Sweets has been running a full-fledged restaurant and catering facilities in violation of the said licence. It is

also stated that the police pleaded helplessness as the matter is under the purview of Corporation and the petitioner company also sent a reminder

letter dated 31.5.2002 and in spite of the same, the licence was renewed beyond 31.3.2002. It is stated that the writ petition is filed not only to

safeguard the property and health of its Managing Director and his family who reside in its premises, but also to safeguard the entire citizenry of the

locality. It is alleged that large scale cooking and catering activities including manufacturing sweets and savouries attract the provisions of the

Pollution Control Acts. It is stated that it is not clear that Suriya Sweets obtained the requisite consent from the Pollution Control Board. Hence,

the writ petition has been filed with the prayer as stated earlier.

9. In the writ petition filed by the company, the third respondent, namely, The Deputy Commissioner of Police, Traffic (South), Vepery, Chennai

has filed a detailed counter affidavit. So also, the Commissioner, Corporation of Chennai has filed an independent counter affidavit. Suriya Sweets

also filed a separate counter affidavit. The Pollution Control Board has placed before the Court its reports.

10. In the counter affidavit filed by Suriya Sweets in the writ petition filed by the company, the main allegation is that the company has no locus

standi to file the writ petition. It is fairly admitted that Suriya Sweets is a sweet shop where sweets and savouries are sold and it has a small kitchen

for the preparation of sweets and savouries. It is also its case that its activities do not cause any pollution. It is stated that due to the commercial

nature of the business of selling sweets and eatables and preparation thereof, Suriya Sweets obtained necessary licences and most of the averments

in the counter affidavit are all repetition of the averments made in the writ petition filed by it. In the counter affidavit there is also a reference to the

interim order of this Court dated 21.11.2002 by which interim stay was granted of the order of the Pollution Control Board with a condition that

Suriya Sweets should not run any restaurant except selling sweets and savouries.

11. We have gone through all the counter affidavits filed by the parties as well as the reports filed by the Pollution Control Board. As already

stated by us, the issues raised in both the writ petitions are common and hence, both the writ petitions were considered together. We heard Mr.

P.S. Raman, learned senior counsel for the petitioner in W.P. No. 35483 of 2002 and Mr. Nalini Chidambaram, learned senior counsel for the

petitioner in W.P. No. 37462 of 2002, Mr. Bagyalakshmi, learned counsel for the Corporation of Chennai, Mr. V. Perumal, learned counsel for

Chennai Metropolitan Development Authority (CMDA) and Mr. Rita Chandrasekar, learned counsel for the Pollution Control Board.

12. After considering the arguments of learned senior counsel and learned counsel for the parties, we are of the view, it would be convenient to

consider the points that arise in the writ petitions as under:

LOCATION:

13. The first point arises with regard to the location of Suriya Sweets. The Government of Tamil Nadu enacted an Act called, The Tamil Nadu

Town and Country Planning Act, 1971 with the avowed objects to provide for planning the development and use of rural and urban land in the

State of Tamil Nadu and for purposes connected therewith and the Act was published in the Tamil Nadu Government Gazette dated 29.11.1972.

There is no dispute that the Town and Country Planning Act is in force in the area in question. Section 9-C of the said Act provides that CMDA

shall carry out a survey of the Chennai Metropolitan Planning Area and prepare a master plan as referred to in Section 17 of the Act. Accordingly,

CMDA has carried out necessary surveys and studies and prepared a master plan for Chennai Metropolitan Area which was approved by the

Government of Tamil Nadu also. The master plan prepared by the CMDA has been approved by the Government laying down policies and

programmes for the overall development of Chennai Metropolitan Areas taking long term view requirements of the City. CMDA has classified all

lands in Chennai Metropolitan Area into ten use zones, namely, primary residential use zone, mixed residential use zone, commercial use zone, etc.,

and in each zone, certain uses are permitted. For use of each zone, there are regulations for construction of buildings in respect of height of the building, floor space index, etc., and the grant of planning permission for construction of building is regulated by the Development Control Rules for

Chennai Metropolitan Area (hereinafter referred to as ''the Development Control Rules''). Rule 7 of the Development Control Rules deals with

primary residential use zone and Rule 8 deals with mixed residential use zone, Rule 9 relates to commercial use zone and Rule 10 deals with light

industrial zone. There are Rules dealing with other zones also, but however, we are not concerned with the same. In respect of primary residential

use zone, the Development Control Rules provide that buildings or premises shall be normally permitted only for the purposes mentioned in Rule 7

and the relevant sub-rules for the purpose of this case are 7(a)(iii), 7(a)(iv), 7(a)(v), 7(a)(x), 7(b), 7(b)(i) and 7(c) and the said sub-rules are as

under:-

7. Primary residential Use Zone:-

(a) In the Primary Residential use zone, buildings or premises shall be normally permitted only for the following purposes and accessory uses.

Permissible non-residential activity shall be limited to one in a sub-division.

(i) & (ii) xxxx

(iii) Petty shops dealing with daily essentials including retail sale of provisions, soft drinks, cigarettes, newspapers, tea stalls, confectionary retail

shops, mutton stall and milk kiosks, cycle repair shops, tailoring shops and trades declared as non-offensive as per G.O. Ms. No. 2771, Rural

Development and Local Administration dated the 22nd December, 1962 (as amended from time to time) may be permitted subject to the

restrictions contained in the said order occupying a floor area not exceeding 20 square metres.

(iv) Nursery, Primary and high schools.

(v) School of commerce including tutorial institutions occupying a floor area not exceeding 40 square metres.

(iv) to (ix) xxxx

(x) Cottage industries listed in G.O. Ms. Nos.565 and 566, dated the 12th March 1962 as amended run by power upto 5 horse power. Also craft

centres and assembly of electronic parts for manufacture of radios transistors, television sets, computer chips and such others with installations not exceeding 5 HP and the number of employees not exceeding 25.

(xi) xxxx

(b) The following uses may be permitted with special sanctions of the Authority.

(i) Hostels, dormitories, restaurants not exceeding 300 square metres in floor area.

(ii) to (viii) xxx

(c) all uses not specifically permitted under sub-rules (a) and (b) above shall be prohibited in the zone.

It is seen that there are permitted non-residential uses in primary residential use zone with special sanctions of the Authority as described in Rule

7(b) of the Development Control Rules. In Rule 7(b)(i), hostels, dormitories, restaurants not exceeding 300 square metres in floor area are dealt

with. In mixed residential use zone which is dealt with in Rule 8 of the Development Control Rules, all uses permissible under sub-rules (a) and (b)

of Rule 7 are permitted. Under Rule 8(a)(iii), restaurants occupying floor area not exceeding 500 square metres are permitted in mixed residential

use zone. It is also relevant to notice that under Rule 8(a)(v), establishment and shops retailing in vegetables, fruits, flowers, fish, meat and such

other daily necessities of the residents occupying a floor area not exceeding 500 square metres or an organised markets are all permitted in mixed

residential use zone. Rule 8(b) deals with the permission to be granted with special sanction of the authority for the uses mentioned thereunder.

14. Admittedly, there is no dispute that Suriya Sweets is located at No. 66, First Main Road, R.A. Puram, Chennai and it is situate in an area

which is classified as primary residential use zone. The case of Suriya Sweets is that though its unit is situate in primary residential use zone, its

activity of manufacture and sale of sweets would fall under cottage industry which is a permissible non-residential activity in the said zone. On the

basis of order of this Court in W.P.M.P. No. 56253 of 2002 dated 21.11.2002, an interim stay of relocation of the sweet stall was granted

subject to the condition that Suriya Sweets should not run any restaurant except selling sweets and savouries. That order came to be modified by

this Court by order dated 1.4.2004 directing Suriya Sweets not to carry on any manufacturing activity in sweets and savouries or run the restaurant

for serving sweets and savouries. This Court also ordered that sweets and savouries may be manufactured elsewhere where it is permissible

without causing any pollution and such sweets can be brought to the present shop at No. 66 (Old No. 47), First Main Road, R.A. Puram, Chennai

28 and can be sold there. This order was also again modified by order dated 30.4.2004 wherein it was held that Suriya Sweets, which was

running its business, should continue to do so and it was only a temporary measure till the Pollution Control Board takes measures as mentioned in

the said order.

15. Section 47 of the Town and Country Planning Act provides that after the coming into operation of any development plan in any area, no

person other than any State Government or the Central Government or any local authority, shall use or cause to be used, any land or carry out any

development in that area otherwise than in conformity with such development plan. Section 48 of the said Act deals with the restrictions on

buildings and lands in the area of the planning authority. Section 49 deals with application for permission and Section 50 deals with the duration of

permission and Section 52 provides for appeal against the order refusing to grant permission or granting permission subject to certain conditions.

Suriya Sweets claims itself to be a cottage industry. The cottage industries which are permissible to be located in primary residential use zone are

listed in Annexure-V of the Development Control Rules. Item No. 4 of the said Annexure refers to bakery, biscuits, cakes and item No. 6 refers to

confectionery sweets.

16. The first question that arises is whether the location of Suriya Sweets in primary residential use zone is permissible under Rule 7 of the

Development Control Rules. It is fairly stated by Mr. Nalini Chidambaram, learned senior counsel for Suriya Sweets that it has not obtained any

special sanction of the authority to run the restaurant. The submission of Mr. P.S. Raman, learned senior counsel for the company is that the

activity of manufacture and sale of sweets and savouries is not permissible in primary residential use zone under Rule 7 of the Development Control

Rules. It is his submission that Suriya Sweets is not a cottage industry at all as it is a commercial concern. He submitted that if Suriya Sweets is

allowed to carry on its business which is of commercial in nature in a primary residential use zone, no distinction will be maintained between primary residential use zone and mixed residential use zone. He submitted that the location of Suriya Sweets is in violation of Development Control

Rules. He also referred to the dictionary meaning of the words, ''sweets and savouries'' and submitted that in common parlance, the items found in

Annexure-V of Development Control Rules under the caption, ''List of Cottage Industries'' do not cover the manufacture of savouries.

17. Mr. Nalini Chidambaram, learned senior counsel contended that Suriya Sweets is a cottage industry within the meaning of Rule 7(a)(x) of

Development Control Rules and it is also a petty shop under Rule 7(a)(iii) and according to her, in common parlance, the expression, ''sweets''

includes savouries also and since it is a cottage industry run by using the electric power up to the extent of 5 H.P., the activity of manufacture and

sale of sweets and savouries is permissible in the primary residential use zone. Learned senior counsel also submitted that under the Development

Rules when the running of restaurant is permitted in primary residential use zone subject to the special sanction of the authority, there can be no

objection at all to permit the lesser activity of manufacture and sale of sweets and savouries. Mr. V. Perumal, learned counsel appearing for

CDMA submitted that the location of Suriya Sweets in primary residential use zone is not permissible as there can be no trading activity in primary

residential use zone. Mr. Nalini Chidambaram, learned senior counsel also referred to the permission and licence granted by the Corporation of

Chennai and other authorities and submitted that Suriya Sweets has been recognised as a cottage industry by the Regional Joint Director of

Industries and Commerce, Chennai. She submitted that the licence and permission obtained by Suriya Sweets from the Corporation of Chennai

and other authorities would also show that all the statutory authorities have recognised that the location of Suriya Sweets is not in violation of the

Development Control Rules.

18. We hold that the Development Control Rules make a classification of uses which are permissible in primary residential use zone, which are

permissible in mixed residential zone, which are permissible in commercial use zone, etc. In so far as primary residential use zone is concerned,

buildings or premises shall be normally permitted only for the purposes mentioned in Rule-7 along with accessory uses and the uses are permitted with special sanction of the authority in respect of those mentioned in Rule 7(b). We are unable to accept the submission of Mr. Nalini

Chidambaram, learned senior counsel that Suriya Sweets can be regarded as a petty shop. Petty Shop is one which deals with items like,

provisions, soft drinks, cigarettes, newspapers, tea stalls, etc. and Suriya Sweets cannot be regarded as a petty shop. Moreover, the area of

Suriya Sweets exceeds 20 sq. ft. Which is a pre-requisite for a shop being regarded as a petty shop. Therefore, there is no difficulty in holding that

Rule 7(a)(iii) of the Development Control Rules does not apply to Suriya Sweets and it cannot be regarded as a petty shop.

19. There is no difficulty in holding as it is not seriously disputed that confectionery sweets in Item No. 6 of Annexure V of the D.C.R. Rules would

include all sweets as item-4 of the list which deals with bakery includes biscuits and cakes. If item-4 and item-6 are read together, item-6 which

deals with confectionery sweets would also include all sweets and it is not confined to normal confectionary sweets as mentioned in the dictionary.

Mr. P.S. Raman, learned senior counsel for the company refers to the dictionary meaning of the word, ''sweets'' and also ''savouries'' as found in

The Concise Oxford Dictionary of Current English as well as The Pocket Oxford Dictionary of Current English. We are, however, of the view that

it is not necessary to refer to the meaning of the words, sweets and savouries in the dictionary to find out the articles which can be regarded as

sweets and which can be regarded as savouries. We are unable to accept the submission of Mr. P.S. Raman, learned senior counsel that in

primary residential use zone, there can be no vending at all and his submission that vending is limited to petty shops as found in Rule 7(a)(iii) is not

acceptable. We are of the view, under Rule 7(a)(x), cottage industry is permitted and we find that Annexure-V to the Development Control Rules

enumerates the list of cottage industries and for some of items therein only manufacturing activity is permitted, like item No. 2 Appalam

manufacture and item No. 13 Vermicelli manufacture and item No. 20 brush manufacture, but in respect of other items, there are no restrictions at

all. We are of the view that a cottage industry manufacturing confectionary sweets should also be permitted to sell the same in the same area as the

sale in such case can be regarded as an accessory use to the main purpose of manufacture.

20. We also hold that Mr. Nalini Chidambaram, learned senior counsel is right in her submission that the expression, ''Confectionary Sweets'' in

item No. 6 of Annexure V to the Development Control Rules should not be confined to confectionary sweets, but it should be extended to

savouries also. Though savouries may be antithesis to sweets, we are of the view, the cottage industry manufacturing confectionary sweets is also

permitted to manufacture all its accessory products and one such accessory products of confectionary sweets can be the manufacture of savouries.

Hence, we are unable to accept the submission of Mr. P.S. Raman, learned senior counsel appearing for the petitioner company that the

manufacture of confectionary sweets is only permitted in Rule 7(a) of the Development Control Rules read with Item No. 6 of the Annexure-V

thereto as we are of the opinion that the manufacture of confectionary sweets would also encompass the manufacture of savouries. Further, we find

from a reading of the Development Control Rules and Annexure-V thereto that there is no separate rule for the manufacture or the sale of

savouries and the intention of the legislature seems to be that when it used the expression, ''confectionary sweets'', it would also also include the

manufacture and vending of savouries.

21. As regards the submission that Suriya Sweets is a cottage industry is concerned, there is no definition of the term ''cottage industry'' either in

the Development Control Rules or in the Town and Country Planning Act. In Webster''s Third New International Dictionary - Vol.I, at page 516,

the expression, ''cottage industry'' is defined as under:-

an industry based upon the family unit as a labor force in which workers using their own equipment at home process goods usu. belonging to a

merchant employer and supplement their income from small agricultural holdings"".

The expression, ''cottage industry'' used in the Development Control Rules has to be construed in the context in which the said expression has been

used and the related non-residential purposes which are permitted in a primary residential area by the cottage industry. In Rule 7(a)(x) of the

Development Control Rules, there is no limit as to the amount of capital to be employed or the turnover to regard an establishment as a cottage

industry. Though the expression, ''cottage industry'' has not been defined in the

Development Control Rules, it is an expression of normal use and

its meaning is also well defined. Normally, it includes the industry carried on by a family in dwelling house and the list of industries specified in

Annexure-V also gives a clue as to the types of activities or the extent of the activity of an industry to regard an industry as a cottage industry. But,

the essential ingredient of a cottage industry is that the industry must be carried on by workers/members of the family in the house, and if the

industry is run on a commercial scale, then, it would cease to be a cottage industry and would become a commercial concern. It would be

beneficial to refer to the case of tailoring, one of the items mentioned in Annexure-V. If tailoring work is done by members of the family or even

with the help of outside employees in the home, then, it can be regarded as a cottage industry. However, if tailoring is done on commercial basis

and readymade garments are also manufactured in the same house by employing employees on a commercial scale and garments manufactured

therein are sold in the house like a commercial establishment by opening a shop, then, the tailoring business carried on by the members of the family

would cease to be a cottage industry, and it would become a commercial establishment.

22. It is apparent that there may be certain common characteristics between cottage industry and other industries and cottage industry can be run

on the same line of commercial industry. What has to be seen is the essential and basic characteristic of the industry. The observation of Lord

Denning in Griffiths v. J.P. Harrison (Watford) Ltd. 58 ITR 328 is relevant for the purpose of this case which reads as under:-

We can recognise a ''trade'' when we see it, and also an ''adventure in the nature of trade''. But we are hard pressed to define it. Donovan L.J.

gave an apt illustration 40 ATC 132. Is a monkey a ''human being'' or an animal ''in the nature of a human being?'' It has a head, a body, two legs

and two arms. What detail does it lack?

Similarly, the cottage industry may partake some of the characteristics of commercial activity, but that would not make the cottage industry as a

commercial establishment as the main and essential characteristic of a commercial establishment is to run business on profit and in a commercial

manner. We are of the view, applying the test, Suriya Sweets can be regarded as a commercial activity. Suriya Sweets has also admitted that it is

carrying on business on commercial basis by manufacturing and selling sweets and savouries prepared and its only plea is that it is not causing any

pollution. In the affidavit filed in support of the writ petition filed by Suriya Sweets in W.P. No. 37462 of 2002, it is stated that due to the

commercial nature of the business of selling the sweets and eatables prepared, the petitioner concern has complied with all the formalities and

procedures and has obtained the necessary licences for running the concern. Since it is admitted by Suriya Sweets that it is a commercial concern,

it cannot be regarded as a cottage industry. Further, it is also seen that the licence obtained by Suriya Sweets from the Corporation of Chennai is a

trading licence, and Suriya Sweets has also obtained a commercial sewerage pipe connection from CMWSSB and parking licence from the police.

In the application for consent submitted by Suriya Sweets to the Pollution Control Board under ''Details of products manufactured'', the main

products are described as sweets and savouries and the quantity of sweets manufactured is shown as 3.6 MT., equivalent to 3600 Kgs. and the

quantity of savouries manufactured is indicated as 2.7 MT., equivalent to 2700 kgs. per month. We find, on the facts of the case, Suriya Sweets

has employed nearly 30 persons and the quantity of sweets and savouries manufactured would also show that they are being prepared on

commercial basis and sweets and savouries manufactured are also sold as an commercial establishment and there is nothing to show that the

business carried on by Suriya Sweets is a cottage industry and no materials have also been placed before us to show that the activities are carried

on as a cottage industry.

23. As far as the certificate given by CMDA dated 12.7.2002 is concerned, we have seen that it is based on misconception that confectionary is

different from sweets. That is why it is certified that Suriya Sweets can manufacture confectionaries and sweets. We have also gone through the

records and we find that the authority has not applied its mind to the question whether Suriya Sweets is a cottage industry and the authority seems

to have gone only by the expression used in the Annexure-V to the Development Control Rules, and there is no indication to show that Suriya

Sweets is really a cottage industry. The other certificate issued by the Regional

Joint Director of Industries and Commerce, Chennai dated

19.7.2002 is also liable to be ignored as the said authority has not considered the question whether Suriya Sweets is a cottage industry or not and

no reasons are also given in the said order. We are of the view that the industry set up in the residential use zone area should first be the cottage

industry and it should manufacture or sell anyone of the items mentioned in Annexure-V to the Development Control Rules. We are of the view

that both the conditions should be satisfied for the permitted non-residential purposes in a residential area.

24. Moreover, under Rule 7(a)(x) of the Development Control Rules, the number of employees should not exceed 25, but, as seen from the

documents submitted by Suriya Sweets when it applied for consent from the Pollution Control Board, the number of employees in Suriya Sweets

exceeds 25. We therefore hold that Suriya Sweets is not a cottage industry and the location of the commercial establishment in the primary

residential use zone is not permissible.

25. As far as the permission granted by the Corporation of Chennai is concerned, it was issued as a licence for trading. We find the Chennai City

Municipal Corporation Act, 1919 was enacted prior to the Town and Country Planning Act, 1971 as well as Pollution Control Acts. The Chennai

City Municipal Corporation Act has not made any distinction between the primary residential use zone, mixed residential use zone, commercial use

zone and other zones and the fact that permission has been obtained from the Chennai Corporation to trade in the area in question is not at all

material as Suriya Sweets, in its location, has violated the provisions of the Town and Country Planning Act which is a later enactment. Hence, we

direct the second respondent (CMDA) to take necessary action under the Town and Country Planning Act,1971.

POLLUTION ASPECT:

26. It is seen that Suriya Sweets has not obtained necessary consent from the Pollution Control Board and it has filed an application for consent u/s

21 of the Air Act. Section 21 of the Air Act provides that subject to the provisions of the section, no person shall, without the previous consent of

the State Board, establish or operate any industrial plant in an air pollution control area. u/s 19 of the Air Act the area in which Suriya Sweets is operating is an air pollution control area as the State Government has declared the entire area within the State of Tamil Nadu as Air Pollution

Control Area from 1.10.1983. Suriya Sweets has also applied for consent under Sections 25 and 26 of the Water Act which deal with ''the

restrictions on new outlets'' and ''new discharges and also existing discharge of sewage or trade effluent''. The applications of Suriya Sweets are

pending and it has not obtained the necessary consent from the Pollution Control Board and pending consideration of those applications, the order

which is challenged in the writ petition filed by Suriya Sweets has been passed on 9.9.2002 and the said order has been passed u/s 31A of the Air

Act and 33A of the Water Act directing Suriya Sweets to relocate the unit from the present primary residential area. During the pendency of the

writ petition, on the basis of directions of this Court, the Pollution Control Board has filed a report dated 23.6.2004 pointing out the steps to be

taken to mitigate the causes of pollution. The report refers to the inspection earlier made on 7.6.2004 and the inspection made on 23.6.2004 and

also the reply by Suriya Sweets dated 14.6.2004 wherein Suriya Sweets has stated that the energy requirement for providing the suggested air

pollution control measures and the treatment system for the washing would exceed 5 H.P. and CMDA would not permit the same as the norms

prescribed by CMDA for primary residential zone is only 5 HP. In our view, it is not necessary for us to go into the validity of the directions issued

by the Pollution Control Board dated 23.6.2004 and it is for the Pollution Control Board to decide whether to grant necessary consent u/s 25 of

the Water Act and Section 21 of the Air Act or not. It is also made clear that since the Pollution Control Board has issued necessary directions u/s

31A of the Air Act and 33A of the Water Act, it cannot be presumed that Suriya Sweets has obtained a deemed consent under the proviso to

sub-section (2) of Section 21 of the Air Act as well as under sub-section (7) of Section 25 of the Water Act. The Pollution Control Board is

directed to consider the applications for consent and pass necessary orders within a period of one month from the date of receipt of copy of this

order. Though we are directing the Pollution Control Board to consider the applications for consent filed by Suriya Sweets, the Pollution Control

Board is also directed to take note of the fact that Suriya Sweets is a commercial concern and is located in a primary residential use zone in violation of the Development Control Rules. It is also directed that the Pollution Control Board should take note of its directions issued earlier and

the reply submitted by Suriya Sweets. It is needless to state that the Pollution Control Board will act in accordance with law and will comply with

the principles of natural justice.

LOCUS STANDI:

27. The submission raised by Mr. Nalini Chidambaram, learned senior counsel appearing for Suriya Sweets is that the company, petitioner in W.P.

No. 35483 of 2002 has no locus standi. We make it clear that the writ petition filed by the company has not been filed as a public interest

litigation, but the writ petition has been filed by a person who is said to have been affected by the location of the Suriya Sweets. Further, Suriya

Sweets has also challenged the directions issued by the Pollution Control Board. Both the writ petitions were heard together in detail and in view of

the same, the question of locus standi recedes to the back ground as we have considered the issues that arise in both the writ petitions.

28. Mr. Nalini Chidambaram, learned senior counsel also submitted that in Rama Muthuramalingam, State Propaganda Committee Member Vs.

The Deputy Superintendent of Police and Others, , a Division Bench of this Court, in which one of us was party, held that it is not proper for the

judiciary to encroach upon the domain of the executive or otherwise, the delicate balance in the Constitution would be upset and there would be a

reaction and the administrative authorities have expertise in their respective fields and the courts should not ordinarily interfere in such matters and

the judiciary must exercise self-restraint and not to interfere with the functions of the executive. However, we are of the view, this Court has

already admitted both the writ petitions and heard the matter in full regarding location of Suriya Sweets in the primary residential use zone and on

the question whether the unit is required to be relocated. Hence, the decision of this Court in Rama Muthuramalingam case, cited supra, does not

aid the petitioner in W.P. No. 37462 of 2002.

29. Accordingly, both the writ petitions are disposed of with the above directions. No costs. Connected WP.M. Ps. are closed.

