

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2014

C O R A M

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

Writ Petition No.17051 of 2014
and
M.P.No.1 of 2014

M/s.Thalappakatti Naidu Ananda Vilas
Biriyani Hotel rep.by its Partner
D.Nagasamy
No.15, East Car Street
Dindigul. Petitioner

-vs.-

1. The Commissioner of Police
Chennai City
EVK Sampath Road
Vepery, Chennai 600 007.
2. The Registrar of Trade Marks
Trade Marks Registry
I.P.Bhavan, G.S.T.Road
Guindy, Chennai 600 032. Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the second respondent to give opinion in accordance with Section 115(4) of Trade Marks Act to the first respondent based on the petitioner's complaint dated 05.01.2012 sent to the first respondent.

For petitioner ... Mr.R.Muthukumarasamy
Senior counsel for
Mr.A.Jenasenan

For respondent ... Mr.N.Sakthivel
Government Advocate for R1

O R D E R

Mr.N.Sakthivel, learned Government Advocate takes notice for the first respondent. With the consent of the learned counsel on either side, the writ petition itself is taken up for final disposal.

2. The prayer in the writ petition is for the issuance of a writ of mandamus to direct the second respondent to give opinion in accordance with Section 115(4) of Trade Marks Act to the first respondent based on the petitioner's complaint dated 05.01.2012 sent to the first respondent.

3. The grievance of the petitioner is that the petitioner sent a complaint dated 05.01.2012 to the first respondent to take expeditious action against the offenders to prosecute falsification/infringement of the petitioner's registered trade mark ''Thalappakatti Biriyan Hotel''. According to the petitioner, the first respondent informed them that action can be taken against the offenders only if the petitioner gets a court order. It is the further case of the petitioner that as per Section 115(4) of Trade Marks Act, 1999, it is the duty of the first respondent to obtain an opinion from the second respondent relating to the offending trade mark and the opinion so obtained has to abide by the first respondent. According to the petitioner, it was also informed to them by the first respondent that though they have forwarded the complaint to the second respondent till date they have not obtained any opinion from the second respondent. Hence, the present writ petition.

4. Learned Senior counsel appearing for the petitioner would submit that since the representation submitted by the petitioner dated 05.01.2012 has been pending before the second respondent for the past two years, they have sent a fresh representation to the first and second respondent dated 22.01.2014. Hence, he would pray that the petitioner would be satisfied, if a direction is given to the second respondent to consider the petitioner's representation dated 22.01.2014 at the earliest.

5. Having regard to the limited relief sought for in the writ petition, the second respondent is directed to consider the petitioner's representation dated 22.01.2014 and pass appropriate orders on merits and in accordance with law within a period of four weeks' from the date of receipt of a copy of this order.

6. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

Dated: 09.07.2014

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Police
Chennai City
EVK Sampath Road
Vepery, Chennai 600 007.
2. The Registrar of Trade Marks
Trade Marks Registry
I.P.Bhavan, G.S.T.Road
Guindy, Chennai 600 032.

1 CC to Mr.A.Jenasenan, Advocate SR.No.28056

1 CC to the Government Pleader, SR.No.27879

W.P. No.17051 of 2014

KK(CO)

JJM (10.07.2014)



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