



WP (MD) No. 20277 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.03.2023

PRONOUNCED ON: 27.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

WP (MD) No. 20277 of 2017

and

WMP (MD) No. 16522 of 2017

Chinnamasanam

... Petitioner

Vs

1. The District Collector,
Virudhunagar,
Virudhunagar District.

2. The Revenue Divisional Officer,
Virudhunagar,
Virudhunagar District.

3. The Tahsildar,
Sattur Taluk,
Virudhunagar District.

4. The Superintending Engineer
Highways Department,
Madurai.

5. The Secretary,
Highways Department,
Chennai.

6. The Secretary,
Municipal Administration,
Chennai.

... Respondents

[R4 is *suo motu* impleaded vide Court order dated 01.03.2023 and R5 and R6 are *suo motu* impleaded by order dated 06.2023]



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of mandamus, directing the respondents to restore the petty shop meant for selling Aavid products installed by the petitioner in front of Sattur Taluk Office, Sattur Taluk, Virudhunagar District by considering the representation of the petitioner dated 05.10.2017.

For petitioner : Mr.SC.Herold Singh
For Respondents : Mr.T.Vilavankothai,
Additional Government Pleader

ORDER

The petitioner claiming to be an unemployed, at the age of 50 years approached the Virudhunagar Co-Operative Milk Producers Union, Srivilliputhur in the year 2017 for grant of licence to sell Aavin products in front of Sattur Taluk Office. The Taluk Office, Sattur and the Sub Registrar Sattur are in the same campus. The petitioner's application was considered by the Virudhunagar District Co-operative Milk Producers Union and the petitioner was recognised as an agent to sell the Aavin products with certain terms and conditions by an agreement dated 01.08.2017 for a period of seven months from 01.08.2017 to 31.03.2018.



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The General Manager, Milk Producers Union made a request to the Divisional Engineer, Highways Department, Sattur by his letter dated 11.08.2017 to grant permission to this petitioner to have an Aavin Kiosk to an extent of 8X8 feet in Madurai- Kanyakumari National Highways in front of the Sattur Taluk Office. The petitioner had established a Kiosk on the State Highways road margin in front of Sattur Taluk Office. While so on 13.09.2017 the Tahsildar, Sattur Taluk with machineries damaged his Aavin Kiosk without issuing any notice to the petitioner and therefore, the petitioner claims that he suffered a financial loss to the tune of Rs.One Lakh. Hence this petition was filed for a mandamus directing the respondents to restore the petitioner's Aavin Kiosk in front of the Sattur Taluk Office by considering his representation dated 05.10.2017.

2.The learned Counsel for the petitioner submits that the petitioner established the Avin Kiosk in the place identified by the Assistant Divisional Engineer, Highways Department, only on the permission granted by the Virudhunagar District Co-Operative Milk Producers Union,



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Srivilliputhur and this petitioner had also invested a sum of Rs.45,000/- for establishing the Kiosk as per the agreement and also stored the Aavin products, worth Rs.50,000/- all these things were damaged on 13.09.2017 at the instance of the Tahsildar without any notice. The Kiosk was in the road margin of Highways and the 3rd respondent Tahsildar has no authority to remove the petitioner's Kiosk.

3.In addition to that the learned Counsel submits that even assuming that the petitioner had encroached the Highways, the respondent ought to have followed due process of law as envisaged under the Land Encroachment Act, instead the 3rd respondent removed the Kiosk in a high handed manner without any notice. The petitioner is an unemployed and by believing the words of the Milk Producers Union and the Assistant Divisional Engineer, he invested a huge sum for establishing the Kiosk and also for purchasing Aavin products and neither the Milk Producers Union nor the Highways Department had come to his rescue and now he is left in lurch. If any show cause notice was issued at least, the petitioner himself would have removed the Kiosk



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on his own after ascertaining the legal position with the Milk Producers Union and the Highways Department, however without providing any opportunity, the petitioner was removed.

4.The learned Counsel further submits that in the very same place, from where this petitioner's shop was removed as it was an encroachment, by proceedings dated 20.01.2023 one Karpagakannan, S/o.Gurusamy was permitted to run a Kiosk from 20.01.2023 to 31.03.2023. If the particular place is a prohibited place for establishment of a shop, it is not known how the other person was permitted to run a kiosk in the same place. The petitioner was permitted to run an Avin Kiosk in the said place in the year 2017, when the Department is now permitting another person to run a Kiosk, ought to have considered the case of the petitioner.

5.The Tahsildar / 3rd respondent filed a counter affidavit that the Highways Department did not grant any permission to this petitioner as claimed by him and it was at the stage of request from the Milk Producers Union and



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the Highways authority had not granted any permission,
the petitioner had put up the shop on his own.

The place had already been declared as a prohibited area by the Police Department to establish any shop. The petitioner did not commence any sale as claimed by him. Only a temporary petty shop was attempted to be established in the place at midnight that was not allowed by the Tahsildar on 13.09.2017. The attempt of the petitioner to encroach the government land was prevented by the Tahsildar effectively and this petitioner is not having any agreement with the Highways department for establishing Kiosk as claimed by him.

6.This Court has considered the rival submissions made and perused the materials placed on record.

7.The petitioner claims that he was permitted to put up a Kiosk in front of the Taluk Office by the authorities concerned and this place was also identified by the Divisional Engineer of Highways Department. On the



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contrary, the 3rd respondent Tahsildar has disputed the same that no such permission was granted by the Highways Department as it was a prohibited area by the Police Department for establishment of any shop. However the petitioner has relied on a proceedings dated 20.01.2023 that in the very same place, from where the petitioner's Kiosk was removed as it is a prohibited area, another person namely, one Karpagakannan was permitted to run a Kiosk from 20.01.2023 to 31.03.2023. If it is an absolutely prohibited area as claimed by the Tahsildar, it is not known, how the authorities have now permitted Karpagakannan to establish a shop in the very same place.

8. In Re Ahmedabad Municipal Corporation Vs Nawab Khan Gulab Khan and Ors (1997) 11 SCC 121, the Hon'ble Apex Court observed as follows:

"8....Footpath, street or pavement are public property which are intended to serve the convenience of general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public roads. The main reason for laying out



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pavement is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements. The claim of the pavement dwellers to construct huts on the pavement or road is a permanent obstruction to free passage of traffic and pedestrians' safety and security. Therefore, it would be impermissible to permit or to make use of the pavement for private purpose. They should allow passing and re-passing by the pedestrians. No one has a right to make use of a public property for the private purpose without the requisite authorisation from the competent authority. It would, therefore, be but the duty of the competent authority to remove encroachments on the pavement or footpath of the public street obstructing free flow of traffic or passing or re-passing by the pedestrians.

10. The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the



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facilities or convenience for passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed.

...

13.....no person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose.

22..... **Every municipal Corporation has statutory obligation to provide free flow of traffic and pedestrians' right to pass and re-pass freely and safely; as its concomitance, the Corporation/Municipality have statutory duty to**



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have the encroachments removed. It would, therefore, be inexpedient to give any direction not to remove, or to allot the encroachments on the pavements or footpaths which is a constant source of unhygienic ecology, traffic hazards and risk prone to lives of the pedestrians. It would, therefore, be necessary to permit the Corporation to exercise the statutory powers to prevent encroachment of the pavements/footpaths and to prevent construction thereon. As held earlier, the Corporation should always be vigilant and should not allow encroachments of the pavement and footpaths...."

9. In re **Sanjay Agarwal and another v. Nagar Mahapalika, Allahabad**, reported in **AIR 1999 ALL 348**, the Allahabad High Court has observed as follows:

"22. The roads and its side-walks, the patri, are laid for passage only and for no other and the Supreme Court said in the matter of Municipal Board, Mangalaur v. Mahadeoji Maharaj even facilities like a piyao (drinking water kiosk), library or a statue of Mahatma Gandhi cannot be put on a roadside patri. This case was followed in State of U.P. v. Ata Mohd.



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AIR 1980 SC 1785. The Supreme Court held if the municipality put the street to any other user than that for which it was intended, the State as its owner, was entitled to intervene and maintain an action to get any person in illegal occupation evicted. In the case of *Bombay Hawkers' Union v. Bombay Municipal Corporation*, AIR 1985 SC 1206 the Supreme Court held that **"no one has any right to do his or her trade or business so as to cause nuisance, annoyance or inconvenience to the other members of the public.** Public Streets, by their very nomenclature and definition, are meant for the use of the general public. They are not laid to facilitate the carrying on of private trade or business. **If hawkers were to be conceded the right claimed by them, they could hold the society to ransom by squatting on the centre of busy thoroughfares, thereby paralysing all civic life.** Indeed, that is what some of them have done in some parts of the city. They have made it impossible for the pedestrians to walk on footpaths or even on the streets property so-called." In the case of *Olga Tallis v. Bombay Municipal Corporation* AIR 1986 SC 180 the Supreme Court held that a municipality is empowered to cause to be removed encroachments



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on footpaths or pavements over which the public have a right of passage or access. In this case the Supreme Court also observed that **".....In the first place, footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public streets."** The Supreme Court was also dismissing misplaced arguments resting on life and liberty by those who were claiming occupation of public streets. In this regard, the Supreme Court observed that **".....There is no substance in the argument advanced on behalf of the petitioners that the claim of the pavement dwellers to put up constructions on pavements and that of the pedestrians to make use of the pavements for passing and re-passing, are competing claims and that, the former should be preferred to the later."** In the case of *Delhi Municipal Corporation of Delhi v. Gurnam Kaur*, AIR 1989 SC 38, the Supreme Court reiterated the law that to remove an encroachment of a public road is the obligation of a municipality and that an injunction could not be granted to suffer an encroachment of a public place like a



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street which is meant for the use of the pedestrians. In the matter of *Sodan Singh v. New Delhi Municipal Committee*, AIR 1989 SC 1988 : 1989 All. LJ 1097, the Supreme Court did not permit the plea of life and liberty to be raised, in the context, of carrying on trade or business on a public road. It is in this case that the Supreme Court also held that there can be no fundamental right of a citizen to occupy a particular place where he can squat and engage in trading business. In the case of *Ahmedabad Municipal Corporation v. D. Balwantsingh*, 1992 (2) JT (SC) 363, the Supreme Court negated the plea of an occupier of a public street when he obtained an injunction in a suit to prevent the removal of an encroachment. The Supreme Court reiterated its earlier decisions. Removal of encroachment was upheld; so was the action of the municipal corporation to shift the hawkers to an alternate site. In the case of *Gobind Pershad Jagdish Pershad v. New Delhi Municipal Committee*, AIR 1993 SC 2313, the Supreme Court extended the public street into the verandas in front of a shop which by long user had been used by the public as a passage. **Thus, shopping arcades or verandas adjoining public streets were given the declaration of a public street.**



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Encroachment of such verandas in front of public streets was held as illegal.

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23.The law as has been settled by the Supreme Court now provides sufficient guidelines that hawking cannot take place on public roads and streets nor on the sidewalks. Simply, public streets and sidewalks are to be kept clear for the purposes of passage only and for no other purpose. In so far as hawking on public roads is concerned, Tehbazari as it is known in this State, the Supreme Court has made it absolutely clear that no hawker or squatter has any particular right to any particular spot on a public road. The arguments of life and liberty under Article 21 to occupy a public road has been repelled."

10.The Hon'ble Supreme Court time and again reiterated that footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object of its existence. The margins of the road and streets are meant for the common use for the pedestrians. However, with the



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connivance of some officers, permissions are granted to put up shops on these margins, leaving the general public to walk on the roads, leading to causing inconvenience to the pedestrians as well as commuters on the road and leads to tragic accidents. The difficulties faced by the common man on account of these road side shops can be witnessed all over the state and even in city like Madurai such pathways are occupied by shops, for example the road margins opposite to omni bus stand Madurai, Rajaji hospital Madurai...,etc.

11.In this case the petitioner claims that he has established a Kiosk by obtaining due licence from Aavin and the General Manager of Aavin has also made a request on behalf of the petitioner to establish a Kiosk in the Highways and the Divisional Engineer, Highways has also identified a place in front of the Taluk Office, Sattur in S.No.15/1. The Village Administrative Officer of Sattur Village has also certified that the place in S.No.15/1, in front of the Taluk Office in the National Highways may not cause any hindrance.



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12.As per Section 26(2) of the Tamil Nadu Highways Act 2001, The State Highways Department is empowered to grant licence to put up a temporary structure with the concurrence of the District Collector concerned. The procedure for granting such a permission is also enumerated in Rule 6 of the Tamil Nadu Highways Rules, which is extracted hereunder:

"6.Permission to occupy the highway land:
Permission is granted by the Highways Authority under Sub-Section (2) of Section 26 shall be in Form A.

*PREVENTION OF UNAUTHORISED OCCUPATION OF,
AND ENCROACHMENT ON, A HIGHWAY AND REMOVAL OF
ENCROACHMENT.*

*26.(1) No person shall occupy or encroach
on any highway within the highway boundaries.*

*(2) Notwithstanding anything contained
in sub-section (1), the Highways authority may,
with the concurrence of the Collector and with
due regard to the safety and convenience of
traffic and subject to such conditions, and on
payment of such rent or other charges as may be
prescribed, grant permission, of a temporary*



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nature, to any person -

(a) to make any temporary use of any highway in front of any building owned or occupied by him or make a temporary structure overhanging the highway; or

(b) to put up a temporary awning or tent, pandal or other similar erection or a temporary stall or scaffolding on any highway; or

(c) to deposit or cause to be deposited building materials, goods for sale or other articles on any highway for a specified period; or

(d) to make a temporary excavation on any highway for carrying out any repairs or improvements to building on lands adjoining such highway."

13.The object of Section 26 of the Tamil Nadu Highways Act is to prohibit any encroachment on the highways boundaries. However exceptions have been granted under Sub Section (2) of Section 26 of the Act for temporary structure such as any Pandhal or any tent as a temporary arrangement that too with the concurrence of the District



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Collector. The permission if any can be granted by the Highways Department is also with due regard to the safety and convenience of the traffic. However the places, where the footfall is high are converted as shops to benefit a very few individuals. There is no guideline in permitting such shops on the road margin and on the pavements. These permission, which is granted only for a limited period is allowed to continue for years together. Therefore, the general public are forced to walk on the middle of the road, which leads to creating of chaos in the traffic and causing accidents. These shops established on the pavements are also expanding their structures in due course and are occupying more places. It is not known what is the rent prescribed for these shops, how such rents are accounted for, how these shops are permitted to run for years together and on what basis these shops are permitted.

14.A Hon'ble Division bench of this court had an occasion to deal with these shops, in WP(MD)No.12188 of 2019, etc., batch [where in myself BPJ is a party] has passed an interim order on 02.07.2019, discussing the



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relevant provisions under Madurai city Municipal Corporation Act, 1971 and the relevant portions of that order is extracted as under;

“ 7. Incidental question arises for consideration is as to the rights of Madurai Corporation to allot bunk shops on the road margins de hors permission/authorisation and it is relevant to extract hereunder Section 259 of Madurai City Municipal Corporation Act, 1971:

“259. Power to allow certain projections and erections.-

(1) The Commissioner may grant a licence subject to such conditions and restrictions as he may think fit to the owner or occupier of any premises-

(a) to put up or continue to have verandas, balconies, sunshades, weather frames and the like, to project over a street;

(b) in streets in which the construction of arcades has been sanctioned by the council, to put up or continue to have an arcade;
or

(c) to construct or to continue to have any step or drain covering necessary for access to the premises.

(2) With the concurrence of the Superintendent of Police, Madurai or any officer authorised by him in this behalf, the Commissioner may grant a licence subject to such conditions and restrictions as he may think fit, for any temporary construction in



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any street or in any public place the control of which is vested in the corporation.

(3) No licence shall be granted under sub-section (1) if the projection or construction is likely to be injurious to health or cause public inconvenience or otherwise materially interfere or result in material interference with the use of the road as such.

(4) On the expiry of any period for which a licence has been granted under this section or after due communication of an order of suspension or revocation of such licence, the Commissioner, may, without notice, cause any projection or construction put up under sub-section (1) or sub-section (2) to be removed, and the cost of so doing shall be recoverable in the manner provided in section 479 from the person to whom the licence was granted.

(5) The council shall have power to lease road sides and street margins vested in the corporation for occupation on such terms and conditions and for such period as it may deem fit: Provided that no such lease for any term exceeding three years shall be valid unless the sanction of the Government therefor shall have been first obtained:

Provided further that the Government consider that any occupation of a road side or street margin under a lease granted by the council under this section is likely to be injurious to health or cause public inconvenience or otherwise materially interfere



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with the use of the road side or street margin as such, the Government may direct the council to cancel or modify the lease, and the council shall, thereupon, cancel or modify the lease accordingly.”

8. Provisos 1 and 2 to sub-section 5 of Section 259 of Madurai City Municipal Corporation Act, 1971, mandate that no such lease for any term exceeding three years shall be valid unless the sanction of the Government therefor shall have been first obtained and if the Government consider that any occupation of a road side or street margin under a lease granted by the council under this provision is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road side or street margin as such, the Government may direct the council to cancel or modify the lease, and the council shall, thereupon, cancel or modify the lease accordingly.

9. It is the submission of the learned Standing Counsel for Madurai Corporation, on instructions, that no such permission has been obtained from the Government for leasing out the road sides or street margins in favour of the licensees of bunk shops in terms of the said provision and more particularly, second proviso to sub-section 5 of Section 259 of Madurai City Municipal Corporation Act, 1971, which provides that if such location is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road side or street margin



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as such, the Government may direct the council to cancel or modify the lease, and the council shall, thereupon, cancel or modify the lease accordingly.

10. The application of second proviso to sub-section 5 of Section 259 of Madurai City Municipal Corporation Act, 1971, would apply only to Madurai Corporation, who has to obtain sanction and admittedly, the same has not been done. It is also conceded that licences have been granted for 542 road side shops on road margins and as already pointed out, almost all roads in Madurai Corporation belong to National/State Highways Department and in the absence of any express or written permission, such licences ought not to have been granted.

11. It appears from the submissions of the learned Standing Counsel for Madurai Corporation that no periodical inspection has also been done as to whether the licensees of bunk shops are carrying on business or whether any sub-letting has been done and whether the purpose for which licence has been granted has been misused or not and further that whether any further encroachment has been caused either in front or sideways of the bunk shops.

13. The booklet containing the details of road side shops, dated 07.06.2019 submitted by the Assistant Commissioner (Revenue), Madurai Corporation, as already pointed out, had disclosed the fact that licences have been granted to 542 road side shops.



14. In the considered opinion of this Court, the platforms and road side margins are meant for pedestrians and Madurai Corporation is having neither legal right nor moral obligation to use the said road side margins/storm water drainage platforms for location of bunk shops and it prima facie appears to be against the public interest also.

15. In the light of the above facts and circumstances of the case, the Commissioner, Madurai Corporation, with the help of the officials, shall cause inspection of all 542 road side shops which are located in Zones 1 to 4 and file a status report with supporting documents and photographs, containing the following details:

(a)Details of licensees with Name, Address, Aadhar Card, Voter Identity Card, Driving Licence, Ration Card;

(b)Period of licence;

(c)Extension of period of licence for how many times;

(d)Original licence amount and the licence amount being paid by the licensees;

(e)Purpose for which licence as well as trade licence was granted and the present purpose that is being used by the licensees;

(f)Whether there is any sub-letting of the licence granted to the licensees?

(g)Whether the road side shops are abutting or encroaching upon the road margins of National/State Highways and whether



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there are encroachments on the part of the bunk shops owners either in front of or rear side or side ways of the bunk shops?

(h) If food articles are sold or dispensed with, whether the said dispensation/sale/preparation of food articles are in conformity with fssai standards?

(i) Manner in which the electricity connections have been obtained;

(j) Availability of any other amenities other than the one permitted by Madurai Corporation;

(k) Whether the areas in and around the bunk shops are maintained in neat, tidy and sanitary condition; and

(l) Lastly, if not the least, what is the difficulty or inconvenience caused to the pedestrians of road users on account of location of the said bunk shops.

16. The said status report with supporting documents and photographs shall be submitted to this Court on 29.07.2019.

Call on 29.07.2019.”

15. It appears that pursuant to the above order, the Corporation has removed 68 shops out of 71 unauthorized shops. The Corporation has taken a stand before the Division Bench that 542 shops were permitted by the corporation within the limits of Madurai Corporation and 71



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shops were running without any permission from any department and actions have been taken selectively on 68 shops alone and the other queries raised by this Court are not addressed by the corporation till date.

16.It also appears that the Madurai District Municipal Corporation Act, the District Municipalities Act and the the Tamil Nadu Highways Act, do not empower the authorities to grant any lease or license to the shops on the road margins. Sub Section 3 of Section 183 of the District Municipalities Act enables the Council to lease road sides and street margins rested with it, after ensuring such lease does not endanger the life of the public or cause inconvenience to the public or otherwise materially interfere with the use of the road as such. All these shops are almost in the busy localities. It is relevant to point out that during the Smart City Scheme, the shopping complex at Periyar bus stand was demolished and the shops functioning thereon were provided with alternative places near Madurai omni bus stand and at various other busy places in Madurai and it was only an interim arrangement.



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However, even after the construction of the new shopping complex, some shops are still allowed to be continued in those places. This is the tip of the ice berg which indicates that how the officials are misusing their powers to grant license on these road margins in violation of the prevailing Acts and Rules without considering the nuisance caused to the public.

17. Sections 182 and 183 of The Tamil Nadu District Municipalities Act, 1920 deal with removal of encroachments and powers to allow certain projections and erections and the same is extracted hereunder:

"182. Removal of encroachments .- (1) The [Executive Authority] may, by notice, require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar or ground-floor window) situated against or in front of such premises and in or over any street. (2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to



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give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the Municipal Council shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.

183. Power to allow certain projections and erections .— (1) The Council may grant a licence, subject to such conditions and restrictions as it may think fit, to the owner or occupier of any premises to put up verandas, balconies, sunshades, weather-frames and the like, to project over a street, or in streets in which the construction of arcades has been sanctioned by the Council, to put up an arcade ; or to construct any step or drain-covering necessary for access to the premises. 2 [(2) The 1 [Executive Authority] may grant a licence, subject to such conditions and restrictions as he may think fit, for the temporary erection of pandals and other structures in a public street vested in the Council or in any other public place the control of which is vested in the Council. (3) The Council shall have power to



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lease road sides and street margins vested in it for occupation on such terms and conditions and for such period as the Council may fix. (4) But neither a licence under sub-section (1) nor a lease under subsection (3) shall be granted if the projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such. (5) The 3 [State Government] may, by notification, restrict and place under such control as they may think fit, the exercise by Municipal Councils in general or by any Municipal Council in particular, of the powers under sub-sections (1) and (3).

(6) On the expiry of any period for which a licence has been granted under this section, the 1 [Executive Authority] may, without notice, cause any projection or construction put up under sub-section (1) or (2) to be removed, and the cost of so doing shall be recoverable in the manner provided in Section 344 from the person to whom the licence was granted.]”



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18. Section 26 of The Tamil Nadu Highways Act, deals with prevention of unauthorised occupation of and encroachment on a highway and removal of encroachment and the same is extracted hereunder:

"PREVENTION OF UNAUTHORISED OCCUPATION OF, AND ENCROACHMENT ON, A HIGHWAY AND REMOVAL OF ENCROACHMENT. 26. (1) No person shall occupy or encroach on any highway within the highway boundaries. (2) Notwithstanding anything contained in sub-section (1), the Highways authority may, with the concurrence of the Collector and with due regard to the safety and convenience of traffic and subject to such conditions, and on payment of such rent or other charges as may be prescribed, grant permission, of a temporary nature, to any person- (a) to make any temporary use of any highway in front of any building owned or occupied by him or make a temporary structure overhanging the highway; or (b) to put up a temporary awning or tent, pandal or other similar erection or a temporary stall or scaffolding on any highway; or (c) to deposit or cause to be deposited building materials, goods for sale or other articles on any highway for a specified period; or (d) to make a temporary excavation on any highway for carrying out any repairs or improvements to building on lands adjoining such highway: Provided that no such permission shall be deemed to be valid beyond a period of one year, unless it is expressly renewed by the Highways authority. (3) The permission granted under sub-section (2) shall clearly specify the date upto which and the purpose for which the occupation of the highway is authorised and the exact



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portion of the highway so permitted to be occupied, and shall also be accompanied by a plan or sketch of that portion of the highway. A copy of such permission shall be communicated to the Collector for the purpose of record. (4) The person in whose favour such permission has been given shall produce the permit for inspection whenever called upon to do so by the Highways authority, or any officer authorised by it in that behalf and shall, at the end of the period specified in the permit, vacate the portion of the highway occupied by him, after restoring it to the same state as it originally stood before the occupation by him. (5) The Highways authority shall maintain a complete record of all such permissions granted, and shall also cause an inspection to be made in every case at the expiration of the period upto which such occupation has been permitted, to ensure that the portion of the highway has actually been vacated. (6) The permission granted under sub-section (2) shall be in such form and subject to such conditions as may be prescribed.

The Highways authority or any person authorised by it in this behalf shall, at such time as may be considered necessary, conduct such checks and periodical inspection, of the highway boundaries, with the view to ensure the prevention of unauthorised encroachment and the removal of such encroachment. (2) The Highways authority or any person authorised by it in this behalf, may-- (i) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken; (ii) remove any immovable structure, whether permanent or



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temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof: Provided that any representation received within the time limit shall be considered by the authority or officer concerned before passing final orders."

19.Considering the larger issue of the sufferings faced by the common man due to the act of the officials concerned, this court suo moto impleads (i) the Secretary to the Government, Highways Department, Chennai and (ii) the Secretary to the Government, Municipal Administration and Water Supply Department Chennai as a party to this writ petition and direct the learned Additional Advocate General to take notice on behalf of the newly impleaded respondents.

20.In the result, the writ petition is disposed with the following directions:

1.The writ petitioner is not having any right or authority to establish a shop on a road margin of a Highway without getting any prior permission and therefore, he is not entitled for the relief sought for in this writ petition. However if he has suffered any loss on account of permission



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granted by the General Manager, Virudunagar Co-operative Milk Producers Union, it is open to the petitioner to claim damages as against the General Manager of the Virudunagar Co-operative Milk Producers Union, in a manner known to law.

2.The Secretary to the State Highways Department and the Secretary to the Municipal Administration and Water Supply Department shall constitute a Committee and identify the number of shops permitted and by the respective Departments all over the State and ensure the strict compliance of the relevant Acts and Rules on grant of license on road margins and ensure the convenience of the common public is not affected.

3.The State Highways Department and the Municipal Administration Department shall also frame guidelines for granting such licenses on a road margin in accordance with the the Tamil Nadu Highways Act, and the District Municipalities Act.

4. The respective departments shall also ensure that the pathways/sidewalks on the margin of roads/streets are not occupied or encroached for any other purpose. No costs. Consequently connected miscellaneous petition is closed.

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To

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- 1.The District Collector,
Virudhunagar,
Virudhunagar District.
- 2.The Revenue Divisional Officer,
Virudhunagar,
Virudhunagar District.
- 3.The Tahsildar,
Sattur Taluk,
Virudhunagar District.
- 4.The Superintending Engineer
Highways Department,
Madurai.
- 5.The Secretary,
Highways Department,
Chennai.
- 6.The Secretary,
Municipal Administration,
Chennai.



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B. PUGALENDHI, J.

DSK

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27.06.2023