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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.17827 of 2016
and
WMP (MD) No.12856 of 2016

P.Duraipandi

... Petitioner

Vs.

- 1.The District Collector,
Madurai District.
- 2.The Revenue Divisional Officer,
Usilampatti, Madurai District.
- 3.The Usilampatti Municipality,
Usilampatti, Madurai District,
Rep.by its Chairman
- 4.The Commissioner,
Usilampatti Municipality,
Usilampatti, Madurai District.

... Respondents

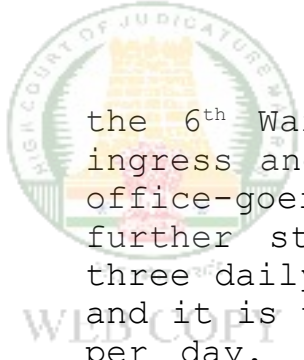
PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents herein, their men, officials or any one claiming under them from putting upon unlawful shops by encroaching into Murugan Kovil Street and its margin in 6th Ward, Usilampatti, Madurai District.

For Petitioner	: Mr.K.Appadurai
For Respondents	: Mr.M.Murugan
(R1 and R2)	Govt. Advocate
For Respondents	: Mr.K.Mahendran
(R3 and R4)	

ORDER

(Order of this Court was made by M.SATHYANARAYANAN, J.)

By consent the Writ Petition is taken up for final disposal.



the 6th Ward of Usilampatti is one of the important street for ingress and egress for large number of public, students, traders, office-goers etc., and the said street is always busy. It is further stated by the petitioner that a Temple, four Schools, three daily and weekly shandys, are also located in the said place and it is used to be thronged in, it is not less than 3000 persons per day. The petitioner claims to be the resident of 6th Ward would state that he is also using the said street and he came to know that the 3rd respondent is decided to allot street margin for putting up four bunk shops by way of licence and in that event, there is likely to be encroachment as well as nuisance and thereby reducing the width of the road.

3. In this regard, the residents of Ward Nos.4 to 9 had given numerous representations to the respondents stating that no bunk shops are allowed to be located on the road margin and thereby causing hindrance to the free movement of traffic and user of the way by the pedestrians and despite receipt and acknowledgement, emergent steps are being taken to give allotment to the persons closed to hirers. The petitioner along with residents had submitted a representation, dated 07.09.2016 to the respondents and despite receipt and acknowledgement, no response is forthcoming and steps are being taken by the 3rd respondent to enable the persons to put up bunk shops and hence, came forward to file this Writ Petition.

4. Mr.K.Appadurai, the learned counsel appearing for the petitioner would submit that the present writ petition is a genuine public interest litigation and even as per the counter affidavit of the respondents, steps are being taken to grant licence for the vacant site on the road margin on which bunk shops are going to put up and in that event, the road margin will get reduced and thereby causing hindrance to the general public by taking their vehicles and also result in traffic hindrance and prays for interference.

5. Per contra, Mr.K.Mahendran, the learned standing counsel appearing for the respondents 3 and 4 has invited the attention of this Court to the counter affidavit and would submit that the petitioner is also one of the aspirants to get the allotment of the bunk shops to be put up by way of licence and insofar as the claim made by the petitioner that in the event of putting up bunk shops, the road margin will get reduced and it will lead to further complication and would also submit that the vacant land situates in Murugan Koil Street is used by the public for answering the call of nature and some unwanted social element also used to consume alcohol and create nuisance to the general public and therefore, a fair and conscious steps has been taken to lease ~~the vacant land~~ ^{the vacant land} for location of the bunk and in the event of licence being granted, it will be ensured that there will be no encroachment also and therefore the apprehension expressed by the



petitioner is wholly unfound and prays for dismissal of the Writ Petition.

6. This Court paid its best attention to the rival submissions and also perused the materials produced before it.

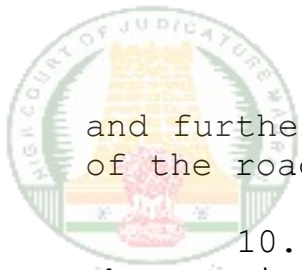
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7. It is relevant to extract paragraph No.3 of the counter affidavit of the 4th respondent, which reads as follows:-

"3. I state that there is vacant land situated in the Murugan Kovil Street and the passerby through the street used the place for call of nature and some unwanted social element standing there and consume alcohol and create nuisance to the general public who used to visit the Murugan temple and ladies are afraid to walk to the street in the evening time. Therefore, the 4th respondent decided to put-up a bunk shop to avoid the nuisance and also to get revenue to the municipality. Hence the 4th respondent place the Resolution No.456, dated 28.08.2014 before the 3rd respondent and the resolution was unanimously passed to that effect to give licence for 4 shops each measuring 6 feet x 4 feet that too only erected petty bunk shop and not to put-up any permanent structure in the said place as alleged by the petitioner."

8. It is a specific stand of the local body that the said vacant space is being used by passerby for answering the call of nature and some persons used to consume alcohol and causing nuisance to the general public also and in order to avoid the said nuisance a fair and conscious decision has been taken in public interest to grant licence to the said vacant space through Tender-cum-action and in the event of the bunk shops being located, it should be strictly in conformity with all the relevant laws, Regulations and administrative instructions and the 3rd and 4th respondents will also see to that no encroachment on account of the location of the bunk shops would take place and there will not be any hindrance to the general public / user of the road. It is also the stand of the respondents that the petitioner is one of the aspirants for getting licence in respect of the said vacant space and the said fact is stoutly denied by the learned counsel appearing for the petitioner.

9. In the light of the stand taken by 4th respondent, this Court is of the considered view that the apprehension expressed by the petitioner is wholly unfound. However, in the event of grant of licence for location of bunk shops, the respondents 3 and 4 shall ensure that it should be strictly in conformity with the relevant law, regulations as well as administrative instructions



and further see that no encroachment is taking place and the users of the road shall not be put to any inconvenience also.

10. The Writ Petition is disposed of with the above observation. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

- 1.The District Collector,
Madurai District.
 - 2.The Revenue Divisional Officer,
Usilampatti, Madurai District.
 3. The Chairman,
The Usilampatti Municipality, Usilampatti, Madurai District,
 - 4.The Commissioner, Usilampatti Municipality,
Usilampatti, Madurai District.
- +1 CC to M/s.K.MAHENDRAN, Advocate, SR No.55520
+1 CC to M/s.K.APPADURAI, Advocate, SR No.55252
+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No.56114

W.P. (MD) No.17827 of 2016
23.09.2016

mpk
SH/SS-2:05.10.2016:4P/8C