



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.P (MD) No.23715 of 2016

and

M.P (MD) No.17054 of 2016

D.Selvi

..Petitioner

Vs.

1.The District Collector,
Dindigul District,
Collectorate Buildings,
Dindigul.

2.The Commissioner,
Kodaikanal Municipality,
Kodaikanal,
Dindigul District.

..Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus forbearing the respondents from evicting the petitioner's shop named Ex-service Man's Welfare shop covered with iron sheets to an extent of 48 sq. feet at Near English Club Rear Gate, Bryant Park Road, Lake Road, Kodaikanal, Dindigul District without following the due process law.

For Petitioner : Mr.T.Lajapathi Roy

For Respondent No.1 : Mr.R.Velmurugan,
Government Advocate.

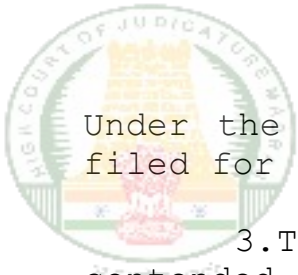
For Respondent No.2 : Mr.T.S.Mohammed Mohideen,
Standing Counsel.

ORDER

[Order of the Court was made by A.SELVAM, J.]

This writ petition has been filed under Article 226 of the Constitution of India praying to forbear the respondents from evicting the petitioner from the shop mentioned in the petition by way of passing a writ of mandamus.

2.It is averred in the petition that the father-in-law of the petitioner is an Ex-Serviceman and under the scheme of Ex-Serviceman's Welfare, the shop mentioned in the petition has been allotted to him. After his demise, the petitioner has been running the same. Now the respondents even without giving show cause notice, have made arrangements to evict the petitioner.



Under the said circumstances, the present writ petition has been filed for getting the relief sought therein.

3.The learned counsel appearing for the petitioner has contended to the effect that the respondents even without giving show cause notice, have made arrangements to evict the petitioner from the shop mentioned in the petition and therefore the present writ petition has been filed for getting the relief sought therein.

4.The learned Standing Counsel appearing for the second respondent has contended to the effect that under the scheme of Ex-Serviceman's Welfare, a shop has been allotted to the father in law of the petitioner in the year 1997 in Naidupuram, Kodaikanal and till his demise he has run the same and after his demise, the petitioner has shifted the business to the shop mentioned in the petition by way of encroaching the land belongs to Kodaikanal Municipality and therefore the relief sought in the petition cannot be granted.

5.It is seen from the averments made in the petition that the petitioner has been running the shop mentioned in the petition. The main grievance expressed on the side of the petitioner is that before taking eviction proceedings, no show cause notice has been given to the petitioner.

6.Even assuming without conceding that the petitioner has encroached the property mentioned in the petition and put up a shop, a primordial duty is cast upon the second respondent to issue show cause notice before taking eviction proceedings. But in the instant case, no document has been filed on the side of the second respondent for the purpose of showing that prior show cause notice has been issued to the petitioner. Under the said circumstances, the present petition can be allowed on such terms as indicated below.

7.In fine, this writ petition is allowed without costs and the second respondent is directed to issue a show cause notice as contemplated under law and take further proceedings of eviction. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar(CS)

To

1.The District Collector,
Dindigul District,
Collectorate Buildings,



2.The Commissioner,
Kodaikanal Municipality,
Kodaikanal,
Dindigul District.

WEB COPY

+1cc to Mr.T.S.Mohamed Mohideen, Advocate in SR.80046
+1cc to Mr.T.Lajapathi Roy, Advocate in SR.80194
+1cc to the Special Government Pleader in SR.79978

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