



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2016

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THE HONOURABLE **MR. JUSTICE B. RAJENDRAN**

W.P (MD) No. 8054 of 2016

and

WMP (MD) No. 6572 of 2016

V.Ramesh Kumar

.. Petitioner

Versus

The Commissioner,
Kumbakonam Municipality,
Tanjore District

.. Respondent

Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus by directing the respondent to remove the mobile toilet that has been erected just at the entrance of the petitioner's shop situated at Door No.4/429, Mahamahakulam West Street, Kumbakonam, Tanjore District.

For petitioner	:	Mr. R. Anand
For respondent	:	Mr. M. Rajarajan Government Advocate

ORDER

This Writ Petition has been filed praying for issuance of a Mandamus by directing the respondent to remove the mobile toilet that has been erected just at the entrance of the petitioner's shop situated at Door No.4/429, Mahamahakulam, Tanjore District.

2. Though the prayer sought for in this writ petition appears to be simple in nature, on going through the materials placed on record, this Court is of the view that the petitioner has approached this Court with unclean hands. Earlier he filed Writ Petition in W.P.(MD).No.22871 of 2015 seeking possession of the premises which was let out to him on the ground that during Mahamaham, all the shops were directed to be removed temporarily and after Mahamaham, as per the undertaking given before this Court by the respondent therein, the possession of such shops would be handed over to the tenants. According to the petitioner, the shops were handed over to the tenants by the respondent, however, the possession of his shop has not been



handed over to him. Therefore, the petitioner filed a contempt petition in W.P.(MD).No.22871 of 2015 stating that the respondent therein has not handed over the shop as assured by them before this Court. On the basis of the averments in the affidavit as though possession of shops has not been handed over to the petitioner by disobeying the order passed by this Court, this Court issued a statutory notice in Cont.P (MD) No.270 of 2016 for appearance of the Executive Officer. On the basis of such notice, the Executive Officer appeared before this Court and informed that the key was handed over to the petitioner herein as early as on 23.02.2016. To this effect, the acknowledgment signed by the petitioner for having received the key of the shop has also been produced before this Court. Thus, it is evident that the petitioner has filed the Contempt Petition (MD) No.270 of 2016 by suppressing the fact that possession of the shop has been handed over to him even as early as on 23.02.2016.

3. Now, the petitioner states that he could not open the shop in question as the Municipality has put up a mobile toilet just in front of his shop. However it is to be pointed out that in the earlier writ petition as well as the contempt petition, the petitioner has never stated about the erection of mobile toilet by the Municipality in front of his shop. Therefore, that Contempt Petition was closed by recording the fact that key was handed over to the petitioner. Now, the very same petitioner has come forward with this writ petition to direct the respondent-Municipality to remove the mobile toilet put up in front of the shop. In such view of the matter, no direction can be issued to the respondent to remove the mobile toilet said to have been put up before the shop of the petitioner. It is for the respondent Municipality to decide whether the mobile toilet should continue to exist or it shall be removed. Accordingly, this Writ Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

The Commissioner, Kumbakonam Municipality, Tanjore District.

+1 cc to M/s.R.Anand, Advocate in SR.No.24435/16

+1 cc to M/s.M.Rajarajan, Advocate in SR.No.23787/16

ssm/rsh

CSL/NGM-MP/28.06.2016 :2P/4C

WP (MD) No. 8054 of 2016
25.04.2016