



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2017

CORAM:

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THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.423 of 2016

K.Abdul Rahman

... Petitioner

Vs.

1.The District Collector,
Sivagangai District.

2.The Assistant Director of Town Panchayat,
Collectorate Building,
Sivagangai.

3.The Executive officer,
Thirupuvanam Special Grade Town Panchayat,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to maintain the weekly market in Survey No.16/14 at Thirupuvanam Village, Sivagangai District by putting up necessary infrastructures by considering the representation of the petitioner dated 23.12.2015.

For Petitioner	: Mr.J.Anandkumar
For R.1&2	: Mr.R.Karthikeyan Additional Government Pleader
For R.3	: Mr.M.Alagathevan Special Government Pleader

* * * * *

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

By consent, the writ petition itself is taken up for final disposal.

<https://hcservices.ecourts.gov.in/hcservices> This writ petition has been filed by way of 'Public Interest Litigation' seeking orders on the respondents to maintain the weekly market in Survey No.16/14 at Thirupuvanam Village,



Sivagangai District by setting up necessary infrastructure upon consideration of the representation of the petitioner dated 23.12.2015.

3. The learned Counsel appearing on behalf of the respondents-authorities submits that S.No.16/14 of Thirupuvannam Village in Sivagangai District is recorded as a waterbody. Further, in paragraph No.8 of the counter affidavit, it is stated that S.Nos.16/6 and 16/16 at the village were earlier used as a market. However, by reason of judicial orders in a civil suit those plots cannot be used as a market.

4. There can be no question of this Court directing the respondents to put up structures on a water body. The Tamil Nadu District Municipalities Act, 1920, (for short 'the Act') and in particular, Section 259 thereof provides that all markets which are acquired, constructed, repaired or maintained out of the municipal funds shall be deemed to be public markets and such markets shall be open to persons of whatever caste or creed.

5. Sections 260 and 261 of the said Act provide as follows:-

"260. Powers in respect of public markets:-

(1) The council may provide places for use as public markets.

(2) The council may in any public market levy any one or more of the following fees at such rates and may place the collection of such fees under the management of such persons as may appear to it proper or may farm out such fees '(for any period not exceeding three years at a time and] on such terms and subject to such conditions as it may deem fit:

- (a) fees for the use of or, for the right to expose goods for sale in, such markets;
- (b) fees for the use of shops, stalls, pens or stands in such markets;
- (c) fees on vehicles or pack-animals carrying, or on persons bringing, goods for sale in such markets ;
- (d) fees on animals brought for sale into, or sold in, such markets ; and
- (e) licence fees on brokers, commission agents, weighmen and measures practising their calling in such markets.

(3) The council may, with the sanction of the State Government close any public market or part thereof.

261. Control of the executive authority over public markets.-

(1) No person shall, without the permission of the executive authority, or if the fees have been farmed out, of the farmer, sell or expose for sale any animal or article within any public market.

(2) The executive authority may expel from any public market any person who or whose servant has been convicted of disobeying any by-laws at the time in force in such market and may prevent such person from further carrying on by himself or his servants or agents, any trade or business in such market, or occupying any shop, stall or other place therein and may determine any lease or tenure which such person may possess in any such shop, stall or place.

6. Section 262 of the said Act provides that no person shall open a new private market or continue to keep open a private market unless he obtains from the council a licence to do so.

7. Sub-section (3) of Section 262 of the said Act provides:

"262. license for private market. - (1), (2)

(3) The Council shall, as regards Private Markets already lawfully established and may, at its discretion as regards new Private Markets, grant the licence applied for subject to such regulations as to supervision and inspection and to such conditions as to sanitation, drainage, water-supply, width of paths and ways, weights and measures to be used, and rents and fees to be charged in such market as the Council may think proper ; or the Council may refuse to grant any such licence for any new Private Market. The Council may, however, at any time, for breach of the conditions thereof, suspend or cancel any licence which has been granted under this section. The Council may also modify the conditions of the licence to take effect from a specified date."

The Council is obliged to grant licence in respect of private markets already established and at its discretion grant licence for new private markets, if applied for, subject to such regulations as to supervision and inspection and such conditions as to sanitation, drainage, water supply, width of paths and ways, weights and measures to be used and rents and fees to be charged in such market as the council may think proper. For breach of the



conditions of licence and/or the breach of regulations, the Council might suspend or cancel any license which has been granted under the afore-said section.

8. Market can therefore be public market under the control of the executive authority under the Tamil Nadu District Municipalities Act, 1920 or a private market run under licence. Any area under a District Municipality governed by the Tamil Nadu District Municipalities Act, 1920 would necessarily have to have a market, be it a public market or be it a private market.

9. A perusal of the provision of Section 260/261 of the Act makes it amply clear that public markets should have facilities to expose goods for sale. They should have stalls, pens or stands in such markets. Needless to mention that all public markets must comply with the basic requirements of hygiene and personal safety as also the basic rules and regulations for construction under the applicable municipal laws. Similarly, private markets run on licence are also required to comply with and subjected to supervision and inspection in relation to conditions of sanitation, drainage, water supply, width of paths and ways, weights and measurements etc.,

10. We are of the view that these basic conditions of markets are applicable to public and private markets alike. If infrastructure cannot be provided, a market cannot be possibly run. A market cannot be operated on a water body without construction of any structure.

11. Thirupuvanam Special Grade Town Panchayat, Sivagangai District, is directed to ensure that a proper market place with adequate infrastructure and facilities including proper drainage and sanitation and "pucca" pathways, whether a public market or private market is provided in the area. It will be open to said Panchayat to invite applications for grant of license to operate a market place or alternatively, to set up a public market in accordance with Sections 259 and 260 of the Tamil Nadu Municipalities Act, 1920.

12. If there are no applicants for licence for a private market, a public market shall be set up for the benefit of the people, with requisite infrastructure either by acquiring land or on land owned by the Panchayat, within a period of six months from the date of communication of this order. If there is no excess land available for setting up a public market, the Panchayat shall acquire land by purchase, acquisition or on lease by private negotiation.



13. This writ petition is disposed of, with the afore-said direction. No costs.

Sd/-

Assistant Registrar(T&P)

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Sub Assistant Registrar.

To

1.The District Collector,
Sivagangai District.

2.The Assistant Director of Town Panchayat,
Collectorate Building,
Sivagangai.

3.The Executive officer,
Thirupuvanam Special Grade Town Panchayat,
Sivagangai District.

+1CC to Mr.J.Anand Kumar, Advocate, SR.No. 83800

+1CC to the Special Government Pleader SR.No.83849

ORDER MADE IN
W.P (MD) No.423 of 2016
25.10.2017

ssm/jikr

AM/SKN RSK/SAR 2/06.11.2017/5P/6C