

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.19912 of 2002

1 N. Thangam
2 John David Louserus
3 P. Iyasami .. Petitioners

v.

1 The Municipal Commissioner,
Puliangudi Municipality,
Puliangudi
2 The District Collector,
Tirunelveli
3 The Revenue Divisional Officer,
Tenkasi
4 The Assistant Divisional Engineer,
National Highway,
Tirunelveli. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, directing the respondents to restore the possession of the shops in S.No.173, National Highway, known as old Passengers Shed, under the control of 1st respondent in Madurai-Tenkasi Road at Puliangudi.

For Petitioner : Mr.J.Antony Jesus

For Respondents: Mr. P.S.JayaKumar - for R1

Mr.S.N.Parthasarathy,
Government Advocate - for R2 to R4

O R D E R
(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The petitioners have filed the above Writ Petition to issue a Writ of Mandamus, directing the respondents to restore the possession of the shops in S.No.173, National Highway, known as Old Passengers Shed, under the control of 1st respondent in Madurai-Tenkasi Road at Puliyankudi.

2. It is the case of the petitioners that originally, the petitioners became the lessees of shops belonging to the 1st petitioner located on the western side of Madurai - Tenkasi Road. The leased properties were located in S.No.310/2. Subsequently, in the year 1991, the 1st respondent decided to construct a new Bus Stand for the benefit of the public at large. When action was initiated, to take possession of the shops in S.No.310/2, the petitioners filed a Civil Suit in O.S.No.153 of 1992 before the District Munsif Court, Sankarankoil and the dispute was settled by way of compromise, whereby, the petitioners were given shops located on the National Highway, in Survey No.173, measuring an extent of 5 cents on condition that they have to withdraw the suit. Accordingly, a Resolution was passed by the Puliyankudi Municipal Commissioner on 23.9.1992, by which, it was resolved that they will be given 8' x 8' portion in S.No.173.

3. The 1st respondent, the Municipal Commissioner, has filed a counter wherein it has been stated that the shops in S.No.173 were removed during eviction of an encroachment. Further, the 1st respondent has stated that as per the order of the Union Ministry of Survey Transport and National Highway, there should be no encroachment upto a width of 7 meters from the edge of the Road. Since the shops in S.No. 173 were situated in National Highway No.208, the eviction of shops in S.No.173 were executed and therefore, there is no violation of any rules. The eviction was carried out between 03.01.2002 and 05.01.2002. Further, the 1st respondent has stated that as per the lease conditions, the Municipality can vacate the lessee any time whenever the land is required or the shop is required for the Municipality for any other use. Therefore, the shops in S.No.173 were removed as per the provisions of the lease condition. Further, the eviction was carried out by the Highways Department, Revenue Department and the Municipality and there is no illegality

in removing the encroachment in S.No.173. That apart, the petitioners are out of possession for more than 17 years.

4. In these circumstances, the relief sought for in the Writ Petition cannot be granted. The Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Rj
To

- 1 The Municipal Commissioner,
Puliangudi Municipality,
Puliangudi
- 2 The District Collector,
Tirunelveli
- 3 The Revenue Divisional Officer,
Tenkasi
- 4 The Assistant Divisional Engineer,
National Highway,
Tirunelveli.

+1cc to Mr.P.S.JayaKumar , Advocate SR.No. 53272
+1 cc to Government Pleader Sr.No. 52399

A.SK(18/07/2019)

W.P.No.19912 of 2002

सत्यमेव जयते
WEB COPY