

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**Reserved on
24.01.2019**

**Delivered on
13.03.2019**

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CORAM:

THE HONOURABLE MR. **JUSTICE K.K.SASIDHARAN**
AND

THE HONOURABLE MR. **JUSTICE P.D.AUDIKESAVALU**

W.P. (MD) Nos.24268, 20571, 22693, 22040 of 2018

W.P. (MD) No.24268 of 2018 :-

P.Loganathan ... petitioner

versus

1.The District Collector,
Madurai District.

2.The Commissioner,
Madurai Corporation. ... respondents

Prayer in WP(MD). 24268 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to provide all amenities to the passengers using the Periyar Bus Stand, and further direct the Respondents to develop the same under smart city project as announced by the Respondents.

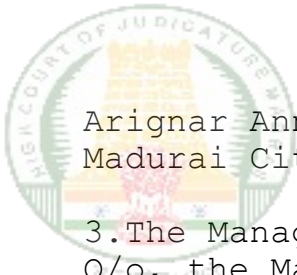
W.P. (MD) No.20571 of 2018 :-

Bharathiyar Vanika Valagam,
Periyar Perunthu Nilayam
Palporul Vanikarkal Munnetra Sangam,
registered No.153/2015
represented by the Secretary
A.Karuppandi ... petitioner

versus

1.The State of Tamil Nadu,
rep. By the Secretary,
Municipal Administration and Water Supply Department,
Secretariat, Chennai 9.

2.The Madurai Corporation,
by its Commissioner,
Corporation Building,



Arignar Annamaligai,
Madurai City 2

3.The Managing Director,
O/o, the Managing Director,
Madurai Smart City Ltd.,
Corporation Building,
Arignar Annamaligai,
Madurai

4.The Director,
O/o The Director of Town & Country Planning,
No.807, Anna Salai,
Chennai 600 002.

... respondents

(R4 impleaded vide order dated 12/11/18 in WMP 19380 of 2018)

Prayer in WP(MD). 20571 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Tender Notification dated 14.07.2018 on the file of the Respondent No.3 and quash the same as illegal and consequently direction directing the respondents not to evict the petitioner and the Members of the petitioners sangam namely Bharathiyar Vanika Valagam (Shopping Complex Bus Stand), Periyar Perunthu Nilayam, Madurai city without issuing notice and without providing alternative shops and without following due process of law.

W.P. (MD) No.22040 of 2018 :-

N.Selvi

... petitioner

versus

1.The State of Tamil Nadu,
rep. By the Secretary,
Municipal Administration and Water Supply Department,
Secretariat, Chennai 9.

2.The Director,
O/o The Director of Town & Country Planning,
No.807, Anna Salai,
Chennai 600 002.

3.The Madurai Corporation,
by its Commissioner,
Corporation Building,
Arignar Annamaligai,
Madurai City 2

... respondents

Prayer in WP(MD). 22040 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified mandamus to call for the records pertaining to the impugned Notice in Mava 4 / 027955 / 18 dated 22/10/2018 on the file of the respondent No.3 and quash the same as illegal and consequently direction directing the respondents not to evict the petitioners shop No.21B in Assessment No.6450195, Bharathiyar Shopping Complex Shops (F-Section), Periyar Bus Stand, Madurai City without providing alternative shops.

W.P. (MD) No.22693 of 2018 :-

Madurai Periyar Bus Stand,
Bharathiyar Shopping Complex Bus Stand
Combined Merchants Welfare Association,
(Registration No.86/2013)
rep. By its President

... petitioner

versus

The Madurai Corporation,
by its Commissioner,
Corporation Building,
Arignar Annamaligai,
Madurai

... respondents

Prayer in WP(MD). 22693 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus forbearing the respondent or their Men or Agent or any other person claiming under him from evicting the members of the petitioner association from their respective licensed shops situated at Periyar Bus and Bharathiyar Shopping Complex Bus Stand, Madurai without arranging for alternative sites to them.

Appearance

For petitioners

Mr.A.Srinivasan, (W.P.(MD) No.24268/2018)

Mr.T.Lajapathi Roy, (W.P.(MD) Nos.20571, 22040 of 2018)

Mr.M.Sam Eugene Jebakumar (W.P.(MD) No.22693/2018)

For respondents

Mr.A.K.Baskara Pandian, Spl.G.P.,
<https://hcservices.ecourts.gov.in/hcservices/>
for respondents 1 to 4 in (W.P.(MD) No.20571/2018)
and respondents 1 and 2 in (W.P.(MD) No.22040/2018)



Mr.R.Murali

for 2nd respondent in (W.P.(MD) No.20571/2018)

for sole respondent in (W.P.(MD) No.22693/2018)

for 3rd respondent in (W.P.(MD) No.22040/2018)

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COMMON ORDER

K.K.SASIDHARAN, J.

The temple city of Madurai was included in the smart city project by the Central Government. In order to make the city smart, the Central Government allotted considerable amount. A special service vehicle was incorporated with the Commissioner, Madurai Corporation, as the Managing Director.

2. The tender notification issued by the Madurai Corporation for construction of bus stand as part of the smart city project was challenged by the Association of Traders in the name and style of Bharathiyar Vaniga Valagam, Periyar Perunthu Nilayam, Palporul Vanikarkal Munnetra Sangam, on the ground that it would result in evicting the traders who are presently doing business at the Periyar Bus Stand. After filing the said Writ Petition in W.P.No.20571 of 2018, another Writ Petition was filed by the Madurai Periyar Bus Stand - Bharathiyar Shopping Complex Bus stand combined Merchants Welfare Association, in W.P.No.22693 of 2018, to restrain the Madurai Corporation from evicting the members of the Association from their respective shops without giving them alternative accommodation. While so, another Writ Petition was filed in pro bono publico, in W.P.(MD) No.24268 of 2018 directing the Corporation to develop the Periyar Bus Stand under the Smart City Project and provide all the necessary amenities to the passengers. A shop keeper in Bharathiyar Shopping Complex, Periyar Bus Stand, has filed a Writ Petition in W.P.No.22040 of 2018, not to evict her from the existing shop without providing alternative shop.

3. The petitioners in W.P.Nos.20571, 22693 and 22040 of 2018 are not against the development of the Madurai City under the Smart City Project. Their primary concern relates to the eviction of the existing traders and the possibility of their losing the business and thereby the livelihood.

4. We have summoned the Commissioner, Madurai Corporation in Court and took an assurance from him that accommodation would be given to all the traders after reconstruction of the bus stand in case the entire arrears is paid. The matter was taken up on multiple occasions for passing interim orders.

5. We extract the orders passed by this Court from time to time to address the issue raised by the parties.

(i) The order dated 10 December 2018 reads

<https://hcservices.ecourts.gov.in/hcservices/>

thus:-

The petitioner filed this Writ Petition for a



direction to the respondents to provide all amenities to the passengers using the Periyar Bus Stand and develop the bus stand under the Smart City Project.

2. Mr.N.Shanmugaselvam, learned Additional Government Pleader, takes notice on behalf of the first respondent.

3. Mr.R.Murali, learned Standing Counsel, taking notice on behalf of the second respondent submitted that the construction of the bus stand has already been included in the Smart City Project. According to the learned Counsel, due to the pendency of the writ petitions filed by the traders who are in occupation of the various premises and the interim order obtained by them earlier, further process could not be taken for construction of the bus stand by including it under the Smart City Project.

4.We direct the Registry to post this Writ Petition along with W.P.[MD]Nos.20571, 22040 and 22693 of 2018, after obtaining orders from the Administrative Judge, on **11 December, 2018**.

(ii) The order dated 11 December 2018 reads thus :-

Heard the learned counsel for the respective petitioners and the learned Additional Advocate General on behalf of the Madurai Corporation.

2.The Corporation proposed to construct a new Bus Stand in the place of the existing Periyar Bus Stand under the Smart City Project at an estimated cost of Rs.159.70 Crores. According to the Corporation, the construction would be completed within a period of 18 months. The Corporation has already issued a letter of acceptance to the Contractor on 16.11.2018. It was agreed to complete the construction of the Bus Stand within a period of 18 months. According to the Corporation, the proposed Bus Stand would be a Bus Plaza and it would contain basement 1 for Car Parking measuring 28,274 sq.m. and Basement 2 for Two Wheeler Parking measuring 28,274 sq.m. The Ground Floor would be a Bus Terminal having an area of 34,482 sq.m. The First, Second and Third Floor would accommodate commercial shops and the Fourth Floor would be a Roof Top Restaurant with Play materials measuring 3,393 sq.m. The Commissioner assured that every licensee would be given shop after reconstruction, subject to the condition that they should clear the entire arrears.



3. The learned counsel for the petitioners contented that the construction would continue for a long time and as such the traders would have no income during this period. The learned counsel also contended that the Corporation enhanced the rent unreasonably and under the pretext of non-payment of rent, the present shop owners would not be given allotment after reconstruction.

4. We are informed that the Writ Petitions challenging the enhancement of rent are pending before this Court. We are also informed that the licensees are paying the agreed rent in addition to the 50% of the enhanced rent, pursuant to the interim orders passed by this Court.

5. The plea of allocation of alternative accommodation is turned down by the Corporation primarily on the ground of non-availability. The site identified by the traders near Mattuthavani Bus Stand is a water body. The Corporation has assured that all the traders would be given allotment in the new Bus Stand terminal, subject to payment of arrears.

6. The construction of a Bus Plaza with an estimated cost of Rs.159.70 Crores should not be kept pending on the ground that the traders would not have any income during the period of construction. It would not be possible for the Corporation to give temporary accommodation to the existing 400 traders. The traders have been informed as early as on 30 July, 2018, to vacate the premises by convening a meeting. Even then, the traders have not taken any action to move out of the Periyar Bus Stand.

7. The contract for the work has already been given. In case the site is not handed over and the matter is delayed, there is a possibility of making a claim for escalation of cost by the Contractor. The public money should not be wasted, at the instance of the traders.

8. The Court has to balance the equity in a case of this nature. The Court must address the issue raised by the traders with regard to the allotment after the reconstruction. They should not be denied allotment solely on the ground of arrears of rent.

9. The learned Additional Advocate General assured that all the existing tenants would be given accommodation, in case they have discharged the rent. In order to resolve this issue, we are inclined to direct the Commissioner to furnish



the following information by way of an affidavit:

(A) The total number of lessees/licensees at the Periyar Bus Stand as per the records maintained by the Corporation with their names and addresses.

(B) The details of rent arrears. The Corporation should indicate whether the original rent has been paid and whether 50% of enhanced rent has also been paid. The list should contain details of such payments including arrears.

(C) In case there is any dispute with regard to the possession or lease of any of the shops, it should also be indicated.

10. The Commissioner shall obtain an undertaking from the Contractor as to when the work would commence and the outer time for handing over the newly constructed Bus Plaza.

11. The Commissioner shall also file an affidavit with regard to the stage of the contract and as to when the work would be completed.

12. The allotment would be made only to those who give an undertaking to vacate the premises on or before 31 December, 2018. The existing lessees/licensees must give an affidavit of undertaking to the Commissioner by appearing in person undertaking to vacate and hand over vacant possession before the cut-off date indicated above. The time limit for giving such undertaking would be given after furnishing particulars by the Commissioner.

13. Post on 13 December, 2018 immediately after motion.

(iii) The order dated 13 December 2018 reads thus:-

The Commissioner, Corporation of Madurai, pursuant to our earlier order dated 11 December, 2018, filed an additional affidavit, along with documents indicating the names of the licensees, the arrears of rent due from them and the outer time limit for completion of the construction of the Periyar Bus Stand.

2.Mr.Isaac Mohanlal, learned Senior Counsel appearing on behalf of the petitioner in W.P.[MD] No.22693 of 2018, submitted that before vacating the premises by the individual lessees, they should be given alternate accommodation, in view of the fact that the construction, even according to the Commissioner, Madurai Corporation, would



take about 18 months. The learned Senior Counsel has suggested five locations for accommodating the existing lessees / licensees.

3.The list was given to the Commissioner. According to the Commissioner, it would not be possible to make allotment as suggested by the petitioner. When a suggestion was made to allot the land at Ellis Nagar, it was pointed out by Mr.Natarajan, the Joint Commissioner / Executive Officer, Arulmigu Meenakshi Sundareswarar Temple, that the said land is earmarked for parking the buses coming to the temple. The temple has also provided all the sanitary facilities to the pilgrims and as such, it would not be possible to allot the said land to the lessees. In view of the said submission, it would not be possible to allot the sites suggested by the learned Senior Counsel.

4.When a suggestion was mooted to whether individual licensees can identify a small area and submit applications to the Commissioner, for allotment temporarily till the construction is completed, it was accepted by the learned Senior Counsel. The Commissioner submitted that he would consider the applications, provided it is not objectionable and is in accordance with the Rules. The said submission is recorded.

5.Mr.T.Lajapathi Roy, learned Counsel for the petitioner in W.P.[MD]No.20571 of 2018, submitted that the Corporation revised the rent retrospectively and that too, in an unscientific manner and as such, the lessees find difficult to pay the rent. He further submitted that the lessees should be permitted to continue till the Pongal festival, 2019, as it is a festival season, enabling the lessees to get substantial business.

6.This Court has already upheld the revision of rent by the Corporation with a modification. This Court has ruled that the rent should be collected prospectively, instead of collecting it retrospectively. The Commissioner, who is present in person before us submitted that in accordance with the judgment of the Court, the rent would be collected from September 2017, at the revised rate.

7.We permit the lessees to pay the arrears of rent, taking into account the revision from September 2017, less the amount already paid. In case, a request is made for payment of the rent in instalments, the same would be considered by



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the Commissioner with appropriate conditions. All those lessees who have given affidavit / undertaking to vacate the premises on or before 31 December, 2018, and agreeing to pay the entire arrears of rent would be given allotment on priority basis, after construction of the bus stand.

8. We direct the Commissioner, to open a separate section for receiving the affidavits from the lessees / licensees, whose names are found in the records of the Corporation for giving an unconditional undertaking to vacate the premises on or before 31 December, 2018. In case, such undertakings are given, such licensees would be given time upto 17 January, 2019 by this Court for vacating the premises. Since it is a consent order, in case any of the tenants continue to occupy even after 17 January, 2019, contempt proceedings would be initiated against all those licensees, in view of the fact that by virtue of the order passed by this Court, time is extended up to 17 January, 2019. We also make it clear that in case, after giving affidavits if any of the licensees are not vacating the premises, it would be open to the Commissioner to evict them without issuing any more notice.

9. The counter for receiving the affidavits would function in the office of the Commissioner, Madurai Corporation, from today [13 December, 2018] and the affidavits would be received till 05.00 p.m. on Sunday [16 December, 2018].

10. The licensees/lessees shall produce documents to prove their identity before the concerned officers along with the undertaking. They should also submit their photographs. This is more so on account of the fact that they have to be given allotment.

11. We also make it clear that the construction work should be completed within a period of 18 months from the date on which the site is handed over to the contractor. The Commissioner shall produce before this Court, the affidavits submitted by the licensees on 17 December, 2018.

12. Post the Writ Petitions on **17 December, 2018.**

(iv) The order dated 17 December 2018 reads

thus:-

<https://hcservices.ecourts.gov.in/hcservices/>

The Writ Petitions are posted today, pursuant to our earlier order dated 13 December, 2018.



2. The particulars submitted by the Commissioner, Madurai Corporation, indicates that 224 original lessees have given undertaking to vacate the premises on or before 31 December, 2018. The legal heirs of the original allottees numbering 26 have also given undertaking. The Corporation received 151 undertaking from those who have entered into a partnership with the original allottees. The Corporation is yet to receive the undertaking affidavit from 45 allottees.

3. The time for submission of unconditional undertaking is extended upto 31 December, 2018. The allottees must discharge the rent as undertaken by them earlier. The question of recognition of the partnership and other issues could be decided by the Commissioner. In case of identifying alternative place by the existing allottees, the same shall be considered on merits by the Commissioner.

4. Post on 4 January, 2019 for filing further report by the Commissioner, Madurai Corporation.

6. The existing licensees have complied with the earlier directions issued by this Court, substantially. Since the earlier orders are self-working, there is no need for another set of directions during the time of final disposal.

7. The interim order shall be treated as part of the final order in the Writ Petitions.

8. We direct the Madurai Corporation to comply with the undertaking that the entire construction would be over within a period of 18 months. The Corporation must accommodate the traders who have complied with our earlier directions by remitting the arrears and producing proof of their entitlement. The allotment would be made on the basis of lots, without giving any preference on the ground that they were in occupation of shops abutting the road. The rent would be fixed by the Corporation in accordance with the relevant guidelines. In case it is made out that after allotting shops to the existing licensees, there are remaining shops, it should be allotted by conducting public auction, after giving wide publicity. Notice of such auction should be published in Indian Express and Dina Thanthi, having wide circulation in and around Madurai. The Corporation must adopt a transparent procedure in the matter of allotment.

9. The Corporation must ensure that the undertaking given to this Court is complied with in all respects.

10. The Writ Petitions are disposed of with the above



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direction. No costs. Consequently, connected miscellaneous petitions in W.M.P. (MD) Nos.20586 and 20959 of 2018 are closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar (CS)

To

1.The Secretary,
Municipal Administration and Water Supply Department,
Secretariat, Chennai 9.

2. The Commissioner,
Madurai Corporation,
Corporation Building,
Arignar Annamaligai,
Madurai City 2

3.The Managing Director,
O/o, the Managing Director,
Madurai Smart City Ltd.,
Corporation Building,
Arignar Annamaligai,
Madurai

4.The Director,
O/o The Director of Town & Country Planning,
No.807, Anna Salai,
Chennai 600 002.

5.The District Collector,
Madurai.

+1cc to Mr.R.MURALI, Advocate, SR.No. 53879

+1cc to M/s.Special Government Pleader, SR.No. 54370

Order in

W.P. Nos.24268, 20571,
22693, 22040 of 2018

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