



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2019

CORAM:

**THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY**

W.P. (MD) .No.19539 of 2019

and

W.M.P (MD) Nos.15995, 15996 & 15997 of 2019

Maideen Sheirf

... Petitioner

vs.

1.The Commissioner,
Madurai Corporation,
Aringnar Anna Maligai,
Madurai.

2.The Assistant Commissioner,
Revenue (Incharge), Madurai Corporation,
Aringnar Anna Maligai,
Madurai.

... Respondents

PRAYER :Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the second respondent made in his proceedings in Ma.Va.2/Ma.Sa.1/010504/19, dated 26.08.2019 and to quash the same as illegal and direct the respondents to mutate the Licence in Allotment No.115/6820071 in the name of the petitioner.

For Petitioner : No Appearance

For Respondents : Mr.R.Murali

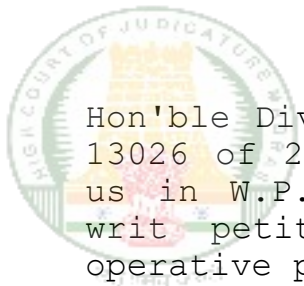
ORDER

(Order of this Court was made by **T.S.SIVAGNANAM, J**)

Heard Mr.R.Murali, learned Standing Counsel, who accepts notice on behalf of the respondent Corporation.

2.By consent of either side, this writ petition is taken up for disposal at the admission stage itself.

3.The petitioner has impugned a eviction notice issued by the respondent Corporation pursuant to the directions issued by the



Hon'ble Division Bench of this Court in W.P.[MD]Nos.12188, 4339 and 13026 of 2019 dated 02.07.2019. Identical cases were considered by us in W.P.[MD]Nos.19394, 19399, 19401, 19404 and 19407 and those writ petitions were dismissed by order dated 06.09.2019. The operative portion of the order read as follows:

3.In W.P(MD)No.19394 of 2019, the Petitioner/Selvam, is running a xerox shop. In respect of four other Writ Petitions, the Petitioner in W.P(MD) No.19399 of 2019, Mr.K.Bharathi is running a Juice shop, the Petitioner in W.P(MD)No.19401 of 2019 Rajasekar is running a hotel and the Petitioner in W.P(MD)No.19404 of 2019 is running a Tea Stall and the Petitioner in W.P(MD)No.19407 of 2019 is running a Tiffin stall. The Petitioners/Rajasekar, Rajendran and M.Saravanakumar are also similarly placed persons as that of the Petitioner in W.P(MD)No.19394 of 2019/M.Selvam and in fact, they have got a weaker case because licence was not granted in their name. Equally so, the Petitioner K.Bharathi and in his case, the licence was issued in favour of one Sudha and licence was not transferred in the name of K.Bharathi. His case was that the licence was originally given to one Sengusamy and it was transferred to the name of Sudha and therefore, legitimately expected that the licence will be transferred in his name. In our considered view, the contention of the learned Senior Counsel will not justify or improve the case of the said Petitioner.

4.The Petitioner/Mr.Selvam was granted licence by the respondents/Corporation during the year 2011 to erect a small bunk shop for operating Xerox Machine. The licence was granted by the respondents/Corporation in favour of the Petitioner without mentioning a stipulated time limit. Taking advantage of the same, the Petitioner continued his activities in the said shop. In fact, the Petitioner in W.P(MD)No.19394 of 2019 had also extended his business by installing more xerox machines and encroaching upon the road margin/pavements, which is situated in the City of Madurai. Several representations were received from the public and earlier, this matter was brought before the Division Bench by way of Public Interest Litigation in W.P(MD)No.12188 of 2019 etc., and batch of cases and the Honourable Division Bench had made a thorough exercise and directed the Corporation to enumerate all the persons who are all carrying on business in road margins/pavements and direct to submit a report, in which, the Corporation came to the conclusion that they



not only have done their business in the bunk shops but they have also extended their business and several persons like Petitioners were carrying on their trading activities in the road margins/pavements. Further, the Court found that the Corporation was not justified in granting licence to those persons, without mentioning any time limit. In this regard, the Commissioner of Madurai Corporation was directed to file a report before this Court and the report is awaited. The Division Bench has passed orders in the said Writ Petitions from time to time and one such order being dated 2.7.2019. The Division Bench had rightly observed that platforms and road margins are meant for pedestrians and the Madurai Corporation is having neither the legal right nor moral obligation to use the said road side margins/storm/water drainage platforms for location of bunk shops and it prima facie appears to be against the public interest. Directions were issued by the Division Bench from time to time and has ultimately resulted in the issuance of impugned notice calling upon the Petitioners to vacate the bunk shops.

5.The learned Senior Counsel appearing for the Petitioners would vehemently contended that the Petitioners would fall within the definition of Street Vendors as defined under the Street Vendors Act. We have got our own doubt on the correctness of the said contention. On the contrary, the Petitioners before us or the persons under whom they claim a right to trade cannot be termed as Street Vendors because they have obtained licence in the year 2011 and taking advantage of the fact that the licence was not issued for a stipulated period, the licensees/transferees were carrying on their trading operations. Therefore the contentions advanced by the Petitioners in this regard cannot be countenanced

6.The second argument of the learned Senior Counsel for the is that the impugned order proceeds on the basis that the Petitioner has transferred the licence in favour of one Chitra. It is the contention of the learned Senior Counsel for the Petitioners that the said Chitra is not the person who is carrying on the business and the Petitioner in W.P(MD)No.19394 is the person who is carrying on business activities and that the said Chitra is only an employee.

7.In our considered view, when the Petitioner was granted licence in the year 2011, the licence



cannot be treated as perpetual and especially when there was no renewal of licence. Therefore, the Petitioners cannot claim any vested rights to carry on business in road margins or pavements. Hence, we do not find any ground to interfere with the impugned orders.

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8.In the result, these Writ Petitions are dismissed and the Petitioners are granted six weeks time to relocate their shops. If the Petitioners fail to relocate the shops within the time stipulated supra, it is open to the respondents/Corporation to proceed further with the impugned notice, in the manner known to law. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

4.Hence, following the above said decision, this Writ Petition is also dismissed. However, the petitioner is granted eight weeks time from the date of receipt of a copy of this order to comply with the directions issued by the respondent/Corporation vide impugned notice dated 26.08.2019. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

MR/gns

To

- 1.The Commissioner,
Madurai Corporation,
Aringnar Anna Maligai,
Madurai.
- 2.The Assistant Commissioner,
Revenue (Incharge), Madurai Corporation,
Aringnar Anna Maligai,
Madurai.

+1 CC to M/s.R.MURALI, Advocate (SR-86361[F] dated 12/09/2019)

W.P. (MD) .No19539 of 2019
10.09.2019

JM/11.10.2019/4P/4C