



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **17.09.2019**
CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P. (MD) .No.19906 of 2019
and

W.M.P. (MD) .Nos.16404 and 16407 of 2019

The Secretary,
Nethaji Bose Market Viyabarikal Sangam,
Tirunelveli Town,
Tirunelveli District.

... Petitioner

Vs.

1.The District Collector,
Collectorate Office,
Kokkirikulam,
Tirunelveli District.

2.The Commissioner,
Tirunelveli Cor-portion,
Tirunelveli District.

3.The Assistant Commissioner (General)
Tirunelveli Region,
Tirunelveli Corporation,
Tirunelveli District.

4.Executive Officer,
Shri Nellaiyappan Temple,
Tirunelveli District.

... Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the 1 to 3 respondents in altering the present nature of Nethaji Bose Market located in Tirunelveli Town either by way of demolishing or by constructing Smart market in the said locality except in accordance with law.

For Petitioner	: Mr.S.Meenakshi Sundaran, Senior Counsel for Mr.N.GA.Natraj
For R1	: Mr.A.K.Baskara Pandian Special Government Pleader
For R2 and R3	: Mr.Aayiram K Selvakumar
For R4	: Mr.M.Karthikeya Venkatachalapathy



O R D E R

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

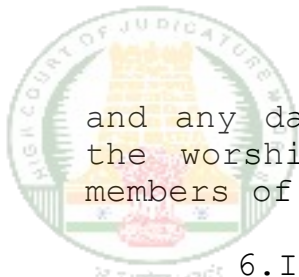
Heard Mr.S.Meenakshi Sundaram, learned Senior Counsel appearing for the petitioner and Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing on behalf of the first respondent and Mr.Aayiram K Selvakumar, learned Counsel appearing for the second and the third respondents and Mr.M.Karthikeya Venkatachalapathy, learned Standing Counsel for the fourth respondent.

2.By consent of either side, this writ petition is taken up for disposal.

3.The petitioner is a Society registered under the Provisions of the Tamil Nadu Societies Registration Act, bearing Registration No.1/82. It is stated that as on date there are 50 members in the petitioner's Sangam, who are carrying on business in selling Vegetables, Coconut, Palmyrah products and many of them are staunch worshippers of the fourth respondent Temple. The second respondent/Corporation has proposed to improve the infrastructure in the area as a part of the Smart City Plan and there is a proposal to construct a multi storage building with car parking facility etc. In this background, there appears action has been initiated by the officials of the Corporation. The members of the petitioner's Sangam fearing that they would be dispossessed summarily and hence, they have approached this Court by way of this writ petition to forbear the respondents 1 to 3 from altering the market by either demolishing or by constructing a smart market in that locality.

4.In our considered view, such a wide prayer cannot be acceded to. The smart city project is a project, which has been implemented throughout the country and few Towns and Cities have been selected in the State of Tamil Nadu. If the project is implemented, it would facilitate various other aspects including better facilities to the local public. But, however, the interest of the vendors in the area, more particularly, those who have granted lease by the Corporation needs to be taken note of and the interest should be well balanced.

5.The learned Senior counsel appearing for the petitioner would submit that the proposed construction is likely to damage the heritage Temple, since the walls of the Aaiyram kaal Mandapam, which is more than 100 years old, is situated very near to the proposed under ground vehicle parking facility. Furthermore, it is submitted that the said Mandapam is historically a heritage structure, which reflects the culture and tradition of the people of Tirunelveli and needs to be preserved. Further, it is submitted that the area where the project is to be implemented includes the Temple viz., Arulmigu Nagalinga Sastha Temple and also Arulmigu Uchimahali Amman Temple



and any damage caused to these Temples will tear to sentiments of the worship in public. It is not clear as to whether all the members of the petitioner's Society have a valid lease.

6.It is represented by Mr.Aayiram K Selvakumar, learned Standing Counsel for the respondent Corporation that few of the occupants of the market complex had been granted lease several years back and it is not clear as to whether the occupants are lessees or the dependant of lessees or third parties. As there is an allegation that several of the original lessees have sub-leased the property in favour of third parties without the approval of the Corporation, we cannot proceed on speculation and before any action has been initiated, full facts have to be gathered for which, the petitioner's Society should extend their full co-operation.

7.It is suggested by Mr.Meenakshi Sundaram, learned Senior Counsel that there is a vacant land near Taluk office and it is an vast extent of land and the license traders in the Nethaji Bose market may be permitted to shift to the said area atleast on temporary basis, till any facility is made available as a part of the Smart City Project. Any such request made on behalf of the petitioner's Society can be considered only after thorough enumeration is done and unless the details are available with the Corporation as to who is in occupation of the property, whether their occupation is lawful or otherwise, a decision cannot be taken. It appears that apart from traders, who are carrying on business in shops and there are also people, who are carrying on business by vending on road margin adjacent to the market. A decision needs to be taken as to what action to be done in respect of those vendors and whether they could be re-located elsewhere.

8.Therefore, we are of the view that the first step of the Corporation, Tirunelveli is to enumerate the traders, who are trading in the Nethaji Bose market and call upon them to furnish all the relevant particulars, for which, a comprehensive format to be prepared by the Commissioner of Corporation and on receipt of the said format, the members of the petitioner's Society shall furnish full details and also with supportive documents. The Secretary of the petitioner's Society shall co-ordinate with the officials of the Corporation and extend their full cooperation in enumerating the list of traders, nature of trade carried on, whether they were lessees, whether there has been any sublease or transfer of the lease hold right etc. After such enumeration is done, the respondent/Corporation shall hold a discussion with the petitioner's Society and to examine the feasibility to re-locate them in the area nearby Taluk Office. Pending enumeration, no coercive action should be initiated against the members of the petitioner's Society. It is needless to state that if there is any arrears of lease rent payable by any of the traders, the same shall be remitted to the respondent Corporation. If the remittance made, the same shall be accepted by



remittance, the members of the petitioner's sangam cannot claim any equity, because the remittance is made pursuant to the direction of this Court with regard to preservation of the ancient Temple and heritage structure and due regards should be made to preserve those structures and appropriate action should be initiated in that regard by the respondent corporation.

9. With the above observations, this Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (records)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The District Collector,
Collectorate Office,
Kokkirikulam,
Tirunelveli District.
2. The Commissioner,
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4. The Executive Officer,
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Tirunelveli District.

+1 CC to Mr.AAYIRAM.K.SELVAKUMAR, Advocate (SR-87065[F] dated 17/09/2019)
+1 CC to Mr.N.GA.NATRAJ, Advocate (SR-87108[F] dated 17/09/2019)
+1 CC to SPL GP (SR-87546[F] dated 18/09/2019)

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