



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD)Nos.20247,20248, 20250 to 20253,20255,20257
and 20258 of 2019

and

W.P(MD)Nos.20346,,20350,20353,20373, 20377,20378,
20380, 20382, 20384 and 20385 of 2019

and

W.M.P(MD)Nos.16839 to 16855 and 16857 of 2019

and

W.M.P(MD)Nos.16964,16967,16970,16971,16974,16975,16988,16989,16991
to 16995 and 16997 to 16999 and 17001 to 17004 of 2019

S. Sellapandi ... Petitioner in WP(MD)No.20247, 20248,
20250, 20251, 20252, 20253, 20255, 20257,
20258 OF 2019.

S.N.M.Ubayathullah ... Petitioner in W.P(MD)Nos.20346, 20350,
20353, 20373, 20377, 20378, 20380,
20382, 20384 and 20385 of 2019

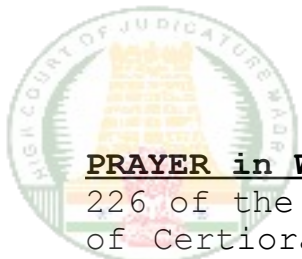
- Vs. -

1. The Commissioner of Cum Special Officer,
Thanjavur Muncipal Corporation,
Aringnar Anna Arangam, RMH Road, Thanjavur District

2. The Managing Director
O/o.The Managing Director Thanjavur Smart City Ltd.,
Corporation Building, Aringnar Anna Arangam,
RMH Road, Thanjavur District

3. The Director of Town and Country Planning,
No.807, Anna Salai, Chennai-2

... Respondents in all the Writ Petitions



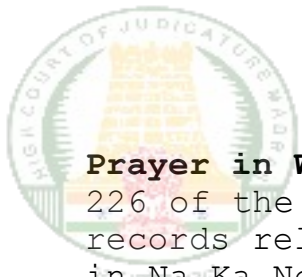
PRAYER in W.P(MD)No.20247 of 2019: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned notice issued by the first respondent in Na.Ka.No.9286/2019/MCA5, dated 01.08.2019 and to quash the same and consequently forbear the respondents from evicting the Petitioner from his shop No.1 in Thiruvaiyaru Bus Stand, Thanjavur District without following due process of law and without providing alternative shops until the completion of Smart City Project.

Prayer in WP(MD). 20248/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.No.9286/2019/MCA5 dated 01.08.2019 and to quash the same and consequently forbearing the respondents from evicting the petitioner from his shop no.17(FF) in thiruvaiyaru bus stand, thanjavur dt without following dur process of law and without providing alternative shops until the completion of smart city project and to pass

Prayer in WP(MD). 20250/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.No.9286 / 2019 / MC A5 dt. 01/08/2019 and to quash the same and consequently forbearing the Respondents from evicting the petitioner from his Shop No.15(GF) in Thiruvaiyaru Bus Stand, Thanjavur District without following due process of law and without providing alternative shops until the completion of Smart City project

Prayer in WP(MD). 20251 and 20252 / 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.No.9286 / 2019 / MC A5 dt. 01/08/2019 and to quash the same and consequently forbearing the Respondents from evicting the petitioner from his Shop No.14(FF) and Shop NO. 9FF in Thiruvaiyaru Bus Stand, Thanjavur District without following due process of law and without providing alternative shops until the completion of Smart City project

Prayer in WP(MD). 20253/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.No.9286/2019/MCA5 dated 01.08.2019 and to quash the same and consequently forbearing the respondents from evicting the petitioner from his shop no.18(FF) in thiruvaiyaru bus stand, thanjavur dt without following dur process of law and without providing alternative shops until the completion of smart city project and to pass



Prayer in WP(MD) . 20255/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.No.9286 / 2019 / MC A5 dt. 01/08/2019 and to quash the same and consequently forbearing the Respondents from evicting the petitioner from his Shop No.16 in Thiruvaiyaru Bus Stand, Thanjavur District without following due process of law and without providing alternative shops until the completion of Smart City project

Prayer in WP(MD) . 20257/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.No.9286 / 2019 / MC A5 dt. 01/08/2019 and to quash the same and consequently forbearing the Respondents from evicting the petitioner from his Shop No.14 in Thiruvaiyaru Bus Stand, Thanjavur District without following due process of law and without providing alternative shops until the completion of Smart City project

Prayer in WP(MD) . 20258/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.No.9286 / 2019 / MC A5 dt. 01/08/2019 and to quash the same and consequently forbearing the Respondents from evicting the petitioner from his Shop No.15 (FF) in Thiruvaiyaru Bus Stand, Thanjavur District without following due process of law and without providing alternative shops until the completion of Smart City project

Prayer in WP(MD) . 20346/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.No.9286 / 2019 / MC A5 dt. 02/08/2019 and to quash the same and consequently forbearing the Respondents from evicting the petitioner from his Shop No.1 (Outside of Old Bus Stand), Old Bus Stand , Thanjavur District without following due process of law and without providing alternative shops until the completion of Smart City project

Prayer in WP(MD) . 20350/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.No.9286 / 2019 / MC A5 dt. 02/08/2019 and to quash the same and consequently forbearing the Respondents from evicting the petitioner from his Shop No.1 (Petty Shop) vide Allotment No. 606, Old Bus Stand , Thanjavur District without following due process of law and without providing alternative shops until the completion of Smart City project.



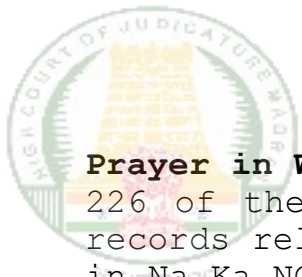
Prayer in WP(MD) . 20353/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.No.9286 / 2019 / MC A5 dt. 02/08/2019 and to quash the same and consequently forbearing the Respondents from evicting the petitioner from his Shop No.2 South Rampart) Old Bus Stand , Thanjavur District without following due process of law and without providing alternative shops until the completion of Smart City project.

Prayer in WP(MD) . 20373/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.NO.9286/2019/MCA5 dated 02.8.2019 and to quash the same and consequently forbearing the respondents from evicting the petitioner from his Shop 3 (North West Corner), Old Bus Stand, Thanjavur without following due procee of law and without providing alternative shops until the completion of Smart City Project.

Prayer in WP(MD) . 20377/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.NO.9286/2019/MCA5 dated 02.8.2019 and to quash the same and consequently forbearing the respondents from evicting the petitioner from his Shop.Petty Shop (North Side of Vegetarian Hotel), vide Allotment No.107/605 Old Bus Stand, Thanjavur without following due process of law and without providing alternative shops until the completion of Smart City Project

Prayer in WP(MD) . 20378/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.NO.9286/2019/MCA5 dated 02.8.2019 and to quash the same and consequently forbearing the respondents from evicting the petitioner from his Shop Appar Shop No. 3 (South Rampart), Old Bus Stand, Thanjavur without following due proceed of law and without providing alternative shops until the completion of Smart City Project.

Prayer in WP(MD) . 20380/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.NO.9286/2019/MCA5 dated 02.8.2019 and to quash the same and consequently forbearing the respondents from evicting the petitioner from his Shop.No.9 (South Rampart), Old Bus Stand, Thanjavur without following due process of law and without providing alternative shops until the completion of Smart City Project



Prayer in WP(MD) . 20382/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.NO.9286/2019/MCA5 dated 02.8.2019 and to quash the same and consequently forbearing the respondents from evicting the petitioner from his Shop 19(south rampart), Old Bus Stand, Thanjavur without following due procee of law and without providing alternative shops until the completion of Smart City Project.

Prayer in WP(MD) . 20384/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.NO.9286/2019/MCA5 dated 02.8.2019 and to quash the same and consequently forbearing the respondents from evicting the petitioner from his Shop.No.Petty Shop Vide Allotment No.607, Old Bus Stand, Thanjavur without following due process of law and without providing alternative shops until the completion of Smart City Project

Prayer in WP(MD) . 20385/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Call for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.NO.9286/2019/MCA5 dated 02.8.2019 and to quash the same and consequently forbearing the respondents from evicting the petitioner from his Shop 1(toilet side of old bus stand), Old Bus Stand, Thanjavur without following due procee of law and without providing alternative shops until the completion of Smart City Project.

For Petitioner :Mr.Veera. kathiravan,
Senior Counsel,
for Mr.C.Santhosh Kumar
in all Cases

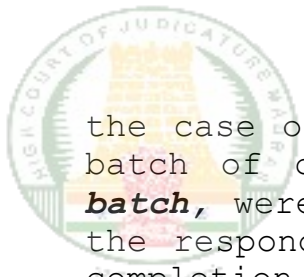
For Respondents :Mr.N.Dilip Kumar
1 and 2 Standing Counsel

For Respondent-3 :Mr.A.K.Baskarapandian,
Special Govt.Pleader
in all Cases

COMMON ORDER

[Order of the Court was made by **T.S.SIVAGNANAM. ,J.**]

These Writ Petitions have been filed for identical relief and therefore, we have heard all these Writ Petitions together and they are disposed of by this Common Order.



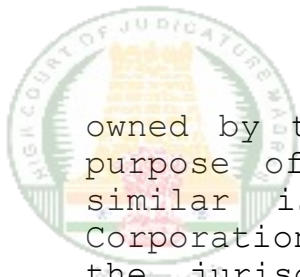
the case of shops constructed by Madurai Municipal Corporation, a batch of cases before this Court in **W.P(MD)No.24266 of 2018 and batch**, were disposed of by a common order on 13.3.2019 by directing the respondents to provide shops in the concerned buildings after completion of the construction without any fresh auction by trying all lease and other methods to let the shops. Therefore, it is submitted that such procedure should be followed in the instant case also and that the respondents shall be directed to do so. Further, it is submitted that similarly placed persons have approached the learned Single Bench of this Court and there was an order of interim stay granted and the matters are also pending. Thus, it is submitted that the livelihood of the Petitioners is jeo-paradized on account of the action of the respondents/Corporation.

5. On the above grounds, the learned Senior Counsel seeks for setting aside the impugned notice and directing the Petitioners to continue in possession of the shops which was granted on lease to them and also to adopt the directions issued by this Court in the case of shops constructed by the City Municipal Corporation, Madurai.

6. Mr. N. Dilip Kumar, learned Standing Counsel appearing for the respondents/Corporation submitted that most of the Petitioners are not genuine lessees. They have been in possession of the shops well beyond the period and several other persons have somehow obtained licence for more than five shops. These shops are in their respective names and this will clearly show that the objections raised by the Petitioners that the shops are the only source of livelihood are false. Further, it is submitted that it is an prestigious aspect to note that Thanjavur has been chosen as one of the cities to implement the Smart City Scheme and the Central Government has sanctioned funds and the public has welcomed the project and extended their full co-operation and considering all these factors and taking note of the earlier decision of this Court in the case relating to Tirunelveli Municipal Corporation and Madurai Municipal Corporation, action has been initiated by the respondents/Corporation and the impugned notice has been issued and there is no error in the impugned notice.

7. We have elaborately heard the learned counsel for the parties and carefully considered the materials placed on record.

8. Apart from testing the correctness of the issues raised by the learned counsels, we note that exercise of power under G.O.No.92, dated 3.7.2007 has given rise to arbitrariness and most of the time, power has been misused. In several decisions of this Court, it has been held that the condition prescribed in G.O.92 is not mandatory but only directory and the concerned Municipal Corporation or any other local body is well within its jurisdiction to initiate proceedings to bring the shops and other properties



owned by the corporation/local bodies by public auction for the purpose of augmenting revenue. Earlier, this Court, dealt with similar issues in various cases pertaining to the Municipal Corporations which are situated in the Districts falling within the jurisdiction of the Madurai Bench of Madras High Court. Invariably, in all cases, it is found that there is cartel and the same set of persons are in possession of the shops and paying meagre rent to the Corporation and simultaneously sub-letting the shops to various third parties without the permission of the Corporation. It is to be noted that the exercise of power under G.O.Ms.No.92, dated 3.7.2007 is not only arbitrary but there is favoritism and nepotism and the very object of lease has been defeated. Though several decisions of this Court which have consistently taken a view that G.O.Ms.No.92 has been misused, the Government has been sitting tight over the matter as a mute spectator and has not issued any clarification or guidelines to the local bodies. However, certain local bodies have taken the responsibility upon themselves and proceeded to conduct public auction and refusing to follow G.O.Ms.No.92 on the ground that it is not mandatory. The erstwhile shop owners challenged those orders by filing Writ Petitions which were dismissed. In any event, the Petitioners who have been granted extension of lease for a period of nine years i.e., block period of three years each, cannot now contend that they would be entitled to continue to remain in possession of the shops in question. The Petitioners should bear in mind that at no point of time, they can become the owner of the shops which have been licensed or leased out to them. In certain cases, the Court held the expression 'lease' used by the local bodies while confirming the auction is a misnomer as the grant is in the nature of a licence. With regard to the submission of the learned Senior Counsel that the Court should adopt the directions issued in W.P(MD)Nos.24268 of 2018 and batch of cases, we find that all the matters pertain to the shops falling within the jurisdiction of Madurai Corporation and it appears that the Writ Petitions were pending from the year 2018 and interim orders were granted and ultimately, the case was disposed of by issuing certain directions, which were part of the interim order. Therefore, we find that the said order passed in W.P(MD)No.24268 of 2018 and batch of cases, dated 13.3.2019 cannot be treated to be a precedent and at best, can be treated to be a one based on the concession that has been given by the Madurai Corporation. For the reasons stated above, we are of the considered view that the Petitioners had not made any case to set aside the impugned notice.

9.However, we find that the impugned notice has granted only seven days time to the Petitioners to vacate and hand-over vacant possession of the shops in question. We find that the said time limit is inadequate and reasonable time should be granted to the Petitioners to vacate and hand-over vacant possession of the premises in question.



10. For such reasons, we are of the view that there is no error in the impugned order and accordingly, all these Writ Petitions are dismissed and the Petitioners are granted three months time from the date of receipt of a copy of this order to vacate and hand-over the vacant possession of the premises in question and in the event, the Petitioners not doing so within the time permitted, it is open to the respondents/Corporation to initiate action for eviction, in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

SD

ASSISTANT REGISTRAR (CO)

TRUE COPY

SUB ASSISTANT REGISTRAR (CS)

vsn

To

1. The Commissioner cum Special Officer,
Thanjavur Municipal Corporation,
Arignar Anna Arangam, RMH Road, Thanjavur District.

2. The Managing Director,
Office of the Managing Director Thanjavur Smart
City Limited, Corporation Building,
Arignar Anna Arangam, RMH Road, Thanjavur District.

3. The Director of Town and Country Planning,
No.807, Anna Salai, Chennai - 600 002.

2CC'S TO MR.N.DILIP KUMAR, ADVOCATE SR 88157
2CC TO MR. C. SANTHOSH KUMAR, ADVOCATE SR 88212
1CC TO THE GOVT PLEADER SR 88544

COMMON ORDER MADE IN

W.P(MD) Nos.20247,20248, 20250 to 20253,20255,20257 and 20258 of 2019

and

W.P(MD) Nos.20346,,20350,20353,20373, 20377,20378, 20380, 20382,
20384 and 20385 of 2019

and

W.M.P(MD) Nos.16839 to 16855 and 16857 of 2019

and

W.M.P(MD) Nos.16964,16967,16970,16971,16974,16975,16988,
16989,16991to 16995 and 16997 to 16999

and 17001 to 17004 of 2019

20.09.2019

KG (CO)

<https://hsrvt2s.ecourts.gov.in/case/vb/> **TR (21-10-2019) 9B 9C**