



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.10.2019**

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P. (MD) .No.21066 of 2019

WEB COPY

S.Arumugam

... Petitioner

Vs.

1.The District Collector,
Dindigul,
Dindigul District.

2.The Commissioner,
Kodaikanal Municipality,
Kodaikanal.

3.The Revenue Divisional Officer,
RDO Office,
Kodaikanal

4.S.Najeebdeen

... Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to issue a direction to the 2nd respondent to demolish the Tin Shed that was illegally constructed by the 4th respondent and who subsequently broke the lock and seal of the Tin Shed as against the order of this Court, so that the said land in which the Tin Shed stands now could be used for the purpose of providing parking space for vehicles of the employee of the Indian Club and the Co-operative Society.

For Petitioner : Mr.S.E.Veronica Vincent

For Respondents : Mr.A.K.Baskarapandian
(R1 & R3) Spl.Govt.Pleader

For Respondent-2 : Mr.T.S.Mohammed Mohideen

For Respondent-4 : Ms.S.Jenifer Evangilin Verenica

O R D E R

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

We have heard Mr.S.E.Veronica Vincent, learned Counsel appearing for the petitioner, Mr.A.K.Baskarapandian, learned Special Government Pleader, for respondents 1 and 3 and Mr.T.S.Mohammed Mohideen, learned Standing Counsel for the 2nd respondent.

2. By consent of either side, this Writ Petition is taken up



3. The petitioner, by way of this Writ Petition, seeks for a direction to the 2nd respondent, the Commissioner, Kodaikanal Municipality, to demolish the Tin Shed, which according to the petitioner was illegally constructed by the 4th respondent, who has broken the lock and seal affixed on the Tin Shed.

WEB COPY

4. The building in question has been the subject matter of the litigation before this Court and we heard an earlier round of litigation in W.P.(MD)Nos.1506 and 1615 of 2018. One of the Writ Petitions was filed by the Indian Club and the present Writ Petition is by a person, who states that he is the Secretary of the Indian Club. Another Writ Petition was also filed by the Indian Club, represented by the present petitioner as Secretary. There are internal disputes in the club, which is now before the civil court. By common order, dated 13.03.2018, we disposed of the Writ Petitions, issuing certain directions to the Indian Club as well as the Kodaikanal Municipality. The operative portion of the order and direction reads as follows:-

"4.Considering the fact that there is a Cooperative Society functioning in the building and the building appears to be small building with ground plus first floor with slopping roof, without prejudice to the further action to be taken by the respondent Municipality, we direct the respondent Municipality to unlock and unseal of the building not only ground floor but also the first floor where the Cooperative Society is functioning. We make it clear that this direction is only with regard to the ground plus first floor, not other buildings within the same campus. Against other buildings, appropriate legal action should be taken by the respondent Municipality. We make it clear that on account of the order passed unlocking and unsealing the building, the respective writ petitions, namely respective Secretaries shall not take advantage nor place reliance of this order in the Civil proceedings which are pending before the Civil Court. It is also made clear that this order has been passed considering the peculiar facts and circumstances of the case and taking note that the tenant of the Indian Club is a cooperative Society and the building appears to be small building with ground plus first floor.

5.The above direction shall be complied with within a period of one week from the date of receipt of copy of this order. With the above observation, these writ petitions are disposed of. No Costs. Consequently, W.M.P.(MD)Nos.1586, 1702 and 1703 of 2018 are closed."



5. The above direction is stated to have been complied in letter and spirit and the Tin Shed has been locked and sealed. It appears that taking advantage of some general orders issued by this Court in a Public Interest Litigation, for removal of lock and seal, in respect of the shops, the lock and seal affixed in the Tin Shed has been removed by the Commissioner. We do not approve the action taken by the Commissioner for more than one reasons. Firstly, the building in question was the subject matter of litigation before this Court and this Court has issued direction, which should be complied with in letter and spirit. Secondly, the 4th respondent has approached this Court by filing W.P.(MD)No.17947 of 2018, to remove the lock and seal put up by the Municipality / Kodaikanal Local Planning Authority. That Writ Petition, after contest, was dismissed by the Division Bench on 14.08.2018. The operative portion of the orders reads as follows:-

" 3.The learned counsel appearing for the third respondent objecting the above prayer submitted that the petitioner has no locus standi to come to this Court, as he is only a tenant, not even owner of the house in question, where the third respondent identifying the petitioner's encroachment, as unlawful encroachment, had already locked and sealed the said premises. He has further objected that when the landlord is kept quiet accepting the action taken by the third respondent, the petitioner who claims to be the tenant under the landlord, has no legal right to file this writ petition. He has also submitted that when the third respondent has already locked and sealed the premises in question, the petitioner, without getting any permission or making any representation whatsoever, has unauthorisedly unsealed the premises.

4.Having fully agreed with the submissions made by the learned counsel appearing for the third respondent, we are not inclined to entertain this writ petition. First of all, the petitioner has no locus standi to come to this Court, as he is neither the pattadar nor obtained any permission to put up even Tin sheets in the building in question. Therefore, the writ petition being bereft of any merits, is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed."

6. The above order has attained finality. The Kodaikanal Municipality, being a party to the said Writ Petition, is bound by the order and cannot take advantage of the general direction issued in a Public Interest Litigation. The Municipality has taken advantage of the general direction, we can safely infer that there



was a collusion, but we do not want to express any conclusive opinion on that and we direct the Municipality to lock and seal the Tin Shop and await orders, which may be passed in the other matters, which are pending before the Division Bench,.

7. Since we are disposing of the Writ Petition, we are conscious of the fact that the 4th respondent has not been noticed. Because, the 4th respondent cannot plead a different case and cannot take advantage of an action done by the Kodaikanal Municipality, which we hold is without jurisdiction. The above direction be implemented within a period of 48 hours from the date of receipt of a copy of this order.

8. With the above direction, the Writ Petition stands disposed of. No costs.

This Petition having been posted on for Being Mentioned in pursuance to the order of this Court dated 04.10.2019 and made herein in the presence of the above said Advocate this Court made the following order:

ORDER

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

The matter has been listed today under the Caption, 'for being mentioned'.

2. We have heard the learned counsel appearing for the 4th respondent and the counsel appearing for the respondent Municipality.

3. It is submitted by the learned counsel appearing for the 4th respondent that the 4th respondent was not heard in the matter and there is a threat to demolish the Tin Shed based on order dated 01.10.2019 in this writ petition.

4. In our order, we have made it clear that the Tin Shop should be locked and sealed and there is no direction for demolition. Therefore, the order dated 01.10.2019 shall be complied with by the respondent Municipality. In case, there are any articles kept by the 4th respondent in the tin shed, the same shall be removed by the 4th respondent immediately.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The District Collector,
Dindigul,
Dindigul District.

2.The Commissioner,
Kodaikanal Municipality,
Kodaikanal.

3.The Revenue Divisional Officer,
RDO Office,
Kodaikanal

+1 CC to Mr.S.E.VERONICA VINCENT, Advocate (SR-16796[I] dated
01/10/2019)

+1 CC to Mr.T.S. MOHAMED MOHIDHEEN, Advocate (SR-90647[F] dated
01/10/2019)

+1 CC to Mr.S.E.VERONICA VINCENT, Advocate (SR-90947[F] dated
03/10/2019)

+1 CC to SPL.GP (SR-91178[F] dated 03/10/2019)

W.P. (MD) .No.21066 of 2019

01.10.2019

MPK

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