

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
01.10.2019	22.10.2019

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CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI**

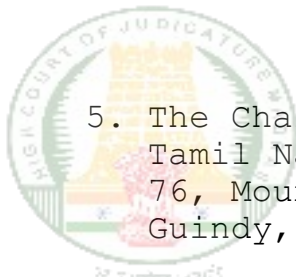
**W.P. (MD) No.21116 of 2019
and
W.M.P. (MD) No.17761 of 2019**

Ramakrishnan Ponniah

... Petitioner

-VS-

1. The Earth System Science
Organization (ESSO)
Ministry of Earth Sciences
Mahasagar Bhawan
Block-12, C.G.O.Complex
New Delhi-110 003
2. Deputy Director General of Forests (C)
Ministry of Environment,
Forest and Climate Change
Regional Office (South Eastern Zone)
Ist and IInd Floor
Handloom Export Promotion Council
34, Cathedral Garden Road
Nungambakkam, Chennai-34.
3. National Centre for Sustainable
Coastal Management
Ministry of Environment,
Forest and Climate Change (MoEF&CC)
Anna University Campus
Chennai-600 025, Tamil Nadu
4. The Chairman
Central Pollution Control Board
Parivesh Bhawan, East Arjun Nagar
Delhi-110 032.



5. The Chairman
Tamil Nadu Pollution Control Board
76, Mount Salai
Guindy, Chennai-600 032

6. Principal Secretary to Government
Environment and Forests Department
Government of Tamil Nadu
Chennai

7. The District Collector
Kanyakumari District

8. The Executive Officer
Kanyakumari Town Panchayat

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents not to lease out temporary shops in the seashore or anywhere close to the sea and consequently directing to shift the seasonal shops to any other unobjectionable place.

For Petitioner : Mr.RM.Arun Swaminathan

For Respondents : Mr.R.Vijayarajan,
Central Government Standing Counsel for R1 to R4
Mr.Vasanthakumar for R5
Mr.S.Angappan
Government Advocate for R6 & R7
Mr.Aayiram K.Selvakumar
Additional Government Pleader for R8

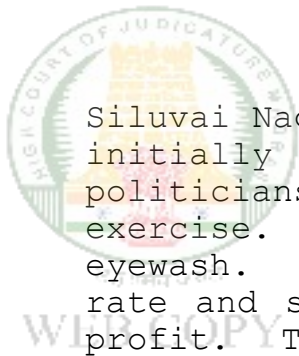
O R D E R

T.S.SIVAGNANAM, J.

This writ petition styled as public interest litigation seeks for a direction upon the respondents not to lease out temporary shops in the seashore or anywhere close to the sea and to shift the seasonal shops to any other unobjectionable place.

2. The petitioner, who is a resident of Agasteeswaram in Kanyakumari District, claims to be a social responsible person and seeks to protect the natural resources and for such purpose, he has filed this writ petition as a public interest litigation.

3. The petitioner would state that for the past few years, Kanyakumari Town Panchayat is leasing out temporary shops during the season for 60 days along the seashore from Sannathi Street to



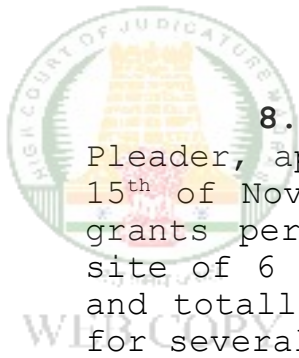
Siluvai Nagar in Beach Road. It is submitted that this practice was initially started to help the Tibetan people in exile. Later, the politicians took over and as of now, it has become a money-spinning exercise. The auction conducted by the Town Panchayat is an eyewash. Many of the shops are taken in auction at a very cheap rate and sub-leased to persons coming from North India for a huge profit. Therefore, it is submitted that the Town Panchayat is not benefited on account of the auction, but certain private persons and politically influenced persons are enriching themselves.

4. It is further submitted that if the object of the Town Panchayat is to alleviate the downtrodden in the area, who sell small handicraft items, then they should encourage those persons. But, whereas, all the stalls in the area are put up by the traders from North India, who sell electronic goods, plastic items, which are made in China and many of which are hazardous, ready-made dresses and sweaters etc., and in the recent past, there was not even a single shop, where the seashell products were sold by the local residents.

5. Further, it is submitted that these traders, who come for carrying on business for sixty days, do not abide by the rules, there is indiscriminate use of banned plastic products and the entire area is littered with garbage. The Authorities turned a blind eye towards the menace. Further, it is submitted that temporary shows are provided with electricity connection by installing two diesel generators, which are virtually on the seashore. Every year, there is a great impact on the environment on account of indiscriminate dumping of garbage along the seashore.

6. The learned counsel for the petitioner has drawn the attention of this Court to a Notification issued by the Ministry of Environment, Forest and Climate Change, dated 18.01.2019 and it is submitted that no commercial activities are permissible in the seashore area and in utter violation of the said Notification, the Town Panchayat has leased out the shops.

7. Further, it is submitted that the Town Panchayat is not in a position to manage the solid waste generated on account of these shops, as a result of which, the drainage goes directly into the sea. It is submitted that very recently, on 17.07.2019, there was a fire accident in the solid waste dumping yard near the sunset point, which will go to show that the Town Panchayat does not have the requisite know-how to manage the solid waste. Therefore, the petitioner sent a representation to the Authorities as the Town Panchayat would grant permission for the shops from middle of November, 2019 and the representation having not been considered, the petitioner is before this Court.



8. Mr.Aayiram K.Selvakumar, learned Additional Government Pleader, appearing for the eighth respondent, submitted that between 15th of November and 23rd of January, every year, the Town Panchayat grants permission to the persons to put up stalls by allotting a site of 6 Feet X 4 Feet and permission is granted only for 60 days and totally 519 shops are permitted and this has been the practice for several years.

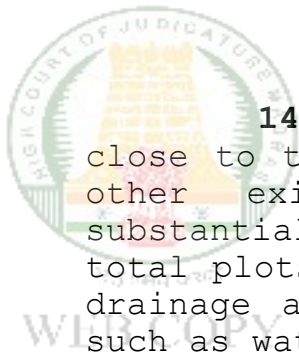
9. It is submitted that during last year, 80 Lakhs tourists have visited Kanyakumari and on account of this, the garbage generated was high and this has been well managed by deploying additional force and 40 Sanitary Workers and 10 vehicles were deployed to clear the debris. It is submitted that the revenue earned by the Town Panchayat during 2018 was Rs.1.6 Crores and similar such permissions are granted by other Corporations, namely, Tirunelveli Corporation, Thoothukudi Corporation and Kanyakumari Corporation during festival seasons and special occasions and this is a major source of income for the local bodies.

10. Further, it is submitted that there is a great doubt as to whether the petitioner is a *bona fide* public interest litigant, because it is the endeavour of the big shop owners to somehow see that the small traders are not permitted to carry on their operations during this season and in all probabilities, the present writ petition is at the behest of the big shop owners. Therefore, it is submitted that the Town Panchayat should be permitted to grant licence by collecting ground rent from the small traders for the specified period of 60 days and the Town Panchayat will take all efforts to ensure that the beach and the seashore etc., are kept litter-free.

11. We have heard the learned counsel for the parties.

12. We do not wish to go into the controversy as to whether the writ petition is a genuine public interest litigation or at the behest of some outlanders. We are concerned about the matter, which is brought to our notice.

13. The seashore, beach sand etc., are to be preserved by us. The Coastal Regulation Zone (CRZ) was brought into force by a Notification issued by the Government, which has been amended from time to time. For the purpose of conserving and protecting the coastal areas and marine waters, there are four categories of Coastal Regulation Zone (CRZ) area, namely, CRZ-I areas, which are environmentally most critical. Under CRZ-I, there are two categories, namely, CRZ-1 A is the area, which is ecologically sensitive and geo-morphological features, which play a role in maintaining the integrity of the coast. CRZ-I B is the area between Low Tide Line and High Tide Line.



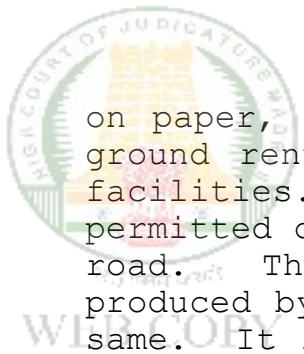
14. CRZ-II constitutes the developed land areas upto or close to the shoreline, within the existing municipal limits or in other existing legally designated urban areas, which are substantially built-up with a ratio of built-up plots to that of total plots being more than 50 per cent and have been provided with drainage and approach roads and other infrastructural facilities, such as water supply, sewerage mains etc.

15. CRZ-III is the area, which is relatively undisturbed, namely, rural areas and those which do not fall under CRZ-II constitutes CRZ-III. CRZ-III has been further classified into two categories, namely, CRZ-III A is the area, which is more than 2161 per square kilometre densely populated and CRZ-III B is the area, which is less than 2161 per square kilometre densely populated.

16. CRZ-IV constitutes the water area and it is further classified into CRZ-IV A and CRZ-IV B. The water area and the sea bed area between the Low Tide Line upto twelve nautical miles on the seaward constitutes CRZ-IV A. CRZ-IV B is the area, which includes the water area and the bed area between LTL at the bank of the tidal influenced water body to the LTL on the opposite side of the bank, extending from the mouth of the water body at the sea up to the influence of tide.

17. On going through the map, which has been annexed in the typed set of papers, it has not been disputed by the respondents that in all probabilities, the area in question will fall within CRZ-I B. Clause-4 of the Notification dated 18.01.2019 stipulates the activities, which are prohibited within CRZ. The notification prescribes what are the permissible activities in the CRZ, which are regulated. It appears that the respondent - Town Panchayat has not borne in mind any such restriction as their only concern appears to be to earn revenue. This is what we were able to cull-out from the submissions of the learned Additional Government Pleader appearing for the Town Panchayat, who was instructed by the Officers present in Court.

18. As a local body, the Town Panchayat has to act as a Trustee and has to safeguard the natural resources, protect the environment and maintain hygiene and cleanliness within its area of operation. The permission, which is granted to put up stalls, is only for sixty days. It is not clear as to whether the time limit of sixty days is strictly adhered to and whether there are any checks and balances. The respondent - Town Panchayat would state that each applicant is allotted an extent of 6 Feet X 4 Feet and ground rent is also collected. If this is the stand taken by the Town Panchayat, then it goes without saying that no person will be able to erect a temporary shop and they shall do their trading activities by squatting on the floor. But, in reality, there are semi-permanent shops with all infrastructures. Therefore, though



on paper, the respondent - Town Panchayat states that they collect ground rent, what is being done is to erect temporary shops with facilities. What is disturbing is that 519 shops have been permitted during last year and they were located all along the beach road. The map indicating the location of the shops has been produced by the petitioner and the Town Panchayat does not deny the same. It is common knowledge that in several places in Tamil Nadu, more particularly, in Metropolitan Towns and Cities, platform traders are permitted to sell essential articles during weekends and holidays. Slowly they erect temporary structures, later on, put up a roof over the temporary structures, subsequently, convert a part of the temporary structures into a structure with bricks and mortar, strengthen the superstructure, erect a roof, then erect a name board and ultimately, encroach into the pavement. However, it took several years for the Authorities to wake up to the situation. The political interference in this regard was severe and very often, the authorities were threatened, if action was taken. Only after the Court's intervening, these pavement encroachments were removed. But, the concerned local body was kind enough to provide alternative accommodation by constructing shopping complex and markets. Therefore, we are convinced that the respondent - Town Panchayat cannot indiscriminately allot shops along the beach road.

19. We read often in the media about several NGOs, who volunteer themselves to collect debris from the beach areas. Every festival generate tons and tons of garbage and the majority of the garbage being plastic water bottles and plastic covers and other banned plastic items. This is the scenario during the festive season even for two or three days. The respondent - Town Panchayat has granted permission for 519 shops for sixty days and they have stated that 80 lakhs tourists have visited during the last festive season. If that is so, then the beach road should be kept free for all the 80 lakhs tourists to take a pleasant walk to have full view of the sea, seashore and beach. If a person wants to purchase any articles as a memory of visit, then obviously such goods should be of local origin. The petitioner is right in stating that there are several shops, which sell electronic goods, plastic items, none of which are manufactured in Kanyakumari. The only type of goods, which were available for sale by the small traders, who sell their articles by laying a gunny bag on the floor, were articles and artifacts made from seashell. Therefore, the petitioner is right in stating that the traders dealing with various other goods have invaded the area and this has become the order of the day due to mal administration of the affairs of the Town Panchayat and political interference. If the Town Panchayat has to earn revenue, there are ways and means to do so. Firstly, it is not clear as to what is the revenue earned by the Town Panchayat by renting out the buildings and shops owned by them. It is the common knowledge that the local bodies are permitting the politically influential persons to garner the shops and there are several shops allotted in favour of a single person, who ultimately, sub-lets the shops and earns huge income and



pays a paltry sum to the local body. Therefore, we cannot accept the explanation that on account of the income earned by the Town Panchayat, they should be permitted to grant licence for the shop owners to establish their shops during the festival season. If the shops are present en route towards the beach and seashore, it would definitely lead to littering and indiscriminate disposal of various kinds of garbage, which more often would be plastic water bottles, plastic covers, cardboards, juice cartons, plastic water packets, tobacco products etc. The respondent - Town Panchayat admits that huge quantity of garbage is generated, much of which is attributable to the shops, which are permitted in the beach road, because the tourists purchase articles from those shops and would like to walk in the beach and indiscriminately dispose plastic bottles and other banned items in the beach. Therefore, the Town Panchayat should take a proactive decision in the matter, because, the sunrise and sunset are famous tourist attraction in Kanyakumari. Therefore, purity and serenity should be maintained. That apart, Town Panchayat should provide facilities to the tourists for purchase of articles. Therefore, considering all these facts, the respondent - Town Panchayat should not take this writ petition as adversarial litigation, but they should consider this to be an eye-opener for them to regulate their affairs better and preserve the beach and surrounding area with utmost purity and beauty.

20. Considering the fact that already steps have been taken for the purpose of granting licence for the shops from 15th of November, we are of the view that for this year, we do not propose to ban the shops, but inclined to impose certain conditions. For the ensuing years, the respondent - Town Panchayat is directed not to grant permission to put up any temporary shops in the beach road / beach from the year 2020, and 2019 is the last year, where the shops are permitted to be located subject to the following conditions:

- i. The number of shops shall be restricted to 250.
- ii Each shop may have the measurement of 8 Feet X 6 Feet.
- iii. No person shall be entitled to more than one shop being licensed to him.
- iv. The respondent - Town Panchayat has to put up uniform temporary structure without blocking the sea view.
- v. The leasee will be prohibited to put up his own roof or side closures.
- vi. The leasee must leave 1 ½ feet frontage vacant beneath the allotted roofing for accommodating the customers.

vii. The articles that should be permitted to be sold should be artifacts of local origin. Usage of



plastic bags and other banned items shall be prohibited.

- viii. Sale of packaged water and other beverages in plastic covers shall be prohibited.
- ix. The respondent - Town Panchayat shall ban the sale of imported goods and other goods, which do not have any bearing on the heritage taje of Kanyakumari.
- x. The respondent - Town Panchayat shall give preference to the traders to trade any articles and artifacts made locally within the State and within the country, which promote the rich cultural heritage of the State and our Country.
- xi. The leasee should not be allowed to dump waste materials along the road side or into the sea water or on the seashore and he has to co-operate with the respondent - Town Panchayat for keeping the area clean.
- xii. The respondent - Town Panchayat is directed to collect fine from the leasee, who dump waste materials and water in and around the area polluting the sea water and the seashore.
- xiii. A team of not less than 50 Sanitary Workers for each shift shall patrol the entire area to ensure that no garbage is thrown on the road or beach or along the coastal line.
- xiv. The respondent - Town Panchayat is directed to collect a nominal fine from the public who litter in that area.
- xv. The respondent - Town Panchayat is directed to place placards declaring the area as litter free zone and explaining the imposition of fine.
- xvi. For the convenience of the tourists and visitors, clean drinking water and toilet facilities shall be provided by the Town Panchayat at strategic locations.
- xvii. Grant of licence for the shops shall be by public auction, for which wide publicity shall be given.
- xviii. The common man, who wishes to do trading activities, should be permitted to participate in the auction and the Town Panchayat shall ensure that there is no threat meted to such individual participants and the tender / auction shall be conducted free from any political interference.
- xix. The District Collector, Kanyakumari District, is directed to constitute a team of officers to ensure that there is absolute transparency and fairness in the tender process.
- xx. The timings, during which the articles shall be displayed for sale, shall be specified and no trader



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beyond the prescribed time. If done so, the articles shall be seized and the licence shall be cancelled and the trader shall be evicted.

xxi. The respondent - Town Panchayat shall address the Police Authorities to deploy sufficient number of Police Constables and Sub-Inspectors, both men and women constables, to patrol the entire area as there are complaints received from women that the shop keepers are abusing and harassing them.

xxii. The respondent - Town Panchayat is having the duty to keep the area clean and litter free.

xxiii. The respondent - Town Panchayat will be liable for contempt, on any deviations from the above conditions.

21. With the above observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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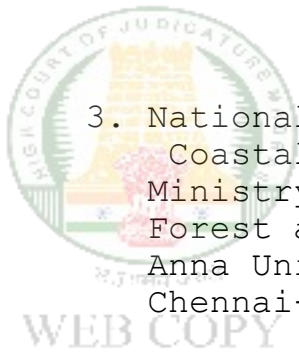
Sub Assistant Registrar(CS)

krk / mrn

To:

1.The Earth System Science
Organization (ESSO),
Ministry of Earth Sciences,
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New Delhi-110 003.

2.Deputy Director General of Forests (C),
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8. The Executive Officer,
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+1 CC to GP SR-91198.

+1 CC to M/s.RM.ARUN SWAMINATHAN, Advocate SR-93620.

+1 CC to M/s.R.VIJAYARAJAN, Advocate SR-93779.

+1 CC to M/s.AAYIRAM K.SELVAKUMAR, Advocate SR-93946.

ORDER
IN
W.P. (MD) No.21116 of 2019
and
W.M.P. (MD) No.17761 of 2019
22.10.2019

CS (07.11.2019) 10P 13C