



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.10.2019

CORAM:

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

W.P. (MD) .No.21839, 21843, 21844 and 21846 of 2019
and

W.M.P. (MD) .Nos.18579, 18581, 18586, 18588, 18589, 18590, 18592 and 18593 of 2019

1.P.Thangavel	... Petitioner in W.P.(MD).No.21839/19
2.C.Gnanaraj	... Petitioner in W.P.(MD).No.21846/19
3.A.Hector Robinson	... Petitioner in W.P.(MD).No.21844/19
4.L.Jeyanthan	... Petitioner in W.P.(MD).No.21843/19

Vs.

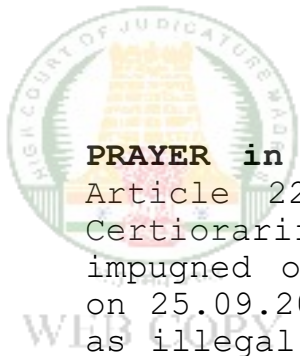
1.The Tirunelveli Corporation,
Rep by its Assistant Commissioner,
Thatchanallur Division,
Tirunelveli District.

2.The Managing Director,
O/o.The Managing Director,
Tirunelveli Smart City Ltd.,
Corporation Building,
SN High Road,
Tirunelveli District.

3.The Director of Town and Country Planning,
O/o.the Director of Town and Country Planning,
807, Anna Salai,
Chennai-02.

... Respondents in all W.Ps

COMMON PRAYER in W.P. (MD) .Nos.21839, 21844 and 21843 of 2019:These petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.A1/6377/2018 dated 19.09.2019 delivered on 25.09.2019 on the file of the respondent No.1 and quash the same as illegal and consequently forbearing the respondents 1 and 2 from evicting the petitioner from their respective shops in Shop Nos.25,9 and 26 respectively, at Western Side ground floor shop of Tirunelveli Junction Old Bus Stand, Tirunelveli District without following the due process of law and without providing alternative shops until the completion of smart city project



PRAYER in W.P. (MD) .No.21846 of 2019: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.A1/6377/2018 dated 19.09.2019 delivered on 25.09.2019 on the file of the respondent No.1 and quash the same as illegal and consequently forbearing the respondents 1 and 2 from evicting the petitioner from their respective shop in Shop No.5 at Western Side first floor shop of Tirunelveli Junction Old Bus Stand, Tirunelveli District, without following the due process of law and without providing alternative shops until the completion of smart city project.

For Petitioner : Mr.T.Lajapathi Roy
For R1 and R2 : Mr.Aairam K Selvakumar
Additional Government Pleader
For R3 : Mr.A.K.Baskara Pandian
Special Government Pleader

ORDER

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

Heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner, Mr.Aairam K Selvakumar, learned Additional Government Pleader appearing for the first and the second respondents and Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the third respondent.

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

3.These writ petitions have been filed challenging the eviction notice issued by the Tirunelveli Corporation to enable them to implement the Smart City Project.

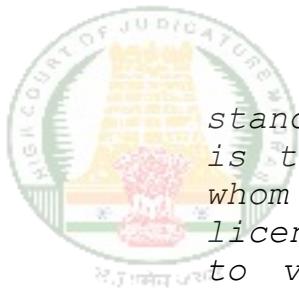
4.Similar notices were challenged by other shop owners and we have heard those writ petitions being W.P. (MD) .Nos.19253 to 19260 of 2019 and those writ petitions have dismissed by a common order dated 04.09.2019. The order reads as follows:

"Heard Mr.K.R.Laxman, learned counsel appearing for the petitioners and Mr.Aayiram K Selvakumar, learned Additional Government Pleader appearing on behalf of the respondents.

2.By consent on either side, these writ petitions are taken up for disposal.

3.These writ petitions have been filed by the Licensees/ erstwhile licensees of shop constructed by the Tirunelveli City Municipal Corporation in the old bus stand block, as a part of implementation of smart city

Plans have been made to demolish the old bus



stand and construct a new bus stand. When such decision is taken, notices were issued to the licensees many of whom were occupying the premises beyond the period of licence. The licensees/erstwhile licensees were directed to vacate and hand over the vacant possession of the premises. They failed to do so and challenged the same by way of writ petition in W.P.(MD).No.17645 of 2019 etc, batch. All those writ petitions were disposed of by a common order, dated 26.08.2019 granting four weeks time to vacate the shops, from the date of receipt of a copy of the order.

4.The learned counsel for the writ petitioners submits that the copy of the order has not yet been issued to the petitioners.

5.Be that as it may, some of the petitioners before us were also petitioners in the earlier batch. The learned counsel for the writ petitioners submitted that the plan as formulated by the Corporation to put up a Mall, Park etc., in the existing area has not been conceived and did not work out and the life and livelihood of small traders like the petitioners could not be put to jeopardy. In our considered view, it is neither the petitioners case nor for this Court to comment upon the schemes which are evolved for public purpose. Unless and until there is any arbitrariness or nepotism or illegality, merely making statements without any substantial proof cannot be taken note of. In any event, the licensee of the shop in a public bus stand has no right to continue beyond the period of license. Even if the license subsists the Corporation would be entitled to terminate the licence. The license cannot be renewed automatically and the license is also not transferred. Therefore, we are of the view that a direction issued by the Division Bench in its order, dated 26.08.2019 after considering all the contentions, is just and proper and provides necessary relief to the petitioner. Therefore, we do not wish to depart from the view taken earlier and consequently, we do not propose to interfere with the impugned notices, which appears to be a second attempt to prolong their occupation.

6.For the above reason, these writ petitions stand dismissed. No costs. As directed by this Court, the petitioners are directed to vacate and handover the vacant possession of the premises in question to the respondent/Corporation within a period of four weeks from the date of receipt of a copy of this order.

7.In the event of the petitioner not handing over the premises as stated supra, it is well open to the



respondent Corporation to take over the possession, in the manner known to law."

5.Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner would strenuously contend that the petitioners' shops are in no way hindrance for the present construction activities and they will vacate and handover the possession, as and when required by the respondent Corporation and for the time being, they should not be disturbed. To substantiate such contention, the learned counsel has produced photographs and also a map showing the proposed construction under the Smart City Project and it is submitted that as of now, there is no need to demolish the shops which are in occupation of the petitioners.

6.Mr.Mr.Aairam K Selvakumar, learned Standing Counsel appearing for the respondent Corporation submitted that 70% of the shop owners would approach this Court and orders were passed and they have vacated and the remaining persons will be evicting by 03.11.2019, as they had filed an affidavit of undertaking before the learned Single Bench. Further, it is submitted that it is incorrect statement that the area where the petitioners shops were located is not required for the Smart City Project.

7.After elaborately hearing the learned counsel for the parties, we are of the view that we cannot arrive at a different decision, than what was taken by us in W.P.(MD).Nos.19253 to 19260 of 2019, as the facts are identical. It is not for this Court to decide, as to which property is required at what time for implementation of the Smart City Project. These are all technical matters and they should be left to the decision of the technical body. Therefore, we cannot take a different view in the case of the petitioners alone. Thus, by following the earlier order, we dismiss these writ petitions and the petitioners are directed to vacate and hand over the vacant possession of the premises in question to the respondent Corporation within a period of four weeks from the date of receipt of a copy of this order.

8.With the above observation, these writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)



To

1. The Assistant Commissioner,
Tirunelveli Corporation,
Thatchanallur Division,
Tirunelveli District.
2. The Managing Director,
O/o.The Managing Director,
Tirunelveli Smart City Ltd.,
Corporation Building,
SN High Road,
Tirunelveli District.
3. The Director of Town and Country Planning,
O/o.the Director of Town and Country Planning,
807, Anna Salai,
Chennai-02.

+4 CC to MR.AAYIRAM .K.SELVAKUMAR, Advocate (SR-92288[F] dated 16/10/2019)
+4 CC to M/s.T.LAJAPATHI ROY, Advocate SR-92359,SR-92360,92361,92362
+1 CC to SPL GP (SR-92499[F] dated 17/10/2019)

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and

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