

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.40959 of 2015
and M.P.No.1 of 2015

P.S.Vijayakumar

...

Petitioner

--VS--

The District Collector
Erode District, Erode

...

Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the respondent from shifting the ration shop in Shop No.BP 102 running at Pappampalayam Village, Perundurai Taluk, Erode District.

For Petitioner :Mr.C.Prakasam

For Respondent :Ms.S.Bhuvaneshwari
Additional Government Pleader

O R D E R

The petitioner has filed the above Writ Petition seeking to issue a Writ of Mandamus forbearing the respondent from shifting the ration shop in Shop No.BP 102 running at Pappampalayam Village, Perundurai Taluk, Erode District.

2. The case of the petitioner is that there is a ration shop bearing No.BP 102 functioning in Pappampalayam Village, Perundurai Taluk, Erode District. The petitioner is holding a ration card attached to the said shop. In the year 2000, due to political reasons, the respondent made an attempt to shift the said shop to some other place. Hence, O.S.No.63 of 2000 on the file of the District Munsif Court, Perundurai came to be filed in a representative capacity by the villagers of Pappampalayam Hamlet, Pappampalayam Harijan Colony, Injambakkam Hamlet and Injambakkam Harijan Colony and on behalf of Vettaiyankinaru Village. The said suit, after contest by the respondent herein along with Supply Officer, Perundurai, Block Development Officer, Perundurai, Panchayat Union, Perundurai was decreed on

28.11.2001. The said decree was passed restraining the respondents therein from shifting the Chinthamani ration shop to any other place in Pappampalayam Village from the existing place. The said decree was not challenged till today. However, after almost two decades, the respondent is trying to shift the shop in disobedience of the decree passed in O.S.No.63 of 2000.

3. In paragraph 5 of the counter affidavit filed by the respondent, it is stated that the place was selected in R.S.No.36/2A with an extent of 0.02 cents, which was gifted by one Chennimalai Gounder and 8 others to the Co-operative Society for the welfare of the public and a building was constructed for Fair Price Shop under the Government Scheme through the funds allotted under the MLA's Development Scheme. It is further stated that the said building is situated in the centre point of Thatchankattur, Chinnaalampalayam, Poochakattuvalasu Hamlets, having more population of Pappampalayam Village of Perundurai Taluk. Yet another reason stated in the counter affidavit is that the existing building is old and in a dilapidated condition.

4. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondent and perused the materials available on record.

5. Obviously, from the year 2001, from the date of the decree till today, repair works for the existing building have not been done. However, the photographs of the said building would show that the building only requires minor repairs and it is a RCC roof construction. No doubt, already the respondent had decided to shift the ration shop, however, it has to be done with the consent of all the people. It is not the case of the respondent that the existing shop is not sufficient for catering to the needs of the neighboring villagers also. Admittedly, the present writ petition is not filed in the representative capacity or by the persons, who had filed the earlier writ petition. However, the fact remains that the Civil Court decree is starring at the face of the respondents and no steps have been taken either to challenge the decree or even get it modified. Even if the respondent wants to shift the shop, they should have taken permission from the Civil Court, which passed the decree, which has got power either to alter or amend the decree on filing appropriate application. The learned Additional Government Pleader is unable to give the actual address where the new shop is intended to be shifted.

6. As the Civil Court decree is already granted and has become final, without any fresh cause of action, the respondent cannot shift the shop. If the respondent is desirous of shifting the shop, the same may be done after getting permission from the

Civil Court or with the consent of the plaintiffs in the suit.

7. In such circumstances, the Writ Petition is allowed, forbearing the respondent from shifting the ration shop bearing No.BP 102 running at Pappampalayam Village, Perundurai Taluk, Erode District to any other place. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srn

To

The District Collector
Erode District, Erode

+1cc to the Government Pleader, Sr.No.23699
+1cc to Mr.C.Prakasam, Advocate, Sr.No.23607



W.P.No.40959 of 2015
and M.P.No.1 of 2015

SS (CO)
GS (08/06/2020)

WEB COPY