

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.12.2020

Delivered on: 23.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP Nos.14088, 15443, 15440, 15487,15492, 15494, 15826, 15825,
15823, 15821, 15828, 15484, 15576, 15573, 15583, 15582, 15579,
15606, 15602, 15598, 15592, 15586, 15633, 15635, 15637, 15625,
15630, 17287, 15900, 14090, 15446, 15441, 15442,
and 15480 of 2020
and

WMP Nos.19668,19434,19297,19430,19435,19665,19325,19671,19672,
19673,19428,19431,19455,19461,19439,19443,19452,19475,19480,1948
4,19485,19487,,21379,21381,19763,19762,17483,17484,19286,19293,1
9290,19289,19337,19334,19330 and 19328 of 2020

1 P.C. DAKSHINAMOORTHY ... PETITIONER in WP No.14088 of 2020
1 K.RAJESWARI ... PETITIONER in WP No.15443 of 2020
1 N.NAGALAKSHMI ... PETITIONER in WP No.15440 of 2020
1 A.MUSTAFA ... PETITIONER in WP No.15487 of 2020
1 C.ESWARA MOORTHY ... PETITIONER in WP No.15492 of 2020
1 C.ESWARA MOORTHY ... PETITIONER in WP No.15494 of 2020
1 K.SIVAMANI ... PETITIONER in WP No.15826 of 2020
1 P.C.DAKSHINAMOORTHY ... PETITIONER in WP No.15825 of 2020
1 P.C.DAKSHINAMOORTHY ... PETITIONER in WP No.15823 of 2020
1 P.C.DAKSHINAMOORTHY ... PETITIONER in WP No.15821 of 2020
1 K.SIVAMANI ... PETITIONER in WP No.15828 of 2020
1 K.SIVAMANI ... PETITIONER in WP No.15484 of 2020
1 K.JAGAN ... PETITIONER in WP No.15576 of 2020
1 P.CHENNIAPPAN ... PETITIONER in WP No.15573 of 2020
1 P.DEVARAJ ... PETITIONER in WP No.15583 of 2020

1 S.NIRMALA DEVI ... PETITIONER in WP No.15582 of 2020
1 M.DEVARAJ ... PETITIONER in WP No.15579 of 2020
1 T.C.RAJENDRAN ... PETITIONER in WP No.15606 of 2020
1 K.SHANMUGAM ... PETITIONER in WP No.15602 of 2020
1 P.P.CHINNASAMY ... PETITIONER in WP No.15598 of 2020
1 K.MURUGANANDAM ... PETITIONER in WP No.15592 of 2020
1 P.MALLIGA ... PETITIONER in WP No.15586 of 2020
1 C.THANGAVEL ... PETITIONER in WP No.15633 of 2020
1 T.SARATHAMMAL ... PETITIONER in WP No.15635 of 2020
1 K.PARAMESWARAN ... PETITIONER in WP No.15637 of 2020
1 C.K.KUZANDASAMY ... PETITIONER in WP No.15625 of 2020
1 C.K.KUZANDASAMY ... PETITIONER in WP No.15630 of 2020
1 R.PALANISAMY ... PETITIONER in WP No.17287 of 2020
1 R.CHANDRASEKARAN ... PETITIONER in WP No.15900 of 2020
1 R.NEHRU ... PETITIONER in WP No.14090 of 2020
1 K.DINESH KUMAR ... PETITIONER in WP No.15446 of 2020
1 A.PERIYASAMY ... PETITIONER in WP No.15441 of 2020
1 C.SELVARAJ ... PETITIONER in WP No.15442 of 2020
1 A.MUSTAFA ... PETITIONER in WP No.15480 of 2020

Vs.

1 THE COMMISSIONER.
ERODE CORPORATION ERODE.

...RESPONDENT in all W.Ps

Common Prayer in all W.Ps: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for records of the respondent herein vide Na.Ka.No.A1/3744/2020 dated 17.09.2020 and quash the same.

For Petitioner

in W.P.Nos.14088,15443,15440,15487,15492,15494,
15826,15825, 15823,15821,15828,15484,15576,
15573,15583, 15582,15579, 15606,15602,15598,
15592,15586,15633,15635,15637,15625,15630,
14090,15446,15441,15442, and 15480/2020

: Mr. Srinath Sridevan

For Petitioner

in W.P.Nos 17287 & 15900/2020: Mr.ARL.Sundaresan
Senior Counsel
for Mrs.AL.Ganthimathi

For Respondent

: Mr.S.R.Rajagopal

(in all WPs)

Additional Advocate General

Assisted by:

Mr.M.Rajamathivanan
Standing Counsel

COMMON ORDER

The petitioners in these batch of Writ Petitions are challenging the Impugned Notices issued by the respondent Corporation directing the petitioners to vacate and handover the Shops on the ground that the Building Complex is in a dilapidated condition with a very weak structural stability and for demolition of the same to put up a new Shopping Complex with all facilities on the basis of the administrative sanction accorded for modernization of Erode Bus Terminal under the Smart City Mission.

2.The petitioners are all lessees who have been running Shops in the Erode Bus Stand Complex for several years based on the lease granted by the Erode Corporation. The particulars of the Shops of each petitioner and the period up to which the lease has been granted can be illustrated through the following tabular column:

Particulars of Bus stand Shops

Sl. No.	Case No.	Name of the Petitioner	Bus Stand Shop No.	Lease Period commenced on	Lease period end on	Business carried out on the shop
1.	W.P.No. 14088/ 2020	P.C.Dakshina-moorthy	AS 1	01.07.2016	31.03.2025	Biscuit, Cool drinks shop
2.	W.P.No. 14090/ 2020	Nehru	AN 7	01.07.2016	31.03.2025	Javuli stores
3.	W.P.No. 15440/ 2020	N.Nagalakshmi	AN 13	01.07.2016	31.03.2025	Cheppal shop
4	W.P.No.1544 2/ 2020	C.Selvaraj	AS 11	01.07.2016	31.03.2025	Biscuit, Cool drinks shop
5.	W.P.No. 15443/ 2020	K.Rajeswari	AN 1	01.07.2016	31.03.2025	Chappal, Javuli stores
6.	W.P.No. 15446/2020	K.Dineshkumar	AN 4	01.07.2016	31.03.2025	Chappal, Javuli stores
7.	W.P.No. 15441/2020	A.Periyasamy	AS 14	01.07.2016	31.03.2025	Biscuit, Cool drinks shop
8.	W.P.No. 15480/2020	A.Mustafa	AS 18	01.07.2016	31.03.2025	Biscuit, Cool drinks shop
9.	W.P.No.1549 4/2020	C.Easwara-moorthy	AS 6	01.07.2016	31.03.2025	Biscuit, Cool drinks shop
10.	W.P.No.1548 4/2020	K.Sivamani	AS 15	01.07.2016	31.03.2025	Cool drinks shop

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S1 No.	Case No.	Name of the Petitioner	Bus Stand Shop No.	Lease Period commenced on	Lease period end on	Business carried out on the shop
11	W.P.No.15487/ 2020	A.Mustafa	AS 17	01.07.2016	31.03.2025	Biscuit, Cool drinks shop
12	W.P.No.15492/ 2020	C.Easwara- moorthy	AS 7	01.07.2016	31.03.2025	Biscuit, Cool drinks shop
13	W.P.No.15625/ 2020	C.K.Kulandai- samy	AN 5/1	01.07.2016	31.03.2025	Cell phone shop
14	W.P.No.15633/ 2020	C.Thangvel	AS 12	01.07.2016	31.03.2025	Biscuit, Cool drinks shop
15	W.P.No.15635/ 2020	T.Sarathammal	AN 5/2	01.07.2016	31.03.2025	Xerox shop
16	W.P.No.15639/ 2020	C.K.Kulandai- samy	AS 8	01.07.2016	31.03.2025	Biscuit, fruits shop
17	W.P.No.15637/ 2020	K.Parames- waran	AS 13	01.07.2016	31.03.2025	Biscuit, Cool drinks shop
18	W.P.No.15586/ 2020	P.Mallika	AN 3	01.07.2016	31.03.2025	Xerox shop
19	W.P.No.15592/ 2020	K.Muruganan- tham	AS 19	01.07.2016	31.03.2025	Tractor shop
20	W.P.No.15598/ 2020	P.P.Chinna- samy	AS 3	01.07.2016	31.03.2025	Cazette shop
21	W.P.No.15602/ 2020	K.Shanmugam	AS 16	01.07.2016	31.03.2025	Cheppal, Bag shop

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S1. No.	Case No.	Name of the Petitioner	Bus Stand Shop No.	Lease Period commenced on	Lease period end on	Business carried out on the shop
22.	W.P.No.15606/ 2020	T.C.Rajen- dran	AS 21	01.07.2016	31.03.2025	Biscuit, cool drinks shop
23.	W.P.No.15573/ 2020	P.Chenniya- ppan	AS 9	01.07.2016	31.03.2025	Fancy stores
24.	W.P.No.15582/ 2020	S.Nirmala- devi	AS 20	01.07.2016	31.03.2025	Biscuit, cool drinks shop

S1. No.	Case No.	Name of the Petitioner	Bus Stand Shop No.	Lease Period commenced on	Lease period end on	Business carried out on the shop
25.	W.P.No.15583/2020	P.Devaraj	AS 23	01.07.2016	31.03.2025	Fancy stores
26.	W.P.No.15579/2020	M.Devaraj	AS 10	01.07.2016	31.03.2025	Cheppal, Bag shops
27.	W.P.No.15576/2020	K.Jegan	AN 2	01.07.2016	31.03.2025	Javuli stores
28.	W.P.No.15900/2020	R.Chandrasekaran	B Block	01.07.2016	31.03.2025	Non-Veg Hotel
29.	W.P.No.15821/2020	P.C.Dakshina-moorthy	AS 2	01.07.2016	31.03.2025	Cool drinks shop
30.	W.P.No.15826/2020	K.Sivamani	AN 8	01.07.2016	31.03.2025	cool drinks shop
31.	W.P.No.15828/2020	K.Sivamani	AN 9	01.07.2016	31.03.2025	Biscuit, Cool drinks shop
32.	W.P.No.15823/2020	P.C.Dakshina-moorthy	AS 5	01.07.2016	31.03.2025	Cool drinks shop
33.	W.P.No.15825/2020	P.C.Dakshina-moorthy	AS 4	01.07.2016	31.03.2025	Biscuit shop
34.	W.P.No.17287/2020	R.Palanisamy	B Block	01.07.2016	31.03.2025	Veg Hotel

3. The lease period of the petitioners expires during March 2022 according to the respondent Corporation and during March 2025 according to the petitioners and even before the expiry of the lease period, the Impugned Notices came to be issued to the petitioners directing them to vacate and handover the Shops by cancelling the lease. The petitioners aggrieved by the same, have filed these Writ Petitions before this Court.

4. Mr. Srinath Sridevan, learned counsel appearing on behalf of the petitioners in majority of the Writ Petitions and Mr.ARL.Sundaresan, learned Senior Counsel appearing on behalf of the petitioners in two of the Writ Petitions, made the following submissions:

- The lease hold interest which is in subsistence cannot be taken away in a whimsical manner since it is a right to property which is recognized by law.
- The lease period was extended only in the year 2016 and the condition of the building could not have deteriorated to such an extent within a period of 4 years requiring the immediate demolition of the building.

- The petitioners have an accrued right for 9 years upto 2025 with an increase in rent payable once in 3 years and such an accrued right can be interfered only in the manner known to law and not by merely issuing a notice directing the petitioners to vacate and handover the Shops.
- There was no scientific basis to determine the structural stability of the building and the so called consultancy report which is the basis for coming to such a conclusion was not even served on the petitioners who had the right to question the report.
- The respondent Corporation had called for a Tender on 09.10.2020, for giving on lease certain Shops in the very same Building Complex and that itself will show that there is no bonafide on the part of the respondent to state that the building is in a dilapidated condition.
- The respondent Corporation on the one hand has taken the ground that the building is in a dilapidated condition and on the other hand, they have stated that the building is demolished for putting up a modernized Shopping Complex under the Smart City Mission and these two grounds cannot go together.
- The decision to demolish the structure by terminating the subsisting lease has civil consequences for the petitioners and therefore they should have been given a reasonable opportunity at least to know the basis on which the respondent Corporation came to a conclusion that the building is in a dilapidated condition and in the absence of the same, it can only be treated as a pre-determined decision of the respondent to demolish the building which was merely intimated to the existing lessees.
- Even if it is taken that the modernization of the building was pursuant to the Smart City Mission which is a policy decision of the State, the implementation of the same cannot take away the right of livelihood of the petitioners and to that extent the decision should be treated as arbitrary and subject to Judicial Review.
- The learned counsel in order to substantiate the submissions relied upon the following judgments:

(a) Uma Nath Pandey and Others v. State of U.P. and Another, reported in (2009) 12 SCC 40.

(b) Dhanasekari and Others v. Union Territory of Puducherry, rep. by its Secretary and Others reported in (2020) 6 CTC 1.

(c) John v. Rees and Ors. reported in (1969) Weekly Law Reports 1294.

5. The respondent Corporation has filed counter affidavit in all the Writ Petitions. The relevant portions of the counter affidavit in W.P.No. 14088 of 2020, are extracted hereunder:

"11.It is humbly submitted that is is no denied that the corporation officials Mr.T.Vijayakumar (Engineer) and Mr.Baskaran (JE) informed the petitioner and others that a decision being taken by the corporation to demolish the existing Bus Stand Complex and the same was published in the local Daily "Maalai Malar" on 23.02.2020. But is not correct to state that immediately they contacted our office and no documents were supplied with regard to the proposed demolition and we were hostile and not willing to give any information. It is submitted that the petitioner and other shop owners are well aware of the proposals initiated by the Government and in turn the actions taken by the corporation and as well in order to make know it, the same was published in the daily to make aware of all the shop owners besides the petitioner.

12.It is humbly submitted it is not correct to say that the petitioner and other shop owners would have invested huge suns in the shops in the belief that they will be permitted to run the shops till the end of the lease period and it is not denied that the petitioner and other shop owners met with the officer of the respondents to dissuade them from taking the present Bus Stand Complex down. But taking of action any it is in the hands of the Government.

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15.It is humbly submitted that so far as the averments contained in para 17 and 18 the petitioner's and other shop owner's claim are not sustainable. In fact the buildings in Erode Bus Stand Complex (the shops) are much old and are in a dilapidated condition and

that an inspection of those were duly conducted and a report was given about the stability and only after that it was thought fit to demolish the buildings as the conditions of the buildings were found very bad as per the stability report of Kongu Engineering College. Further it was decided to take steps to bring Erode City as a "Smart City" and for that it is a warranted one to modernize the existing Erode Bus Terminal. In furtherance of it a resolution was passed on 23.06.2020 and in pursuance of it the commissioner of Municipal Administration has issued sanction order on 14.08.2020 and the amount estimated in Rs.28.87 crores.

16. It is humbly submitted that so far as the averments contained in para 17 and 18 of the petitioner's and other shop owner's claims are not sustainable. In fact the buildings in Erode Bus Stand Complex (the shops) are much old and are in a dilapidated condition and that an inspection of those were duly conducted and a report was given about the stability and only after that it was thought fit to demolish the buildings as the conditions of the buildings were found very bad. Further it was decided to take steps to bring Erode City as a "Smart City" and for that it is a warranted one to modernize the existing Erode Bus Terminal. In furtherance of it a resolution was passed on 23.06.2020 and in pursuance of it the commissioner of Municipal Administration has issued sanction order on 14.08.2020.

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21. It is also submitted that is not correct to say that the corporation has failed to take note of the fact that the lease between the respondent corporation and the shop owners is still valid and expires only in the year 2025. It is submitted that though a specific period of lease is mentioned, as per the terms and conditions of the lease agreement, termination is at the will of the corporation.

6. Mr. S.R Rajagopal, learned Additional Advocate General, appearing on behalf of the respondent corporation, made the following submissions:

- The building in question is a 40-year-old building which is in a dilapidated condition and it will be dangerous to occupy such a building.
- The structural stability of the building was assessed based on the consultancy report given by the experts from Kongu Engineering College, Department of Civil Engineering and the report makes it very clear that the structure is not sound enough for modernization and a modernized complex can be constructed only by demolishing the existing structure.
- The lease that was granted to the petitioners was in the nature of a lease that can be terminated at the will of the respondent Corporation by issuing sufficient notice.
- Sufficient opportunity was given to the petitioners to vacate and handover the Shops and the petitioners were never asked to move away from the Shops overnight.
- The renewal/extension of the lease period that was made in the year 2019, specifically states that it is subject to the conditions stipulated in 2019-2022, Public Auction and Tender Notification and there is a specific condition that as and when the respondent Corporation requires the building for modernization or any other development, the same has to be handed over to the Corporation without any precondition.
- There is a necessity for demolition of the building which was a policy decision under the Smart City Mission and to provide an opportunity to the lessees will be more or less an useless formality. To substantiate this submission, the learned Additional Advocate General relied upon the judgment of the Hon'ble Supreme Court in M.S Dharampal Satyapal Ltd v. Deputy Commissioner of Central Excise Gauhati & Others reported in (2015) 8 SCC 519.
- The petitioners have been in occupation and enjoyment of the Shops for long number of years and they have been given sufficient time to vacate and handover the Shops and the petitioners cannot have a perpetual right to hold over the Shops permanently.

- The respondent Corporation did not attempt to invite any Tender to lease any Shop in the present Building Complex and the Tender pertains to Shops in a different Building Complex and insofar as the present Building Complex is concerned, no one will be permitted to occupy before the same is demolished and a new modernized Shopping Complex is reconstructed and fresh bids are invited to let the Shops on lease.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. There is no dispute with regard to the fact that all the petitioners have been granted lease of various Shops and the lease is in subsistence. Even though the lease period is for 9 years from 2016 to 2025, the renewal is done once in 3 years by increasing the lease amount as per the Government Order in force. The latest renewal took place in the year 2019 for a period of 3 years up to 2022. While the lease period was renewed, it was made subject to the terms and conditions of the Public Auction and Tender Notification for the period 2019-2022. The terms and conditions makes it clear that as and when the Corporation wants to make any developments or improvements to the property, the lessee has to handover the property without imposing any pre-condition.

9. It is seen from records that a resolution was passed in the Meeting of the Board of Directors of Erode Smart City Limited, to consider the modernization of Erode Bus Terminal in Erode Smart City. This proposal was placed before the Commissioner of Municipal Administration, Chennai. The Commissioner of Municipal Administration by proceedings dt. 14.08.2020, accorded sanction for modernization of Erode Bus Terminal in the ABD area of Erode Smart City. The Commissioner directed the respondent Corporation to commence the work immediately.

10. The matter was placed before the Commissioner of the respondent Corporation and the Commissioner by proceedings dt. 14.08.2020, decided to go ahead with the work for construction of additional parking facilities and Mini Bus shelter in the ABD area and also improvement works around the Erode Bus Terminal in the ABD area of Erode Smart City.

11. The respondent Corporation also obtained a consultancy report from the Department of Civil Engineering, Kongu Engineering College in order to ascertain the structural stability of the building in order to carry out the improvement works. The Committee of Experts after conducting an inspection and various tests, came to the following conclusion and gave the following recommendation:

Conclusion:

- Corrosion of reinforcement due to penetration of carbon di-oxide, leaking and poor cover.
- 40-50% columns are corroded and concrete compressive strength of corroded column is less than 20 MPa.
- Strength of the exposed column is very poor, confined concrete start to disintegrate from the core concrete.
- Seepage of water occurred in the ground floor slab, which initiated the corrosion in the roof slabs.

Recommendation:

- The structure is not sound enough for modernization and further extension. Repairing of damaged elements leads to more initial cost, maintenance cost and also the life span of repair work will be of maximum 20 years. Since the building is used for public purpose, it is suggested that modernization of complex building made with new construction by demolishing the existing structure to ensure public safety.

12. It is clear from the above Report that modernization of the existing Building can be undertaken only by demolishing the same and putting up the new structure and the structure is not sound enough to carry out the modernization by retaining the existing building. This Report has been given by an independent body after considering various factors and the same is clear on a careful reading of the Consultancy Report dt. 16.06.2020. This Court cannot embark upon enquiring the correctness or otherwise or interfere with the findings of the expert body in such technical matters, unless the Report on the face of it is absurd or suffers from illegality. The law on this issue is well settled.

13. It must be borne in mind that the respondent Corporation is not seeking for the eviction of the petitioners on the sole ground that the Building is in a ruinous state and not safe for occupation. If that is the only ground on which the eviction is sought for, the consideration of this Court will be different and this Court will test the Impugned Notices and see if it satisfies the relevant provision which provides for such eviction for the purpose of demolishing the Building which is in a ruinous state. In the present case, the respondent Corporation wants to modernize the existing Erode Bus Terminal under the Smart City Mission Programme. For this purpose, the Corporation wanted to ascertain as to whether this modernization

work can be carried out by doing the necessary repair work in the existing Building. For this purpose, a Report was sought for from the Expert Committee. The Committee has opined that the modernization work cannot be carried out unless the existing building is demolished. The reason for coming to such a conclusion is found in the Report and the relevant portions have been extracted supra. Pursuant to this Report, the Authorities came to a conclusion that the modernization requires the eviction of the existing lessees for the purpose of demolition of the existing building. Consequently, the Impugned Notices came to be issued to the petitioners by the respondent Corporation.

14. The crux of the arguments on the side of the petitioners is that the petitioners have a lease hold right and there is a subsisting lease and therefore the petitioners cannot be evicted unless otherwise by due process of law. The other main issue that has been raised is that the Impugned Notices will result in civil consequences to the petitioners since it involves their livelihood and sufficient opportunity was not given to the petitioners before the Impugned Notice was issued to the petitioners.

15. Insofar as the first issue raised by the petitioners is concerned, the petitioners are bound by the terms and conditions of the Public Auction cum Tender Notification for 2019-2022 and this was made clear to them even at the time of renewal of the lease in the year 2019. The Notification makes it very clear that the lessee will have to handover the possession of the property as and when the respondent Corporation requires the property for carrying out any development or improvement. The respondent Corporation has retained such a right at the time of renewal. The respondent Corporation while issuing the Impugned Notice has also granted three months time for the petitioners to vacate and handover possession on or before 31.12.2020. The lease beyond this period stood cancelled by virtue of the Impugned Notice. In the considered view of this Court, there is no illegality in the procedure adopted by the respondent Corporation and this Court does not find any infraction of the lease hold rights of the petitioners. The petitioners who have been doing business for a long number of years cannot assume that they have a perpetual right to hold on to the property to the extent that they will not even permit the respondent Corporation to carry out any modernization of the places in and around Erode Bus Terminal.

16. Insofar as the issue regarding violation of principles of natural justice is concerned, this Court does not find any such violation in the present case. There is already a proposal to come up with Erode Smart City and a legal entity has been formed for this purpose called as Erode Smart City Limited. This Company is governed by Board of Directors, headed by the

Managing Director and this Company carries out the policy decision taken by the State in its Mission to come up with the Erode Smart City. Every citizen in this Country is expecting for a change and improvement of infrastructure. It is towards this object, the State has come up with the Smart City Mission Programme. In Tamil Nadu, 11 cities have been selected for development under the Smart City Mission. One such City is Erode. The implementation of the Smart City project is being done through Tamil Nadu Urban Finance and Infrastructure Development Corporation (TUFIDCO). The Tamil Nadu Government has submitted 12 Smart City Plans to the Ministry of Urban Development and the Ministry of Urban Development evaluates the proposal before according sanction. The Ministry thereafter provides finance to develop such Smart Cities. This is carried out at an all India level.

17. It is therefore clear that pursuant to the sanction accorded and the requisite budget allotted, the Commissioner of Municipal Administration has directed the respondent Corporation to immediately commence the work of modernization of the Erode Bus Terminal. This project is undertaken under the Smart City Mission. This decision being a policy decision, cannot be interfered unless it suffers from arbitrariness, irrationality, bias and malice. The Hon'ble Supreme Court has also held that such an interference in policy decision is permissible when it is not in conformity of the Wednesbury reasonableness. Useful reference can be made to the judgments of the Hon'ble Supreme Court in :

(a) Shimnit Utsch India Pvt. Ltd. & Anr. v. West Bengal Transport Infrastructure Development Corporation Ltd. & Ors reported in (2010) 6 SCC 303.

(b) APM Terminals B.V. v. Union of India and Another reported in (2011) 6 MLJ 176 and ;

(c) Centre For Public Interest Litigation v. Union Of India And Others reported in (2016) 3 MLJ 516.

To test if whether the decision is afflicted by Wednesbury unreasonableness, Judicial Review is permissible only if the decision is so unreasonable that no reasonable person acting reasonably could have made or taken such a decision. In the present case, the decision taken by the respondent Corporation, pursuant to such a policy decision, does not suffer from any of the infirmities that were listed by the Hon'ble Supreme Court in the judgments referred supra.

18. The next question would be as to whether the petitioners ought to have been given an opportunity to give their explanation with regard to the decision taken by the respondent Corporation. The latest judgment of the Division Bench of this Court in Dhanasekari and Others v. Union

Territory of Puducherry, rep. by its Secretary and Others reported in (2020) 6 CTC 1, went into the question with regard to the extent to which such principles of natural justice will have to be satisfied. The relevant portions in the judgment are extracted hereunder :

"9. The moot question is as to whether the principles of natural justice that were long ago enunciated by the House of Lords in the case of Ridge v. Baldwin, (1963) 2 All ER 66 would still be attracted to the extent as claimed by the appellants or not?

10. The principle of English Law was considered for the first time by our Supreme Court in the case of Associated Cement Companies Limited v. P.N. Sharma, AIR 1965 SC 1595, wherein it was observed that the nature of the decision which had to be undertaken and the area of the applicability of the rules of natural justice have to be followed are relevant considerations to be taken into account. It is, thus, the nature of the jurisdiction conferred on the authority, the scheme and policy of the statute and the character of the rights of persons affected that had to be taken into account for invoking the principles of natural justice. This was again emphasised in the case of Lala Shri Bhagwan v. Shri Ram Chand, AIR 1965 SC 1767 (paragraph 5) and then again reiterated in the judgment of the Apex Court in the case of Union of India v. P.K. Roy, AIR 1968 SC 850.

11. Coming to the later decisions of the Apex Court, reference be had to the judgment in the case of Oriental Bank of Commerce v. R.K. Uppal, (2011) 8 SCC 695, wherein in paragraph (22), it was observed as follows:

"22. It is now fairly well settled that the requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with and so forth. In the words of Ramaswami, J. (Union of India v. P.K. Roy [AIR 1968 SC 850]) the extent and application of the

doctrine of natural justice cannot be imprisoned within the straitjacket of a rigid formula. The application of the doctrine depends upon the nature of jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."

12. On the issue of personal hearing, the Apex Court, in the case of Carborundum Universal Limited v. Central Board of Direct Taxes, 1989 Supp (2) SCC 462, in paragraph (6) observed as under:

"6. There is no procedural statutory requirement of a hearing for the disposal of an application under Section 220(2-A) of the Act. The legal position is that where a statutory provision does not exclude natural justice the requirement of affording an opportunity of being heard can be assumed, particularly when the proceedings are quasi-judicial. Exclusion, however, can either be by a clear provision or inferred from the scheme, as also the nature of power which is being exercised. We have already noticed that the power of the Board which was invoked was discretionary. It was to be exercised on the basis of the recommendation of the Commissioner and the material provided by the assessee. Personal hearing in every situation is not necessary and there can be compliance of the requirements of natural justice of hearing when a right to represent is given and the decision is made on a consideration thereof. Keeping the nature of the power invoked for exercise, the fact that the petitioner had an opportunity to represent its case in writing and the further fact that the Board had taken into consideration the report of the Commissioner in the background that it is not the allegation of the petitioner that the Commissioner's recommendations were different, we do not think in the facts of the case it can be held that the petitioner was entitled to a right of being personally heard before its petition under Section 220(2-A) of the Act was disposed of as aforesaid. The petitioner has claimed that he was entitled to a notice of the Commissioner's report and an opportunity to canvass that the contents thereof, to the extent

they went against it, were incorrect. We do not think there is scope to contend that the assessee is entitled to such a procedural safeguard. Our conclusion is, however, confined to the facts of the case and as and when the question arises in a different situation, the matter may be open to examination."

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23. In order to claim a right of hearing, one may have to demonstrate prejudice or the likelihood thereof. The scales of opportunity to be offered to the convict and the victim have to be evenly balanced. The remission to be considered is a discretion to be exercised as per some settled parameters and not as a routine exercise. The convict has only an opportunity for consideration for pre-mature release as it touches upon the concept of liberty. He cannot, as a matter of fundamental right, claim absolute liberty in as much as he is suffering incarceration under valid law. But if otherwise contingencies exist, this period of incarceration can be remitted by the Sovereign. This consideration, which is an unilateral act of discretion, is not akin to adversarial proceedings where the presence of two or more sides may require a dialogue or a hearing. The process is not of adjudication, but of consideration through discretion. Thus, a right of personal hearing either to the convict or the victim does not appear to be contemplated before the authority at the time of consideration. There is nothing to suggest from the nature of the proceedings that prejudice can be caused or likely to be caused if oral personal hearing is not extended. A physical participative process by inviting the convict or the victim for oral hearing does not appear to be envisaged in the decision making process by the authority. The authority while conducting the said exercise is neither a Court nor a Tribunal, even though the administrative power exercised by it is ordained under the Code of Criminal Procedure to be exercised in the manner provided therein. The insertion of the definition of victim in Section 2(wa) of the Code of Criminal Procedure with effect from 31.12.2009 has not suggested any change in the process of decision making for

grant of remission, recognising any right of personal hearing to a victim or the victim's family, guardian or legal heir before the authority.

19. It is clear from the above judgment that the requirements of natural justice will depend upon the circumstances of each case and it cannot be imprisoned within a straight jacket formula.

20. It will also be useful to place reliance upon the judgment of the Hon'ble Supreme Court in *M S Dharampal Satyapal Ltd., v. Deputy Commissioner of Central Excise Gauhati & Others* reported in (2015) 8 SCC 519. The relevant portions in the judgment are extracted hereunder :

19. What is the genesis behind this requirement? Why it is necessary that before an adverse action is taken against a person he is to be given notice about the proposed action and be heard in the matter? Why is it treated as inseparable and inextricable part of the doctrine of principles of natural justice?

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42. So far so good. However, an important question posed by Mr Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority. This was so held by the English Court way back in the year 1943 in *General Medical Council v. Spackman* [1943 AC 627 : (1943) 2 All ER 337 (HL)] . This Court also spoke in the same language in *Board of High School and Intermediate Education v. Chitra Srivastava* [

(1970) 1 SCC 121 : AIR 1970 SC 1039] , as is apparent from the following words: (SCC p. 123, para 7)

"7. The learned counsel for the appellant, Mr C.B. Agarwala, contends that the facts are not in dispute and it is further clear that no useful purpose would have been served if the Board had served a show-cause notice on the petitioner. He says that in view of these circumstances it was not necessary for the Board to have issued a show-cause notice. We are unable to accept this contention. Whether a duty arises in a particular case to issue a show-cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed."

43. In view of the aforesaid enunciation of law, Mr Sorabjee may also be right in his submission that it was not open for the authority to dispense with the requirement of principles of natural justice on the presumption that no prejudice is going to be caused to the appellant since the judgment in R.C. Tobacco [(2005) 7 SCC 725] had closed all the windows for the appellant.

44. At the same time, it cannot be denied that as far as courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. This was so clarified in ECIL [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] itself in the following words: (SCC p. 758, para 31)

"31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the

court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

45. Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the authority to make fresh demand of amount recoverable, only after issuing notice to show cause to the appellant. In the facts of the present case, we find that such an exercise would be totally futile having regard to the law laid down by this Court in R.C. Tobacco [(2005) 7 SCC 725] .

46. To recapitulate the events, the appellant was accorded certain benefits under the Notification dated 8-7-1999. This Notification stands nullified by Section 154 of the 2003 Act, which has been given retrospective effect. The legal consequence of the aforesaid statutory provision is that the amount with which the appellant was benefited under the aforesaid Notification becomes refundable. Even after the notice is issued, the appellant cannot take any plea to retain the said amount on any ground whatsoever as it is bound by the dicta in R.C. Tobacco [(2005) 7 SCC 725] . Likewise, even the officer who passed the order has no choice but to follow the dicta in R.C. Tobacco [(2005) 7 SCC 725] . It is important to note that as far as quantification of the amount is concerned, it is not disputed at all. In such a situation, issuance of notice would be an empty

formality and we are of the firm opinion that the case stands covered by "useless formality theory".

47. In Escorts Farms Ltd. v. Commr. [(2004) 4 SCC 281] , this Court, while reiterating the position that rules of natural justice are to be followed for doing substantial justice, held that, at the same time, it would be of no use if it amounts to completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. It was so explained in the following terms: (SCC pp. 309-10, para 64)

"64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India.

48. Therefore, on the facts of this case, we are of the opinion that non-issuance of notice before sending communication dated 23-6-2003 has not resulted in any prejudice to the appellant and it may not be feasible to direct the respondents to take fresh action after issuing notice as that would be a mere formality.

21. It is clear from the above judgment that there are cases where the adherence to the principles of natural justice will be a mere completion of a ritual of hearing without any possibility of change in the decision of the case already taken.

If no useful purpose will be served in providing such opportunity, then compliance with the principles of natural justice will become an useless formality.

22. In the present case there is a policy decision taken by the State to develop Smart Cities. This Court has already held that this policy decision does not suffer from any illegality requiring any Judicial Review. It is pursuant to this policy decision, the respondent Corporation has undertaken the project of modernization of the Erode Bus Terminal. The question is even if the petitioners are given an opportunity to put forth their objections on the decision taken by the respondent Corporation, the policy decision that has already been taken is not going to change. Therefore, it will be an useless formality to ask for an explanation on the decision taken by the respondent Corporation since such an opportunity is not going to serve any purpose. At the best it will merely be a completion of formality. Therefore, this Court does not find the decision taken by the respondent Corporation and the consequent Impugned Notices issued to the petitioners to be in violation of the principles of natural justice.

23. In the considered view of this Court, this Court does not find any illegality or infirmity in the procedure followed by the respondent Corporation while issuing the Impugned Eviction Notices to the petitioners. There is no ground to interfere with the Impugned notices issued by the respondent Corporation. However, taking into consideration the facts and circumstances of the case and in order to give sometime to the petitioners to look for an alternative place to do their business till the new Building Complex is put up by the respondent Corporation, this Court is inclined to grant time to the petitioners till 31.03.2021, to vacate and handover the Shops to the respondent Corporation. If the Shops are not vacated and handed over within the time limit fixed by this Court, it is left open to the respondent Corporation to take possession of the Shops and proceed further with the Project.

24. In the result, all the Writ Petitions are dismissed with the above directions. No costs. Consequently, all the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KP

To

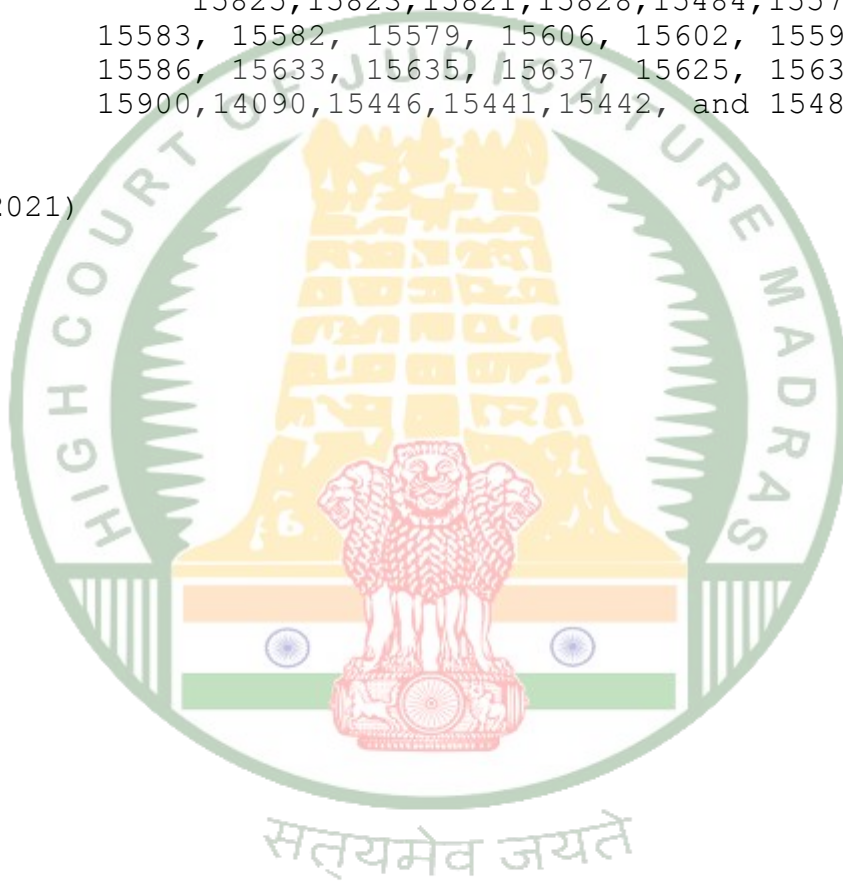
The Commissioner,
Erode Corporation,
Erode.

+30 Ccs to Mr. Srinath Sridevan, Advocate sr 43162.

+2 Ccs to M/s.A.L. Gandhimathi, Advocate sr 43057 & 43058.

WP Nos.14088,15443,15440,15487,15492,15494,15826,
15825,15823,15821,15828,15484,15576, 15573,
15583, 15582, 15579, 15606, 15602, 15598, 15592,
15586, 15633, 15635, 15637, 15625, 15630, 17287,
15900,14090,15446,15441,15442, and 15480/2020

RV(CO)
SP(08/03/2021)



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