



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.979 of 2020
and
W.M.P.(MD).No.795 of 2020

V.S.Maheswari

.. Petitioner

Vs.

The Commissioner,
Karur Municipality,
Karur.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, forbearing the respondent to demolish the petitioner's shop which is situated at shop No.210 situated in G.H.Road, Karur Town, Karur, without following the due process of law.

For Petitioner : Mr.K.Sivabalan

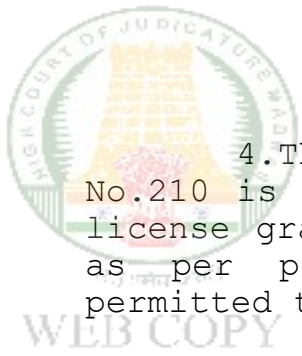
For Respondents : Mr.J.Senthil Kumaraiah

ORDER

This writ petition has been filed for issuance of Writ of Mandamus, forbearing the respondent to demolish the petitioner's shop which is situated at shop No.210 situated in G.H.Road, Karur Town, Karur, without following the due process of law.

2.Heard both sides. By consent of both parties, this writ petition is taken up for disposal at the admission stage itself.

3.The learned counsel appearing for the respondent Municipality submitted that the petitioner was given licence for running a petty shop as per the proceedings, dated 25.08.2010. Taking advantage of the licence given to the petitioner, it is stated by the learned counsel for the respondent that the petitioner has encroached an extent of 18 sq. feet of road margin. It is further stated that when the respondent issued notice to the petitioner for removal of encroachment and to vacate the property encroached by the petitioner, the petitioner has come forward with the present writ petition with ulterior motive.



4.The petitioner's contention that he is in enjoyment of shop No.210 is only as per the licence. However under the guise of the license granted to the petitioner in 2010 for running a petty shop as per proceedings, dated 25.08.2010, the petitioner is not permitted to encroach any road margin.

5.The petitioner himself has stated in his affidavit that he has filed a suit for permanent injunction restraining the Municipality from in any manner interfering with the plaintiff's peaceful possession and enjoyment in suit properties till the petitioner's right is decided under the provisions of Tamilnadu District Municipality Act. The petitioner admits further that the said suit was dismissed by the civil court. It is further stated that the appeal preferred by the petitioner in A.S.No.21 of 2016 on the file of Sub Court also came to be dismissed on 19.12.2019.

6.The petitioner has also admitted in his affidavit that he has filed another suit in O.S.No.46 of 2019 for permanent injunction restraining the defendant namely the Municipality from collecting rent as per the demand notice, dated 18.04.2018 till a reasonable rent is fixed as per the judgment of this Court. From the affidavit filed in support of the petitioner, this Court is of the view that the petitioner is in the habit of filing suit one after another to protect his unlawful enjoyment of the property of Municipality. Without semblance of right over the encroached portion, the petitioner is carrying on business without paying rent to the Municipality for the unauthorized occupation for several years. Merely, because the petitioner was given licence for running a shop, that there does not permit or authorise the petitioner to encroach a public land that too portion of public road to the inconvenience of public. Having encroached into the property, the petitioner does not even pay any rent.

7.It is in this circumstances, this writ petition is dismissed with cost of Rs.500/- payable to the Legal Services Authority, Madurai Bench of Madras High Court. The respondent is further directed to remove the encroachment within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

The Commissioner,
Karur Municipality,
Karur.

Copy to

The Officer - in - Charge,
Legal Services Authority,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.J.SENTHIL KUMARAI AH, Advocate (SR-2368[F] dated 22/01/2020)

+1 CC to Mr.K.SIVABALAN, Advocate (SR-2704[F] dated 23/01/2020)

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21.01.2020

VB(04.02.2020) 3P 5C