



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2020

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THE HONOURABLE MR.JUSTICE **N.KIRUBAKARAN**

AND

THE HONOURABLE MR.JUSTICE **B. PUGALENDHI**

W.P. (MD)No.15947 of 2020

and

W.M.P. (MD)No.13341 of 2020

S.Murugesan

... Petitioner

Vs.

1. The Commissioner,
Madurai Municipal Corporation,
Madurai.

2. The Assistant Commissioner,
Revenue (In-charge),
Madurai Municipal Corporation,
Madurai.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent relating to the undated impugned order which was served on 26.10.2020 and quash the same and consequently direct the first respondent herein to permit the petitioner to run the shop without any hindrance.

For Petitioner : Mr.S.Hammed Ismail

For Respondents : Mr.R.Murali

Standing Counsel for R1 and R2

ORDER

(Order of the Court was made by **B. PUGALENDHI, J**)

This Writ Petition is filed by the petitioner challenging the notice issued by the first respondent Corporation for removing the shop allotted in his name.

2. According to the respondents, during the inspection, it is found that the petitioner is not running the shop and a third party, namely, one Rajasekar is running the shop and therefore, notice has been issued.

3. Learned Counsel appearing for the petitioner would submit that the petitioner was running the shop from the year 2009 onwards and due to some ailments, he was bedridden and hence, he appointed

<https://hcmcs.easirajasekar.com/services/> to run the shop. He would also submit that notice has



been issued, pursuant to the interim order passed by this Court dated 02.07.2019 made in W.P.(MD)Nos.12188, 4339 and 13026 of 2019 and the same is pending and therefore, pending disposal of the writ petitions, the Municipality shall not take any action against the petitioner by way of issuing impugned notice.

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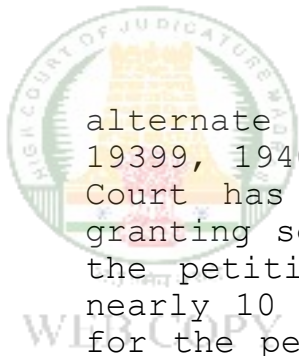
4. The case of the petitioner is that he was running the shop opposite to Maharaja Hospital, Anna Bus Stand, Madurai, from the year 2009 onwards. Admittedly, the shop was allotted on the road margin in the pavement meant for pedestrians.

5. The Madurai Municipal Corporation, by its provision under Section 259 of Madurai City Municipal Corporation Act, 1971 (hereinafter referred to as "the Act"), allowed certain shops on the road margin and with that power, these licences were issued. While exercising the power under Section 259 of the Act, the Corporation ought to have obtained no objection from the Commissioner of Police, Madurai City. The period in such licence or lease can be for a limited period of three years and any further extension shall be only after the sanction from the Government. Originally, the licence was issued in the year 2009 and an extension from 01.04.2010 to 31.03.2013 was also provided without any approval from the Government. Even the original licence has been issued without any concurrence from the Commissioner of Police. There is no extension of lease after the year 2013 and there is no order of approval from the Government for continuing to run the shop beyond that period. Therefore, the Corporation is liable to remove the shop of the petitioner either it is occupied by him or if it is sub-leased beyond the period of licence. When the licence itself has been issued without obtaining No Objection Certificate from the concerned Police, the order of allotment itself is not legally sustainable and therefore, the petitioner is not having any right to claim to run the shop in the road margin, which is meant for pedestrians.

6. We are not able to understand as to why the shops are allotted on the road margin, which is meant for pedestrians. The Corporation, while exercising its power under Section 259 of the Act, while granting these licences, ought to have exercised the same in accordance with law, by obtaining no objection from the Commissioner of Police, Madurai. The Corporation shall review all the licences issued in the road margin to ensure that the requirement of the provision under Section 259 of the Madurai Municipal Corporation Act is strictly complied with.

7. If the pavements meant for pedestrians are permitted to occupy with shops, then, we have to ratify pedestrians to use the road as pavement, which would ultimately cause inconvenience.

8. When this Court is not inclined to entertain this petition, the learned Counsel appearing for the petitioner made a request to grant breathing time to the petitioner to find out



alternate place as provided by this Court in W.P.(MD)Nos.19394, 19399, 19401, 19404 and 19407 of 2019 to similar shop owners. This Court has shown some indulgence in the above writ petitions by granting some time to remove their shops. Considering the fact that the petitioner has been permitted to occupy the road margin for nearly 10 years, this Court is inclined to grant twelve weeks time for the petitioner to find out some other alternative place and to vacate the premises within a period of twelve weeks. Accordingly, twelve weeks time is granted to the petitioner to vacate the shop in the road margin. If the petitioner fails to vacate the premises on expiry of twelve weeks, the Corporation, Madurai, shall remove the shop and recover the cost from the petitioner for removing the shop. It is also made clear that the Corporation shall not let out the place for any other person either by way of licence or lease in any manner as the pavements are only meant for pedestrians.

9. In view of the above, this Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Commissioner,
Madurai Municipal Corporation, Madurai.
- 2.The Assistant Commissioner,
Revenue(Incharge),
Madurai Municipal Corporation, Madurai.

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and W.M.P. (MD)No.13341 of 2020
11.11.2020

VR(CO)

TR(12.03.2021) 3P 3C