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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2020

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.15856 of 2020

and

W.M.P.(MD)No.13285 of 2020

M.Saravanakumar ... Petitioner

Vs.

1.The Commissioner,
Madurai Municipal Corporation,
Madurai.

2.The Assistant Commissioner,
Revenue(Incharge),
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 R.1 and R.2

ORDER

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

This Writ Petition is filed challenging the notice issued by the first respondent Corporation for removing the shop allotted in the name of one Palani in a road margin on payment near Aavin booth at Anna bus stand, Madurai.

2. Learned Counsel appearing for the petitioner would submit that that there are 512 similarly placed shops existing in Madurai Corporation, however, the Corporation has chosen to issue notice only as against the petitioner and has not taken any action as against the similarly placed persons. 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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3. This Court, in an earlier occasion, in W.P.(MD)Nos.12188, 4339 and 13026 of 2019, dated 02.07.2019, in paragraph No.7, has elaborately discussed the manner in which the Corporation granted lease or licence to the shops in the road margins by considering the provisions under Section 259 of the Madurai City Municipal Corporation and the same is extracted hereunder:

> *"7. Incidental question arises for consideration is as to the rights of Madurai Corporation to allot bunk shops on the road margins de hors permission/authorisation and it is relevant to extract hereunder Section 259 of Madurai City Municipal Corporation Act, 1971:*
>
> ***"259. Power to allow certain projections and erections.*** *- (1)*
>
> *The Commissioner may grant a licence subject to such conditions and restrictions as he may think fit to the owner or occupier of any premises-*
>
> *(a) to put up or continue to have verandas, balconies,sunshades, weather frames and the like, to project over a street; or*
>
> *(b) in streets in which the construction of arcades has been sanctioned by the council, to put up or continue to have an arcade; or*
>
> *(c) to construct or to continue to have any step or drain covering necessary for access to the premises.*
>
> *(2) With the concurrence of the Superintendent of Police, Madurai or any officer authorised by him in this behalf, the Commissioner may grant a licence subject to such conditions and restrictions as he may think fit, for any temporary construction in any street or in any public place the control of which is vested in the corporation.*
>
> *(3) No licence shall be granted under sub-section (1) if the projection or construction is likely to be injurious to health or cause public inconvenience or otherwise materially interfere or result in material interference with the use of the road as such.*
>
> *(4) On the expiry of any period for which a licence has been granted under this section or after due communication of an order of suspension or revocation of such licence, the Commissioner, may, without notice, cause any projection or construction put up under sub-section (1) or sub-section (2) to be removed, and the cost of so doing shall be recoverable in the manner provided in section 479 from the person to whom the licence was granted.*

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(5) The council shall have power to lease road sides and street margins vested in the corporation for occupation on such terms and conditions and for such period as it may deem fit: Provided that no such lease for any term exceeding three years shall be valid unless the sanction of the Government therefor shall have been first obtained: Provided further that the Government consider that any occupation of a road side or street margin under a lease granted by the council under this section is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road side or street margin as such, the Government may direct the council to cancel or modify the lease, and the council shall, thereupon, cancel or modify the lease accordingly."

4. It is in fact, this Court, taking note of the provisions under Section 259 of the Madurai City Municipal Corporation Act, 1971 and the manner in which licence had been granted and had been extended periodically without getting permission as contemplated under Section 259 of the Act, has directed the Madurai Corporation to furnish the details as follows:

"(a)Details of licensees with Name, Address, Aadhar Card, Voter Identity Card, Driving Licence, Ration Card;

(b)Period of licence;

(c)Extension of period of licence for how many times;

(d)Original licence amount and the licence amount being paid by the licensees;

(e)Purpose for which licence as well as trade licence was granted and the present purpose that is being used by the licensees;

(f)Whether there is any sub-letting of the licence granted to the licensees?

(g)Whether the road side shops are abutting or encroaching upon the road margins of National/State Highways and whether there are encroachments on the part of the bunk shops owners either in front of or rear side or side ways of the bunk shops?

(h)If food articles are sold or dispensed with, whether the said dispensation/sale/preparation of food articles are in conformity with fssai standards?

(i)Manner in which the electricity connections have been obtained;

(j)Availability of any other amenities other than the one permitted by Madurai Corporation;

(k)Whether the areas in and around the bunk shops are maintained in neat, tidy and sanitary condition; and

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(1)Lastly, if not the least, what is the difficulty or inconvenience caused to the pedestrians of road users on account of location of the said bunk shops.
16. The said status report with supporting documents and photographs shall be submitted to this Court on 29.07.2019.
*Call on **29.07.2019**. Notice through Court as well as privately to the newly impleaded respondents by then."*

5. After this order only, the Corporation has acted upon and has issued certain notices as against the shop owners. Some of the shop owners, similarly placed writ petitioner, challenging the said notices, have filed W.P.(MD)Nos.19394, 19399, 19401, 19404 and 19407 of 2019 and the same were disposed of by order dated 06.09.2019 confirming the orders of this Court made in W.P.(MD)Nos.12188, 4339 and 13026 of 2019, dated 02.07.2019 by holding that the petitioners are not having any right to occupy the platforms and road margins which are meant for pedestrians and there is neither legal right nor moral obligation to use the said road side margins/storm/water drainage platforms for location of bunk shops and it *prima facie* appears to be the public interest.

6. Now this notice has been issued pursuant to the orders passed by this Court in W.P.(MD)Nos.12188, 4339 and 13026 of 2019, dated 02.07.2019 and therefore, this Court is not inclined to entertain this Writ Petition. Moreover, the lease in this case has been allotted to one Palani in the year 2010 from 01.04.2010 to 31.03.2013 and there is no order for extending the lease period. Further, the said Palani, who is a original licensee, has not approached this Court by filing any writ petition and the present Writ Petition is filed by the writ petitioner, who is not a licensee from the Corporation. Therefore, this Court does not find any merit in this writ petition.

7. At this juncture, the learned Counsel appearing for the petitioner sought indulgence of this Court to grant some time to find out alternate place as granted by this Court in W.P.(MD) Nos.19394, 19399, 19401, 19404 and 19407 of 2019, wherein this Court has shown some indulgence by granting six weeks time to relocate their shops.

8. Considering the above facts and circumstances of the case, this Court deems it fit to grant six weeks time for the petitioner to find out the alternate place. Accordingly, six weeks time is granted to the petitioner to find the alternate place and relocate his shop and vacate the present premises. It is also made clear that the Corporation should not let out the third party either by way of licence or lease in any manner as the pavements are only meant for pedestrians.

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9. With the above observations, this Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SSL

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.

+1 CC to Mr.R. MURALI, Advocate (SR-21873[F] dated 11/11/2020)

W.P.(MD)No.15856 of 2020
and
W.M.P.(MD)No.13285 of 2020
10.11.2020

VB (04.12.2020) 5P 4C

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