



WEB COPY

W.P(MD)No.7718 of 2021

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 09.04.2021**

**CORAM:**

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM**

**and**

**THE HONOURABLE MRS.JUSTICE S.ANANTHI**

**W.P(MD)No.7718 of 2021**

**and**

**W.M.P(MD)No.5877 of 2021**

V.O.C Market Kaikani Viyabarigal Sangam,

Rep. By its President,

A.Veluchamy.

... Petitioner

Vs.

1.The State of Tamil Nadu,

Rep. By the Principal Secretary,

Department of Municipal Administration and Water Supply,

Fort St. George,

Chennai.

2.The Tuticorin Corporation,

Rep. By its Commissioner,

Tuticorin District.

3.The Managing Director,

Thoothukudi Smart City Limited,

No.113, Palayamkottai Road,

Tuticorin District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the respondents 1 to 3 from evicting the members of petitioner's Association from their respective shops at VOC market, Tuticorin, Tuticorin District without following the due process of law and without providing alternative shops until the completion of smart city project.

For Petitioner : Mr.T.Lajapathi Roy

For R - 1 : Mr.K.P.Krishna Dass  
Special Government Pleader

For R - 2 : Mr.S.Saji Bino  
Standing Counsel



**ORDER**

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

We have heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner, Mr.K.P.Krishna Dass, learned Special Government Pleader, who accepts notice on behalf of the first respondent and Mr.S.Saji Bino, learned counsel, who accepts notice on behalf of the second respondent.

2.In the light of the orders we propose to pass in this Writ Petition, notice to the third respondent is dispensed with.

3.This Writ Petition has been filed by an Association called V.O.C Market Kaikani Viyabarigal Sangam, represented by its President, Thiru.A.Veluchamy.

4.The prayer sought for in the Writ Petition is to forbear the respondents from evicting the members of the petitioner's Association, who are small traders, running shops in the said market. The cause of action for filing the Writ Petition is on account of smart city project being implemented in Tuticorin.

5.Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner would submit that apart from the fact that the members of the petitioner's Association are small traders and if they are thrown out, their livelihood would be greatly affected, there are two other submissions made by the learned counsel for the petitioner-Association.

6.Firstly on the ground that the site where the market is presently located falls within 500 meters from the Coastal Regulation Zone in terms of the notification issued by the Government. Secondly, it is contended that unless and until the Government has granted approval, the market cannot be closed.

7.The third submission, which is not a legal submission, but the learned counsel would submit that the existing market is in good condition and therefore, it should be allowed to continue as it is and the second respondent/Corporation should ensure that the garbage is cleared periodically.

8.Mr.S.Saji Bino, learned Standing Counsel appearing for the second respondent/Corporation, on instructions from the Assistant Commissioner, Tuticorin Corporation, who is present in Court today, submitted that a meeting was convened by the Commissioner along with the traders and the office bearers and others participated and all of them unanimously agreed that they will be shifted to an alternative place adjacent to the present



market to eke out their livelihood.

9. With regard to the contention of the learned counsel appearing for the petitioner that the site is located within the prohibited distance under the Coastal Regulation Zone, it is emphatically submitted that the site does not fall within the objectionable limit of the Coastal Regulation Zone. Furthermore, it is submitted that the smart city project is in progress and there are various directions issued from time to time and that the project should be allowed to proceed.

10. Mr. S. Saji Bino, learned counsel appearing for the second respondent/Corporation further submitted that one S. Selvi, who was the wife of the licensee, had filed a Writ Petition before this Court in W.P(MD)No.8527 of 2020, which was disposed of by order dated 25.08.2020. Aggrieved by the same, the Tuticorin Corporation has filed W.A(MD)No.1024 of 2020, which appeal was disposed of issuing the following directions:-

*"3. Learned Additional Advocate General appearing for the appellants, placing reliance upon the instructions of Commissioner and Special Officer, submitted that the respondent has not paid the amount due to the Corporation for a sum of Rs.28,20,236/- by misinterpreting the order passed by the learned Single Judge and for the implementation of the Smart City Project, administrative sanction has already been issued followed by technical sanction. Thereafter, a work order has already been issued. The period of the project is one year, during which time project has to be completed and Closure Notice has been issued to the respondent on 22.03.2021 to handover the possession for the implementation of the project.*

*4. Mr. R. Sundar, learned counsel appearing for the respondent submitted that the amount of Rs.28,20,236/- could not be paid, as it was not received. The respondent is ready and willing to pay the said amount. Till the actual vacating of the shops take place, the respondent may be permitted to continue in tune with the order of the learned Single Judge.*

*5. Learned Additional Advocate General appearing for the appellants submitted that due notice has been issued to the other shop owners also and it would be appropriate to direct the respondent to vacate and handover the charge on or before 10.04.2021. The shop owners are expected to handover the shops by that time as due intimations have already been given.*



6. In view of the above, the Writ Appeal stands disposed of, directing the respondent to pay a sum of Rs.28,20,236/- towards the arrears of rent within two weeks from the date of receipt of a copy of this order. The respondent shall hand over the possession of V.O.C. Market on 10.04.2021. For the payment to be made after quantification of the amount of Rs.28,20,236/- till handing over the possession, payment notice has to be issued within two weeks by the appellants and on receipt of the same, the aforesaid amount will be paid by the respondent within two weeks, therefrom. Consequently, connected Miscellaneous Petitions are closed. No costs."

11. It is submitted by the learned counsel for the second respondent/Corporation that in terms of the order passed by the Hon'ble Division Bench, the said licensee was required to hand over possession of V.O.C market on 10.04.2021 and the present litigation is a proxi-litigation set out by the traders. If the licensee wife has already come before this Court and an order has been passed to vacate and hand over possession on 10.04.2021, that order would bind the licensee and consequently would have a binding effect on the person from whom she was collecting licence. Therefore, the present Writ Petition cannot be taken as a second round of litigation and further, the traders should not feel inconvenience as well as the public. Therefore, we grant time upto 7<sup>th</sup> May, 2021 and the traders are excepted to vacate and hand over the possession well before the said date.

12. Considering the submissions made on either side, we are of the view that if the smart city project is implemented, undoubtedly, would bring a lot of improvement to the city, which will result in better facilities for Tuticorin District where the project is implemented. At the same time, it should be ensured that the livelihood of the small traders also be safe-guarded.

13. Insofar as the second aspect is concerned, we find that discussions have been held by the Commissioner, in which, the traders have agreed to shift to an alternative site, which is near to the existing market, which has to be developed for the smart city project. Therefore, the Writ Petition is disposed of by directing the second respondent/Corporation to provide adequate facilities in the alternate site and grant reasonable time to the members to shift and they shall shift not later than 7<sup>th</sup> May, 2021. We make it clear that it is only a time limit given by the Court and other endeavour should be taken by the petitioner-Association to ensure that the members have been peacefully placed in the new location.



14.Further, the learned counsel appearing for the second respondent/Corporation submitted that the individual traders should not come forward with such similar plea. We cannot make any such general observation, that we can observe is that this order will bind and cover the market in question and licencees who are carrying on business in the said market. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

**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 Principal Secretary to Govt. of Tamil Nadu,  
Department of Municipal Administration and Water Supply,  
Fort St. George, Chennai.

2.The Commissioner,  
Tuticorin Corporation,  
Tuticorin District.

3.The Managing Director,  
Thoothukudi Smart City Limited,  
No.113, Palayamkottai Road,  
Tuticorin District.

+1 CC to M/s.SPL GP ( SR-15845[F] dated 15/04/2021 )

+1 CC to M/s.T.LAJAPATHI ROY, Advocate ( SR-16008[F] dated 16/04/2021 )

**ORDER MADE IN  
W.P (MD) No.7718 of 2021  
09.04.2021**

ns (CO)

TR(26.04.2021) 5P 6C