



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

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W.A. (MD)Nos.585 & 604 to 613 of 2018 and W.P. (MD)Nos.20166 & 20192 of 2018

and

C.M.P. (MD)Nos.3294, 3672 and 3371 and 3372 and 3373 and 3374, 3375 and 3376, 3377 and 3378, 3379 and 3380, 3381 and 3382, 3383 and 3384, 3385 and 3386, 3387 and 3388, 3389 of 2018 and W.M.P. (MD)Nos.17952 and 17947 of 2018

E.P.John Prathap, ... Appellant/Petitioner in WA(MD). 585 of 2018
A.M.Hyder Ali ... Appellant/Petitioner in WA(MD). 604 of 2018
K.M.Fathugur Raffani ... Appellant/Petitioner in WA(MD). 605 of 2018
S.H.Badhurudheen ... Appellant/Petitioner in WA(MD). 606 of 2018
K.A.M.A.K.N.Sankar ... Appellant/Petitioner in WA(MD). 607 of 2018
A.Samsudheen ... Appellant/Petitioner in WA(MD). 608 of 2018
M.Jerin Golda, ... Appellant/Petitioner in WA(MD). 609 of 2018
A.Sarufutheen, ... Appellant/Petitioner in WA(MD). 610 of 2018
C.Durai, ... Appellant/Petitioner in WA(MD). 611 of 2018
F.Mohamed Riswan, ... Appellant/Petitioner in WA(MD). 612 of 2018
M.Suseela, ... Appellant/Petitioner in WA(MD). 613 of 2018
D.Mahesh ... Appellant/Petitioner in WP(MD). 20166 of 2018
D. Chellam, ... Appellant/Petitioner in WP(MD). 20192 of 2018

- Vs. -

1. The State of Tamilnadu,
Rep By, its Secretary,
Department of Municipal Administration and Water Supply,
Fort St. George, Chennai-600 009.

2. The Commissioner of Municipal Administration,
Municipal Administration Department, Ezhilagam,
Chepauk, Chennai - 600005.

... Respondents /

Respondents 1 & 2 in WA(MD)585 of 2018

3. The Commissioner,
Nagercoil Municipality, Nagercoil,
Kanyakumari District

... Respondent/Respondent 3 in
WA(MD). 585 of 2018 and Respondent
in WA(MD)Nos.604 to 613 of 2018



The Commissioner /Special Officer
Nagercoil Municipality
Nagercoil-01

... Respondent/Respondent in
WP (MD)No.20166 & 20192 of 2018

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Common Prayer in WA(MD)Nos.585 and 604 to 613 of 2018:

Appeals filed under Clause 15 of the Letters patent against the order passed by this Court in W.P.(MD).No.1884 dated 09.02.2018 and WP(MD)Nos.1541, 1542, 1544, 1545, 1546, 1547, 1548, 1549, 1558 and 1559 of 2018, dated 16.02.2018 respectively.

Prayer in WP(MD). 20166 & 20192 2018 :

Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondent to restore to the petitioner the possession of the site in which, Shop No.11 and 18 was situated at Christopher Bus Stand, Vadasery, Nagercoil, forth with, or such other time as this Hon'ble Court deem fit and proper, so as to enable the petitioner to put up his own superstructure thereon on the terms of lease as may be directed to be fixed by this Hon'ble court.

Prayer in WP(MD). 1884 of 2018 :

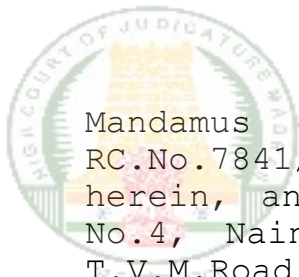
Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus directing the respondents to forbear from evicting or disturbing the petitioner from peaceable possession of his textiles store building namely E.P.N. Stores located in Door No.22/463, Vadasery, Agasteeswaram Taluk, Nagercoil, Kanyakumarri District.

Prayer in WP(MD). 1541 of 2018 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the notice in R.C.No.7841/A13/2017 dated 17.01.2018 on the file of the respondent herein, and to quash the same, in so far as the petitioner Shop No.3, Nainar Commercial Complex, Ground Floor, N.M.C. Building, T.V.M.Road, Vadasery, Nagercoil - 629 003, Kanyakumari District is concerned, and direct the respondent to renew the lease in respect of Shop No.3, Nainar Commercial Complex, Ground Floor, N.M.C. Building T.V.M.Road,Vadasery, Nagercoil - 629 003, Kanyakumari District in terms of G.O.No.92, department of Municipal Administration and Drinking Water Supply (N.N.4) dated 03.07.2007 with effect from 01.04.2018 in favour of the petitioner upon such usual terms and conditions within a time frame that may be stipulated by this Hon'ble Court.

Prayer in WP(MD). 1542 of 2018 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified



Mandamus calling for the records relating to the notice in RC.No.7841/A13/2017 dated 17.01.2018 on the file of the respondent herein, and to quash the same, in so far as the petitioner shop No.4, Nainar Commercial Complex, Ground Floor, N.M.C. Building, T.V.M.Road, Vadasery, Nagercoil - 629 003, Kanyakumari District, is concerned, and direct the respondent to renew the lease in respect Shop No.4, Nainar Commercial Complex, Ground Floor, N.M.C.Building, T.V.M.Road, Vadasery, Nagercoil - 629 003. Kanyakumari District in terms of G.O.No.92, Department of Municipal Administration and Drinking Water Supply (N.N.4) dated 03.07.2007 with effect from 01.04.2018 in favour of the petitioner upon such usual terms and conditions within a time frame that may be stipulated by this Hon'ble Court.

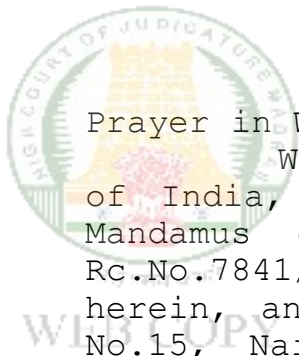
Prayer in WP(MD). 1544 of 2018 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the notice in Rc.No.7841/A13/2017 dated 17.01.2018 on the file of the respondent herein, and to quash the same, in so far as the petitioner Shop No.8, Nainar Commercial Complex, Ground Floor, N.M.C.Building, T.V.M.Road, Vadasery, Nagercoil - 629 003, Kanyakumari District in concerned, and direct the respondent to renew the lease in respect of Shop No.8, Nainar Commercial Complex, Ground Floor, N.M.C.Building, T.V.M.Road

Vadasery, Nagercoil - 629 003. Kanyakumari District in terms of G.O.No.92, Department of Municipal Administration and Drinking Water Supply (N.N.4) dated 03.07.2007 with effect from 01.04.2018 in favour of the petitioner upon such usual terms and conditions within a time frame that may be stipulated by this Hon'ble Court.

Prayer in WP(MD). 1545 of 2018 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the notice in R.C.No.7841/A13/2017 dated 17.01.2018 on the file of the respondent herein, and to quash the same, in so far as the petitioner Shop Nos.11 & 12, Nainar Commercial Complex, Ground Floor, N.M.C. Building, T.V.M.Road, Vadasery, Nagercoil - 629 003, Kanyakumari District is concerned, and direct the respondent to renew the lease in respect of Shop Nos.11 & 12, Nainar Commercial Complex, Ground Floor, N.M.C Building T.V.M.Road, Vadasery, Nagercoil - 629 003. Kanyakumari District in terms of G.O.No.92, Department of Municipal Administration and Drinking Water Supply (N.N.4) dated 03.07.2007 with effect from 01.04.2018 in favour of the petitioner upon such usual terms and conditions within a time frame that may be stipulated by this Hon'ble Court.



Prayer in WP(MD). 1546 of 2018 :

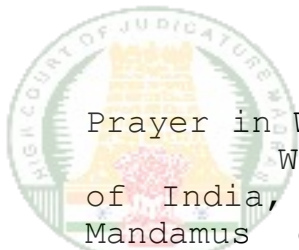
Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the notice in Rc.No.7841/A13/2017 dated 17.01.2018 on the file of the respondent herein, and to quash the same, in so far as the petitioner Shop No.15, Nainar Commercial Complex, Ground Floor, N.M.C.Building, T.V.M.Road, Vadasery, Nagercoil - 629 003, Kanyakumari District, in concerned, and direct the respondent to renew the lease in respect of Shop No.15, Nainar Commercial Complex, Ground Floor, N.M.C.Building, T.V.M.Road Vadasery, Nagercoil - 629 003. Kanyakumari District in terms of G.O.No.92, Department of Municipal Administration and Drinking Water Supply (N.N.4) dated 03.07.2007 with effect from 01.04.2018 in favour of the petitioner upon such usual terms and conditions within a time frame that may be stipulated by this Hon'ble Court.

Prayer in WP(MD). 1547 of 2018 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the notice in R.C.No.7841/A13/2017 dated 17.01.2018 on the file of the respondent herein, and to quash the same, in so far as the petitioner Shop No.2, Nainar Commercial Complex, Ground Floor, N.M.C. Building, T.V.M.Road, Vadasery, Nagercoil - 629 003, Kanyakumari District is concerned, and direct the respondent to renew the lease in respect of Shop No.2, Nainar Commercial Complex, Ground Floor, N.M.C. Building, T.V.M.Road, Vadasery, Nagercoil - 629 003. Kanyakumari District in terms of G.O.No.92, Department of Municipal Administration and Drinking Water Supply (N.N.4) dated 03.07.2007 with effect from 01.04.2018 in favour of the petitioner upon such usual terms and conditions within a time frame that may be stipulated by this Hon'ble Court.

Prayer in WP(MD). 1548 of 2018 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the notice in Rc.No.7841/A13/2017 dated 17.01.2018 on the file of the respondent herein, and to quash the same, in so far as the petitioner shop No.22/461, in front of Market, Balamore Road, Vadasery, Nagercoil - 629 001, Kanyakumari District, is concerned and direct the respondent to renew the lease in respect of Shop No.22/461, in front of Market, Balamore Road, Vadser, Nagercoil - 629 001, Kanyakumari District in terms of G.O.No.92, Department of Municipal Administration and Drinking Water Supply (N.N.4) dated 03.07.2007 with effect from 01.04.2018 in favour of the petitioner upon such usual terms and conditions within a time frame that may be stipulated by this Hon'ble Court.



Prayer in WP(MD). 1549 of 2018 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the notice in R.C.No.7841/A13/2017 dated 17.01.2018 on the file of the respondent herein, and to quash the same, in so far as the petitioner Shop No.9, Nainar Commercial Complex, Ground Floor, N.M.C. Building, T.V.M.Road, Vadasery, Nagercoil - 629 003, Kanyakumari District is concerned, and direct the respondent to renew the lease in respect of Shop No.9, Nainar Commercial Complex, Ground Floor, N.M.C. Building T.V.M.Road, Vadasery, Nagercoil - 629 003. Kanyakumari District in terms of G.O.No.92, Department of Municipal Administration and Drinking Water Supply (N.N.4) dated 03.07.2007 with effect from 01.04.2018 in favour of the petitioner upon such usual terms and conditions within a time frame that may be stipulated by this Hon'ble Court.

Prayer in WP(MD). 1558 of 2018 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the notice in R.C.No.7841/A13/2017 dated 17.01.2018 on the file of the respondent herein, and to quash the same, in so far as the petitioner Shop No.6, Nainar Commercial Complex, Ground Floor, N.M.C. Building, T.V.M.Road, Vadasery, Nagercoil - 629 003, Kanyakumari District is concerned, and direct the respondent to renew the lease in respect of Shop No.6, Nainar Commercial Complex, Ground Floor, N.M.C. Building T.V.M. Road, Vadasery, Nagercoil - 629 003. Kanyakumari District in terms of G.O.No.92, Department of Municipal Administration and Drinking Water Supply (N.N.4) dated 03.07.2007 with effect from 01.04.2018 in favour of the petitioner upon such usual terms and conditions within a time frame that may be stipulated by this Hon'ble Court.

Prayer in WP(MD). 1559 of 2018 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the notice in R.C.No.7841/A13/2017 dated 17.01.2018 on the file of the respondent herein, and to quash the same, in so far as the petitioner Shop No.7, Nainar Commercial Complex, Ground Floor, N.M.C. Building, T.V.M.Road, Vadasery, Nagercoil - 629 003, Kanyakumari District is concerned, and direct the respondent to renew the lease in respect of Shop No.7, Nainar Commercial Complex, Ground Floor, N.M.C. Building T.V.M.Road, Vadasery, Nagercoil - 629 003. Kanyakumari District in terms of G.O.No.92, Department of Municipal Administration and Drinking Water Supply (N.N.4) dated 03.07.2007 with effect from 01.04.2018 in favour of the petitioner upon such usual terms and conditions within a time frame that may be stipulated by this Hon'ble Court.



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For Petitioner : Mr.S.Subbiah
Senior Counsel
for Mr.G.Aravinthan in all Cases

For R1 and R2 : Mr.K.P.Krishnadoss
Special Government Pleader
for R1 & 2 in WA(MD).585 of 2018

: Mr.P.Athimoolapandian
Standing Counsel for
Nagercoil Municipality in
Respondent 3 in WA(MD).585 of 2018
and Respondent in
WA(MD).604 to 613 to 2018 &
in WA(MD).20166 & 20192 of 2018

* * * * *

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

All these cases arise out of one and the same issue and therefore, they are accordingly disposed of by this common judgment.

2.The appellants are the erstwhile Licensees of the respondent Municipality. They had the benefit of Government Order, passed in G.O.(Ms)No.92, Municipal Administration and Drinking Water Supply (N.N.4) Department, dated 03.07.2007. They have been asked to vacate on the premise that the building has become dilapidated. Once again, seeking umbrage under the above said Government Order, the appellants have approached this Court. The learned Single Judge dismissed the Writ Petitions *inter alia* holding that the building is being dilapidated, the request is not feasible for consideration.

3.In similar cases in W.P.(MD)Nos.13391 of 2017 etc. batch, an order has been passed by this Court, against which, the respondent Municipality has filed appeals in W.A.(MD)Nos.1498 of 2017 etc. batch, and the Division Bench of this Court, vide judgment dated 08.03.2018, set aside the order of the learned Single Judge and dismissed the writ petitions. As against the same, S.L.Ps. have been filed in S.L.P.Nos.6781 - 6790 of 2018. By order dated 15.03.2018, the respondents though not represented, were directed to give possession of one shop subject to the terms and conditions fixed by them.

4.The learned Senior Counsel appearing for the appellants submitted that the appellants are entitled to the benefit of the said order. There is no indication with respect to the proposed reconstruction, though substantially demolished. Under those circumstances, appropriate order will have to be passed.



5.The learned Standing Counsel appearing for the respondent Municipality submitted that the Licensees were in possession of 262 shops for more than three decades. Though their possession in the nature of Licence, it was extended from time to time. New shops have already been constructed and out of 262 shops, 105 of them are still vacant. If the appellants want, the respondent Municipality is willing to consider for granting Licence to them subject to fulfilment of terms and conditions imposed. Insofar as the decision made to construct a new Complex, which has been shelved as even the Shops constructed recently, there are vacancies as aforesaid. Therefore, if there is any further construction, it will be neither public interest nor make sense economically and hence, the Writ Appeals will have to be dismissed.

6.We do not find any merits in these Writ Appeals. The appellants have been divested by their possession. The building in question has been demolished substantially. What they have been given is only Licence. Therefore, it does not carry any vested right. The Hon'ble Apex Court has passed the order at the admission stage without hearing the contesting respondent by exercising the power under Article 142 of the Constitution of India. Therefore, it does not a binding precedent. Even otherwise, the said order can only be construed to mean that a Shop can be allotted out of 262 shops.

7.The learned Standing Counsel appearing for the respondent Municipality has fairly stated that the appellants would be considered for the remaining shops.

8.The learned Senior Counsel appearing for the appellants submitted that a representation will be made in this regard.

9.In such view of the matter, while dismissing the Writ Appeals and the Writ Petitions, we permit the appellants to give a fresh representation within a period of two weeks from the date of receipt of a copy of this judgment, seeking allotment out of the 105 vacant shops. On receipt of the same, the respondent Municipality may consider them, particularly, by taking note of the fact that if the shops are lying vacant, nobody would be benefitted. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

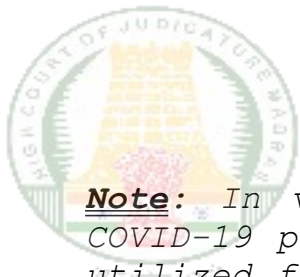
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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



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 Secretary to Government, State of Tamil Nadu,
Department of Municipal Administration and
Water Supply,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Municipal Administration,
Municipal Administration Department,
Ezhilagam, Chepauk,
Chennai - 600 005.
- 3.The Commissioner,
Nagercoil Municipality,
Nagercoil, Kanyakumari District.
- 4.The Commissioner/Special Officer,
Nagercoil Municipality,
Nagercoil, Kanyakumari District.

+1 CC to M/s.GP (SR-2392[F] dated 29/01/2021)

+1 CC to M/s.G.ARAVINTHAN, Advocate (SR-2459[F] dated 29/01/2021)

W.A. (MD) Nos.585 & 604 to 613 of 2018 and W.P. (MD) Nos.20166 & 20192 of 2018

SRK(CO)

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