



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2021

CORAM :

**THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE
AND**

THE HON'BLE MR.JUSTICE M.DURAISWAMY

WEB COPY

W.P. (MD) No.19052 of 2021

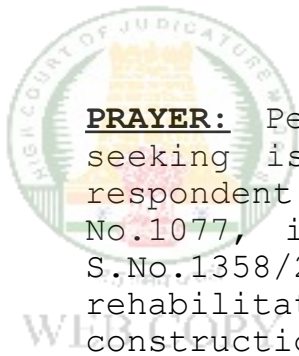
- 1.A.Mohammed Ismail
- 2.M.Mydeen
- 3.M.Shakul Kamidu
- 4.R.Bakiam
- 5.P.Murugan
- 6.Ibrahimsha
- 7.M.Mydeen Abdul Kadar
- 8.M.Akbarali
- 9.M.Masthan
- 10.M.Masthan
- 11.P.Velusamy
- 12.N.Balasubramanian
- 13.M.Mathappa
- 14.S.Balakrishnan
- 15.V.Arul Elango
- 16.A.GopalaKrishnan
- 17.Valarmathi
- 18.K.Karupasamy

.. Petitioner

Vs

- 1.The State of Tamil Nadu,
represented by the Principal Secretary,
Department of Municipal Administration and Water Supply,
Fort St.George, Chennai.
- 2.The Tirunelveli Corporation,
represented by its Commissioner,
Tirunelveli District.
- 3.The Managing Director,
O/o.The Managing Director,
Tirunelveli Smart City Limited,
Corporation Building,
S.N.High Road,
Tirunelveli District.
- 4.The Director of Town and Country Planning,
Office of the Director of Town and Country Planning,
807, Anna Salai,
Chennai -02.

.. Respondents



PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the second respondent to provide the alternate shops to the Petitioner's Survey No.1077, in Jawahar Thidal and in Erumaikida Ground situated in S.No.1358/2, Palayamkottai, Tirunelveli District and rehabilitate/reinduct the Petitioners after the completion of the construction in the Mahatma Gandhi Market Smart City Project as per order dated 1.9.2021 of this Court in W.P(MD)Nos.2263, 2265, 2268, 2270, 2277, 3256, 3265, 3270, 3276, 3277, 3281, 3283, 3286, 3287, 3300, 3303, 3313 of 2021 within the time frame stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.P.Thilakkumar
1 and 4 Govt.Pleader
For Respondents : Mr.Aayiram K.Selvakumar
2 and 3

ORDER

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

The present petition is a sequel to a batch of petitions led by W.P.(MD)No.2263 of 2021 which was disposed of by an order of September 1, 2021.

2.The challenge in the previous set of petitions pertained to shops at the Mahatma Gandhi Market, Palayamkottai in Tirunelveli District as the market was being renovated and the shopkeepers thereat faced temporary dispossession during the period that the construction work would be carried out.

3.The market had been decided to be reconstructed under the smart city scheme at a cost of Rs.40 Crore. The relevant Municipal Corporation has provided temporary alternate accommodation to the lessees of the shops at Mahatma Gandhi Market. Accordingly, the writ petitions were disposed of without interfering with the construction work taken up at the market and by noticing that alternative accommodation on temporary basis had been arranged for the existing lessees of the shop-rooms.

4.The present petition is for the immediate allocation of the temporary accommodation at the alternative site.

5.Mr.Aayiram K.Selvakumar, learned Counsel, takes notice on behalf of the Tirunelveli Corporation and submits that the Corporation does not contest the first part of the prayer by which the petitioners seek the temporary alternative accommodation. However, the Corporation says that no promise can be made to provide future accommodation at the Mahatma Gandhi Market upon its reconstruction since that would be subject to the tender that may be floated or any scheme that may be devised for that purpose.



6.Mr.P.Thilak Kumar, learned Government Pleader, takes notice on behalf of respondent Nos.1 and 4.

7.The Tirunelveli Corporation also points out a recent order of the Supreme Court passed on October 22, 2021 in a batch of Special Leave Petitions being Nos.28623-28641 of 2019. The relevant order records as follows:

"We have heard learned counsel for the respective parties at length. As such, we see no reason to interfere with the impugned common judgment and order passed by the High Court. Hence the present Special Leave Petitions stand dismissed. However, it is observed that in case the respective original writ petitioner(s) as and when the shops are put to auction and they are found to be equal to the other participants/applicants with respect to the newly constructed building which has been constructed in the building occupied by the petitioners, they shall be given the priority."

8.Notwithstanding the preferential allotment at the reconstructed Mahatma Gandhi Market that is sought by the petitioners, it is evident that the Supreme Court order only provided that if offers were invited for allotment of such shops, the existing shop-owners or lessees of the shop-rooms would have to be outbid in the sense that if the same price was quoted for one shop-room and one of the quotations was from the existing lessee, the existing lessee would get preference. The Supreme Court order cannot be seen to imply that there would be any other form of preference that the petitioners herein as the present lessees would be entitled to.

9.Accordingly, W.P.(MD)No.19052 of 2021 is disposed of by providing as follows:

(i) The existing shop-owners or lessees of shop-rooms at the Mahatma Gandhi Market will be relocated to the proposed alternative site within a period of six weeks from date. In other words, possession of the alternative space should be made over to the individual lessees within a period of six weeks from date;

(ii) The temporary accommodation will be only till the tenure of the respective leases in respect of the lessees. That is to say, the temporary accommodation will be coterminous with the expiry of the lease in respect of the relevant shop-rooms at the Mahatma Gandhi Market. The shop-owners or lessees of shop-rooms will have no right of extension;



(iii) In respect of the reconstructed Mahatma Gandhi Market, bids may be invited or some other form of scheme may be devised for allocation of shop space thereat. In the event bids are invited and the existing lessees bid amounts for individual shop-rooms, the existing lessees will have to be outbid or, if they are not outbid, if two bidders bid the same level and one of them is an existing lessee, the existing lessee will get preference between the two.

10. It is recorded that it has been submitted on behalf of the Tirunelveli Corporation that the reconstruction of the Mahatma Gandhi Market is expected to be completed by the end of the year 2022.

There will be no order as to costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

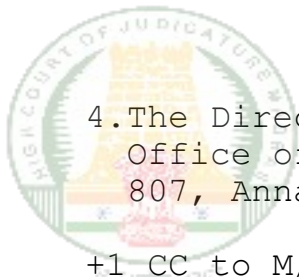
Sub Assistant Registrar(CS)

MR/RM

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,
Government of Tamil Nadu,
Department of Municipal Administration and Water Supply,
Fort St. George,
Chennai.
2. The Commissioner,
Tirunelveli Corporation,
Tirunelveli District.
3. The Managing Director,
O/o. The Managing Director,
Tirunelveli Smart City Limited,
Corporation Building,
S.N. High Road,
Tirunelveli District.



4.The Director of Town and Country Planning,
Office of the Director of Town and Country Planning,
807, Anna Salai, Chennai -02.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-32799[F]
dated 27/10/2021)

+1 CC to M/s.SPL.GP (SR-32825[F] dated 27/10/2021)

ORDER MADE IN
W.P. (MD) No. 19052 of 2021
26.10.2021

SJ(CO)
GC/PM(09.11.2021) 5P 7C