



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN

W.P(MD)No.20026 of 2021

and

W.M.P(MD)No.16717 of 2021

L.Arul Sahayaraja

...Petitioner

vs.

The Commissioner,
Thanjavur Municipal Corporation,
Gandhiji Road,
Thanjavur,
Thanjavur District.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to permit the petitioner to do the petty shop business in the petty shop positioned at the south east of the New Bus Stand, Thanjavur near the place earmarked for buses enroute to Trichy as per the Order passed in NA.No.12376/2016/MCA13, dated 28.04.2017.

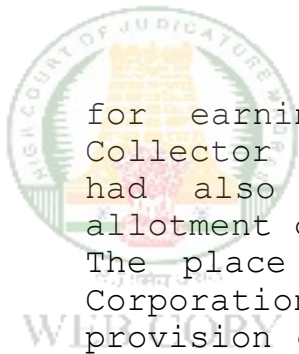
For Petitioner : Mr.V.Chandrasekar

For Respondent : Mr.P.Athimoola Pandian
Standing Counsel

O R D E R

The petitioner, L.Arul Sahayaraja, resident of Keelavasal in Thanjavur District, has approached this Court by filing the present writ petition in the nature of Mandamus, seeking a direction against the respondent/the Commissioner of Thanjavur Municipal Corporation in Thanjavur District, to permit the petitioner to continue to do the petty shop business in the petty shop situated at the south east of the New bus stand of Thanjavur, near the place which is earmarked for buses enroute to Trichy.

2.The petitioner placed reliance on an earlier order passed in Na.No.12376/2016/MCA13, dated 28.04.2017. The petitioner claims that he is a physically challenged person and had been affected by 90% physical impairment. He approached the District Collectorate on 16.12.2016, seeking allotment of a petty shop in the New bus stand



for earning livelihood. Further, he claims that the District Collector had recommended allotment and the Thanjavur Corporation had also passed necessary resolution on 31.03.2017, granting allotment of a petty shop measuring 8 X 6 feet in the new bus stand. The place was also earmarked and the Commissioner of Thanjavur Corporation, who is the respondent herein, also recommended for provision of electricity. The petitioner further claims that he is also paying the necessary electricity charges. He is also paying a sum of Rs.1,500/- per month from 01.05.2017 with a condition that the amount would be enhanced by 15% every three years.

3.The petitioner claims that as per the terms of allotment indicated, the allotment would be in force upto nine years. There had been periodical enhancement of the rent of 15%.

4.It is the grievance of the petitioner that owing to the implementation of the Smart City Project, the respondent had closed the shop without any notice. It is the further case of the petitioner that notice had been pasted in the shop and the entire shop was covered with tarpaulin sheets.

5.During the course of arguments, advanced by Mr.V.Chandra Sekar, learned Counsel on behalf of the petitioner and by Mr.P.Aathimoolapandian, learned Standing Counsel, who represents the Thanjavur Municipality, an issue arose whether the petitioner was in possession of the shop and more intricately, whether the shop itself was in existence. Since this is an issue on fact, both the petitioner and the respondent were directed to file separate affidavits.

6.The petitioner has filed an affidavit and the respondent has filed a counter affidavit not only on that particular issue, but also on the other issues raised by the petitioner. In the affidavit filed by the petitioner, he had again reiterated the fact of the allotment of the shop and also with respect to the payment of enhanced rent and thereafter, he again reiterated that on 08.10.2021, the respondent had pasted a notice and had covered the entire shop with tarpaulin sheets. He had, thereafter, stated that this is preventing his employees from running the shop. I am not able to agree with that particular fact since it is a shop allotted only to the petitioner and I have my own doubts as to the employment of various other persons by the petitioner to run the shop which might give an impression that the petitioner has actually sublet the shop. But, let me not deal with that particular fact as the petitioner has stated that the shop is still in existence, but that he is not running the shop.

7.In the counter affidavit filed by the respondent, it had been stated that the relief sought for in the present writ petition is not maintainable, particularly, because the shop has been vacated by the respondent herein and that the wife of the petitioner had also given a letter to the respondent. It had also been stated that numerous complaints had been received by the respondent claiming



that the shop was a hindrance to the general public and further, this particular shop like any other petty shop was also a hindrance to the Smart City Project.

8.It is also stated that the respondent had inspected the shop and had noticed various violations. It is further claimed that a show cause notice was issued on 31.08.2021, but the petitioner herein had failed to respond to such show cause notice. Thereafter, left with no other option, the respondent had sealed the premises on 08.09.2021. It is further stated that after that particular act, the petitioner had taken away his belongings and goods and had also submitted a letter that he is vacating the shop.

9.It is thus seen that the petitioner now claims that though the shop is in existence, he has been forced and prevented from using the shop, whereas it is the contention of the respondent that the petitioner has vacated the premises and had also given a letter to that effect. It is also contended that the wife of the petitioner had also given a letter to that effect.

10.The petitioner now seeks a Mandamus, seeking permission to do the business in the shop.

11.Admittedly, on weighing the stands taken, one fact is evident, namely, that as on date, the petitioner is not doing business, whether the shop is in existence or not, it is a disputed question of fact. The petitioner claims that it is closed by tarpauline sheets. The respondent has not directly answered that particular point, but has stated that the petitioner has removed all his goods and had stopped the business.

12.The petitioner in view of disputed facts is directed to give a representation to the respondent, seeking permission to continue business in the shop. On receipt of such a representation, the respondent may examine the nature of the representation given and also consider whether it would be appropriate to permit the petitioner to continue the business and take a considered decision on that particular aspect and also seek explanation as to why an answer was not given to the show cause notice already issued to the petitioner and thereafter, pass an order. The nature of the order can either be granting permission to the petitioner to continue with the business or refusing to grant an order to the petitioner to continue with the business or even order to remove the shop from that particular place itself.

13.The prerogative is only with the respondent. The petitioner is given an opportunity to give a representation and such representation may be given on or before 10.12.2021 and if it is done, the respondent may pass an order in any one of the above three options and I am confident that such an order would be passed after following the procedure at any rate on or before 31.12.2021.



14. With the above direction, the Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS-I)

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

lr/sn

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

The Commissioner,
Thanjavur Municipal Corporation,
Gandhiji Road,
Thanjavur,
Thanjavur District.

W. P (MD) NO. 20026 of 2021

and

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RD(29.11.2021) 4P 2C