



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD) .Nos.19769,20413, 20417, 20425,
20435, 20442 and 20445 of 2021

and

W.M.P. (MD) .Nos.16459, 17064, 17065,
17077, 17076, 17087 and 17090 of 2021

S.M.Ali	... Petitioner in W.P(MD)No.19769 of 2021
S.Kandasamy	... Petitioner in W.P(MD)No.20413 of 2021
K.Pandiaraj	... Petitioner in W.P(MD)No.20417 of 2021
R.Pandian	... Petitioner in W.P(MD)No.20425 of 2021
N.S.Seeniappan	... Petitioner in W.P(MD)No.20435 of 2021
Tamizharasi	... Petitioner in W.P(MD)No.20442 of 2021
N.Dhanapandi	... Petitioner in W.P(MD)No.20445 of 2021

Vs.

1.The District Collector Office of the District Collector, Collectorate Post, Dindigul - 624 004.	
2.The Corporation Commissioner, Office of the Corporation Commissioner, Main Road, Dindigul - 624 001.	...Respondents (in all cases)

COMMON PRAYER : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the second respondent to allot a shop to the petitioner attached to the complex situated at Kamarajar bus stand, Dindigul Corporation, Dindigul as per undertaking memo filed by the second respondent, dated 17.04.2018.



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For Petitioner : Mr.L.Prabhu (in all petitions)
For R1 : Mr.N.Satheesh Kumar
Additional Government Pleader
(For W.P(MD)Nos.20417
and 20425 of 2021)
: Mr.D.Gandhiraj
Special Government pleader
(Except W.P(MD)Nos.20417
and 20425 of 2021)
For R2 : Mr.Veerakathiravan
Additional Advocate General
(Assisted by Mr.J.Lawrance
Standing Counsel)
(For all Writ Petitions)

COMMON ORDER

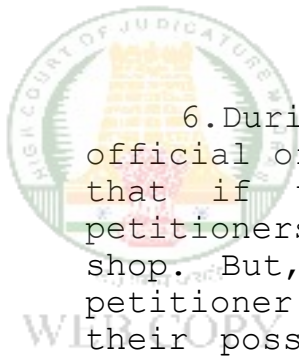
In W.P.(MD).Nos.19769, 20413, 20417, 20425, 20435,20442 and 20445, common arguments were advanced by Mr.L.Prabhu, learned Counsel appearing on behalf of the petitioners, Mr.Veerakathiravan, learned Additional Advocate General, appearing on behalf of the second respondent and Mr.N.Satheesh Kumar, learned Additional Government Pleader, appearing on behalf of the first respondent(for W.P(MD)Nos.20417 and 20425 of 2021).

2.In view of the fact that the issues raised are the same, a common order is passed.

3.The petitioners herein, have had the benefit of being allotted and running shops at Kamarajar bus stand in Dindigul Corporation, Dindigul. The said shops were under the control of the second respondent/Corporation Commissioner, Dindigul. Originally, there were 14 such shops and each one of them measured about 30 X 11 square feet.

4.Owing to the implementation of the Smart City Project, there was a proposal for demolition of the shops and to reconstruct shops. The reconstruction of shops would be 34 in number and would measure about 10 X 11 square feet. The petitioners naturally felt agitated over such decision being taken to demolish and reconstruct the shops. They wanted some assurance for continuation of their business.

5.They independently filed civil suits before the District Munsif Court at Dindigul. Each one of the writ petitioners filed a suit in O.S.Nos.505 of 2017, 473 of 2017, 475 of 2017, 501 of 2017, 493 of 2017, 503 of 2017 and 495 of 2017, for injunction against the second respondent/Corporation Commissioner, Dindigul, restraining the said second respondent herein, from interfering with the peaceful functioning of the petitioner.



6. During the pendency of the suits, it transpired that an official of the second respondent had filed an affidavit undertaking that if the shops are demolished or reconstructed, then the petitioners would have the benefit of being allotted with one such shop. But, the further grievance of the learned Counsel for the petitioner is that the original area of the shops which were in their possession was 30 X 11 square feet and in the undertaking affidavit, the area of shops were reduced to 10 X 11 square feet.

7. The said undertaking memos were recorded and put up in each one of the suits. Thereafter, the parties naturally went to trial. The writ petitioners in their capacity as plaintiffs let evidence. The respondents in their capacity as defendants also let in evidence. The documents were marked, witnesses were cross-examined. The evidence, was thereafter, analyzed. It consisted of both the oral and documentary evidence.

8. A perusal of the judgments of the District Munsif Court which were all dated 27.04.2021, indicate that there was an objection in marking the said undertaking Memos. But, however, with objections, they were marked as documents on behalf of the plaintiffs.

9. Finally, the learned District Munsif in the course of the judgments, after taking note of the memos and also framing specific issues with respect to re-allotment of the shops to the petitioners, found against the petitioners herein, and in effect, dismissed the suit. One of the main grounds, on which, the suit was dismissed, was that the petitioners filed suits only for injunction restraining the second respondent/Corporation Commissioner from interfering with peaceful possession, but pursuant to the filing of the memo, they had not taken any steps to amend the plaint seeking re-allotment of shops. That, as a finding is based on the evidence available before the District Munsif Court, Dindigul. That is, a finding, based on evidence, and, this Court can neither interfere with nor examine its correctness or otherwise.

10. Judicial judgments have been passed by the District Munsif Court. Once a judgment had been passed on the basis of analysis of the evidence, this Court will necessarily have to give respect to such judgment. It must also be noted that the petitioners herein, had not chosen to mark the said Memos, during the cross examination of the witness for the defendant. It was marked during the chief examination of the plaintiff witness. Therefore, the memo was never tested or rather put to the witness for the defendant/Corporation. It only remains as a document. To be considered as evidence it will necessarily have to pass through the tests of admissibility, of being proved in manner known to law, and being relevant and also being genuine.

11. There was an objection raised by the defendants when the petitioners tried to mark the memos as documents on behalf of the



plaintiffs it was marked as Ex.P.W.6 and it was marked with objections. When a particular exhibit is marked with objections, there is a duty cast upon on the Trial Court to explain and give reasons with respect to the objections raised. The judgment in this point is ***Bipin Shantilal Panchal Vs. State of Gujarat and another 2001 (3) SCC***, wherein, a direction had been given by the Hon'ble Supreme Court, no doubt in a criminal case, but also incidentally stating that the rule laid would be applicable even for trial of civil cases that when objections are raised while marking documents, the trial Court should note down the objections and address the objections at the time of delivering the final judgment.

12.In the instant case, with respect to issue No.4, which specifically related to whether the plaintiff was entitled to any further relief particularly, since the plaint relief was restricted for injunction not to disturb their peaceful possession, the learned District Munsif had examined the said document namely the objection memo and had observed that it was only a part of the Court records and had also stated that unless the plaintiff had amended the plaint seeking necessary relief for re-allotment, the Court cannot step-in and pass any such order.

13.I am conscious of the fact that under Order VII Rule 7 of the Code of Civil Procedure, whereby every plaint must contain the specific relief asked, the Code of Civil Procedure also provides that a Court can pass such orders as it deems fit in the circumstances of the case, but granting allotment of a shop would be exceeding the jurisdiction of the Court as that would go much far beyond the relief which had been sought. In any suit for injunction, if there is threat of dispossession without following due process of law, the Court can extend its jurisdiction and prevent such dispossession being undertaken even though the words without due process of law might not have actually been incorporated in the relief sought. But when the prayer is limited to that particular aspect, the Court cannot go beyond and grant practically a mandatory injunction of allotment of a shop.

14.I am afraid that this Court cannot grant any relief to the petitioners herein. The learned Additional Advocate General, had made a statement that whenever the shops namely, new shops, which are reconstructed are put up for auction, the petitioners can always participate as, any other individual who is interested in participating in an auction of such nature.

15.A direction is given to the second respondent/Corporation Commissioner of Dindigul to reconcile the accounts and if payments are to be paid back to the petitioners herein, such amount should be returned back to the writ petitioners within a period of six weeks from the date of receipt of a copy of this order.



16.The Writ Petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

sn/lr

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 District Collector
Office of the District Collector,
Collectorate Post, Dindigul - 624 004.

2.The Corporation Commissioner,
Office of the Corporation Commissioner,
Main Road, Dindigul - 624 001.

+7 CC to M/s.J. LAWRANCE, Advocate (SR-36622 TO 36624 & 36627 TO 36629 & 36631[F] dated 30/11/2021)

+1 CC to M/s.SPL GP (SR-36727, 36741 & 36745[F] dated 01/12/2021)

W.P(MD).Nos.19769, 20413,

20417, 20425, 20435,

20442 and 20445 of 2021

29.11.2021

MA (CO)

GC(10.12.2021) 5P 11C