



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

**DATED: 18.01.2021**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA**

**AND**

**THE HONOURABLE MRS.JUSTICE S.KANNAMMAL**

**W.A(MD)No.1044 of 2016**

**and**

**C.M.P(MD)No.6352 of 2016**

J.Sulthan

... Appellant / Writ Petitioner

Vs.

1.The Commissioner of Corporation,  
Madurai Corporation,  
Corporation Office,  
Madurai.

2.The Assistant Executive Engineer,  
Madurai East Zone,  
Madurai Corporation,  
Madurai.

... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order, dated 18.03.2016 made in W.P(MD)No.15566 of 2015 on the file of this Court.

Prayer in WP(MD). 15566/ 2015 :

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus forbearing the Respondents, their officials, subordinates and servants from disturbing or interfering into the petitioners business at his shop situates at opposite to 16th lane, Ismailpuram, Madurai.

For Appellant : Mr.S.M.A.Jinnah

For Respondents : Mr.R.Murali

**JUDGMENT**

**(Judgment of the Court was delivered by  
PUSHPA SATHYANARAYANA, J.)**

The Writ Appeal is directed against the order dated 18.03.2016 passed in W.P(MD)No.15566 of 2015.

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2.The appellant / writ petitioner, who was a licensee for one year from the respondent-Corporation, has filed the Writ Petition seeking a Mandamus, forbearing the respondents from disturbing or interfering with the peaceful possession of the appellant's / writ petitioner's shop situate in Ismailpuram, Madurai. Even as per the tender condition, the appellant / writ petitioner should not encroach any portion of the property belonging to the respondents / Corporation and any breach of the condition would be liable for eviction. The respondents / Corporation have received the complaint from one Venkatesh alleging that the appellant / writ petitioner has unauthorisedly encroached the property of the Corporation and also got water connection and the said Venkatesh has also filed a Writ Petition in W.P(MD)No.18818 of 2013 before this Court to direct the first respondent therein to remove the encroachment made by the second respondent therein. Pursuant to the order of this Court, dated 26.08.2015, the respondents / Corporation directed the appellant / writ petitioner to remove the unauthorised construction and to remove the water connection.

3.At the time of hearing of the Writ Petition, the learned counsel for the appellant / writ petitioner only sought for a breathing time to vacate the premises, as he has been running the business and also had undertaken before this Court that he would vacate and hand-over the premises on or before 31.03.2016. The said submission of the appellant / writ petitioner was recorded and he was directed to file an undertaking affidavit before the authority concerned, namely, the first respondent, to that effect.

4.It is now stated that no such affidavit of undertaking was filed by the appellant / writ petitioner and he has also not vacated the premises. Having given an undertaking that he would vacate the premises on or before 31.03.2016, the appellant / writ petitioner has preferred the above Writ Appeal.

5.The learned counsel appearing for the respondents / Corporation would submit that since the appellant / writ petitioner did not honour the undertaking given before this Court, the first respondent / Corporation had taken possession of the property and it is kept under lock and seal from July 2016. Admittedly, no rent is paid from July, 2016 and because of the pendency of the Writ Appeal, the respondents / Corporation is also unable to proceed further by auctioning the property.

6.In view of the above facts and submissions of the learned counsel for the respondents / Corporation, the appellant / writ petitioner cannot have any indulgence from this Court, as the possession is already with the first respondent / Corporation and as such nothing survives for adjudication in this matter and it



is left open to the first respondent / Corporation to deal with the property in the manner known to law.

7. With the above observations, the Writ Appeal is dismissed. No costs. consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-I)

// 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 Commissioner of Corporation,  
Madurai Corporation,  
Corporation Office,  
Madurai.

2. The Assistant Executive Engineer,  
Madurai East Zone,  
Madurai Corporation,  
Madurai.

+1 CC to Mr.R.MURALI, Advocate ( SR-1264[F] dated 19/01/2021 )

W.A (MD) No.1044 of 2016  
18.01.2021

KM (29.01.2021) 3P 4C