

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2022

CORAM

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE.N.MALA

W.P.NO.14907 OF 2022
AND
W.M.P.NOS.14124 AND 14126 OF 2022

R.Somasundaram

...Petitioner

Vs.

1.The Commissioner,
Attur Municipality,
Attur, Salem District.

2.The Executive Officer,
Arulmighu Vellai Pillayar Thirukovil,
Attur Town & Taluk,
Salem District-636 102.

...Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the impugned proceedings in Na.Ka.No.1809/2022/F1 dated 24.05.2022 passed by the 1st respondent and quash the same and consequently direct the respondents to allow the petitioner to continue the small business in the name of Dinesh Coverings in the premises at Marimuthu Road Attur which belongs to the Arulmigu Vellai Pillayar Kovil, Attur, Salem District.

For Petitioner : Mr.J.Hemakumar

For Respondent R1 : Mr.B.Anand
Standing Counsel

For R2 : Mr.N.R.R.Arun Natarajan
Standing Counsel

ORDER

[Order of the Court was made by N.MALA,J.]

This writ petition is filed to call for the records of the impugned proceedings in Na.Ka.No.1809/2022/F1 dated 24.05.2022 passed by the 1st respondent and quash the same and consequently

direct the respondents to allow the petitioner to continue the small business in the name of Dinesh Coverings in the premises at Marimuthu Road Attur which belongs to the Arulmigu Vellai Pillayar Kovil, Attur, Salem District.

2.The eviction notice dated 24.05.2022 issued by the first respondent was challenged in the writ proceedings by the petitioner.

3.The petitioner's case is that the HR & CE department which is the owner of land underneath which the sewerage channel passes, leased out the same to him as vacant land and thereafter, he constructed the shop in which he is carrying out a petty business. As a sewerage channel is passing underneath his shop the first respondent Municipality, claiming to be the owner has issued the impugned notice for eviction. As the Municipality is not the owner of the land the first respondent Municipality is not the competent authority to issue eviction notice.

4.The counsel for the petitioner submitted that the first respondent Municipality has no authority to issue the impugned eviction notice, as the second respondent HR & CE department is the owner of the premises and it had leased the same to him. Therefore according to the counsel it is only the second respondent who is competent to evict him and not the first respondent.

5.The first respondent submitted that the sewerage channel which passes underneath the petitioner's shop belongs to the Municipality and as such the first respondent is very much competent to issue the eviction notice. According to the counsel the shop is built over the sewerage channel and it is causing hindrance to the maintenance of the channel. The Municipality is bound to maintain the channel in Public interest.

6.The counsel for the second respondent, HR & CE department submitted that the land belongs to the Municipality and the HR & CE department is not the owner.

7.We have considered the respective submissions of the counsels and perused the records.

8.The very narrow issue is whether the first respondent Municipality is competent to issue the eviction notice. The Admitted fact is that the shop is built over the sewerage channel. According to the first respondent the presence of the shop is causing hindrance to the Municipality in maintaining the same. The entire edifice of the petitioner case is rested on the ownership of the land/shop in the HR & CE department.

9. According to the petitioner the shop is owned by the HR & CE department, second respondent herein. Where as it is the second respondent's own case that the Municipality is the owner of the land underneath which the sewerage channel is passing. When the HR & CE/ second respondent has itself admitted the ownership of the first respondent, the petitioner's stand cannot be countenanced. Therefore, we are of the view that the first respondent is competent to issue the eviction notice.

In the light of the above the Writ Petition fails and is dismissed but without costs. Consequently, connected W.M.P. Nos. are closed.

Sd/-

Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

dsn

To

1. The Commissioner,
Attur Municipality,
Attur, Salem District.
2. The Executive Officer,
Arulmighu Vellai Pillayar Thirukovil,
Attur Town & Taluk,
Salem District-636 102.

+1cc to the Government Pleader Sr.No.44665

W.P.No.14907 of 2022

NK(CO)
RVM(22/07/2022)