



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2022

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI**

W.P. (MD) Nos.10329, 10694 and 8189 of 2022

and

W.M.P(MD) Nos.6101, 6102, 7339, 7340, 7737 and 7738 of 2022

S.Veeramani

... Petitioner in all W.Ps

-vs-

- 1.The Secretary to the Government,
Municipal Administration and Water
Supply Department,
Secretariat, Chennai - 600 009.
- 2.The Director of Municipal Administration,
Directorate of Municipal Administration,
75, Urban Administrative Building,
Santhome High Road, MRC Nagar,
Annamalaipuram,
Chennai - 600 028.
- 3.The Principal Secretary to Government,
Rural Development, Panchayats and
Panchayat Unions,
Secretariat, Chennai - 600 009.
- 4.The District Collector, Madurai District.
- 5.The Assistant Director of Panchayat,
Madurai Collectorate Office, Madurai.
- 6.The Regional Director of Municipal
Administration,
Madurai Collectorate Office, Madurai.
- 7.The Commissioner,
Panchayat Union,
Usilampatti Taluk,
Usilampatti, Madurai District.



8.The Commissioner,
Usilampatti Municipality,
Usilampatti, Madurai District. ... Respondents in all W.Ps

PRAYER in W.P(MD) No.10329 of 2022: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the impugned auction notification on the file of 7th respondent, dated 17.05.2022, under Na.Ka.No.909/2022/A4, pertaining to auctioning of NABARD shop No.1 to 200 and impugned auction notification on the file of the seventh respondent, dated 17.05.2022, under Na.Ka.No.910/2022/A4, pertaining to auctioning of temporary shops, situated under S.Nos.39, 40, 45 and 48 of Usilampatti, Madurai District and to quash both the said notification as illegal, unconstitutional and without jurisdiction, in the light of the G.O.Ms.No.298, dated 20.11.1996 and G.O.Ms.No.131, dated 23.05.1997, passed by the first respondent herein.

PRAYER in W.P(MD) No.10694 of 2022: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the orders passed by the fifth respondent under Na.Ka.No.351/2021/A2.UE(Oo), dated 09.05.2022, and to quash the same as far as retaining Serial Nos.1,2,3,4,5,6,7,8 and 10 of the listed properties within the ambit of the seventh herein and further direct the respondents Serial Nos.1,2,3,4,5,6,7,8 and 10 of the listed properties in the orders passed by the fifth respondent under Na.Ka.No.351/2021/A2.UE(Oo), dated 09.05.2022 to the 8th respondent, in the interest of public, in the light of the G.O.Ms.No.298, dated 20.11.1996 read with G.O.Ms.No.131, dated 23.05.1997 and in the light of the orders passed by this Court in W.A(MD) No.832 and 606 of 2008.

PRAYER in W.P(MD) No.8189 of 2022: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus directing the seventh respondent to hand over the Market situated under S.Nos.39,40,45 and 48 of Usilampatti, Madurai District to the 8th respondent herein, in the light of the G.O.Ms.No.298, dated 20.11.1996 read with G.O.Ms.No.131, dated 23.05.1997 passed by the first respondent herein, in the interest of public.

For Petitioner: Mr.K.R.Laxman (in all W.Ps)

For Respondents: Mr.Veera Kathiravan,
Additional Advocate General,
assisted by Mr.P.Thilak Kumar,
Government Pleader for R1 to R7(in all W.Ps)
Mr.R.Mahendran, for R8 (in all W.Ps)



COMMON ORDER
(Made by P.N.PRAKASH, J.)

The minimum facts that are required for deciding this public interest litigation are as under:-

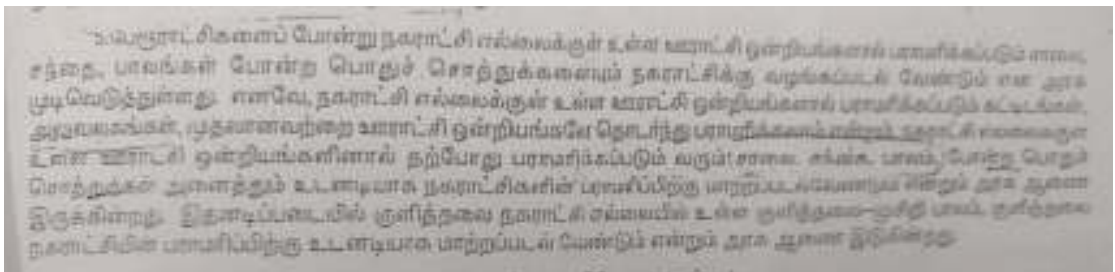
The petitioner is an elected member from Ward No.4 of Usilampatti Municipality. The issue relates to around 450 shops located in Usilampatti Town in Survey Nos.39, 40, 45 and 48 of Usilampatti, Madurai District, which falls within the jurisdiction of Usilampatti Municipality.

2. According to the petitioner, the Usilampatti Panchayat Union is administering those shops and are auctioning it to various persons, which is illegal in the light of G.O.No.298, Municipal Administration and Water Supply Department, dated 20.11.1996 and G.O.(Ms).No.131, Municipal Administration and Water Supply Department, dated 23.05.1997.

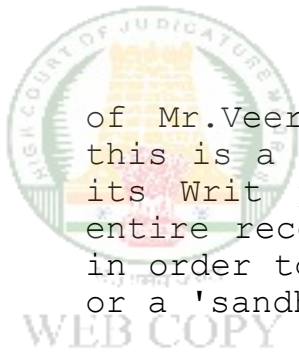
3. According to the petitioner, by virtue of these two Government Orders, those 450 shops should be transferred to the Usilampatti Municipality and that the Usilampatti Panchayat Union does not have the power to administer them nor to put them on auction.

4. Refuting the said contention, Mr.Veera Kathiravan, learned Additional Advocate General, submitted that vide G.O.(Ms).No.131 (supra), the buildings and office buildings, though located within the territorial jurisdiction of the Municipality, would still vest with the parent Panchayat Union and that they could administer the same without let or hindrance.

5. Mr.Veera Kathiravan, learned Additional Advocate General, predicated this submission based on paragraph No.15 of the order dated 05.10.2009 in **S.O.R.Thangapandian v. I.Mahendran**, (W.A(MD) Nos.832 and 606 of 2008). For the sake of convenience, we are extracting paragraph No.5 from G.O.Ms.No.131 dated 23.05.1997, which is as under:-



6. If the disputed structure is construed as a 'Sandhai', then the case of the petitioner is fortified. On the contrary, if the disputed structure is construed as a 'building', then the submission



of Mr.Veera Kathiravan would warrant acceptance. In our opinion, this is a question of fact which cannot be decided by this Court in its Writ jurisdiction. It is for the Government to go into the entire records, conduct physical inspection and all other enquiries in order to determine whether the disputed structure is a 'building' or a 'sandhai'.

7. Mr.Veera Kathiravan, learned Additional Advocate General, submitted that this issue has to be essentially decided by the Secretary to the Government, Municipal Administration and Water Supply Department, under which Department, Municipalities fall, and Secretary to the Government, Rural Development and Panchayat Raj, under whom Panchayat Unions and Panchayats fall. It is also brought to our knowledge that the petitioner has also given a representation to the Government for transferring the said structure from the control of the Panchayat Union to the control of the Usilampatti Municipality and similarly, the members of the Usilampatti Panchayat Union have also passed a resolution for retaining the said structure with them. Thus, this is purely a politico-executive issue which cannot be determined by this Court.

8. Thus, we direct the Government to decide this disputed question of fact and accordingly, pass appropriate orders on merits and in accordance with law. Accordingly these writ petitions are closed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:

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7.The Commissioner,
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Usilampatti, Madurai District.

8.The Commissioner,
Usilampatti Municipality,
Usilampatti, Madurai District.

+3 CC to M/s.K.R.LAXMAN, Advocate (SR-24979, 24981 & 24982[F] dated
10/06/2022)

+1 CC to Mr. Special Government Pleader, SR.No. 25419

W.P. (MD) Nos.10329, 10694 and 8189 of 2022

09.06.2022

srr(CO)

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