



W.P(MD)No.11661 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 01.09.2022	Orders Pronounced On 13.10.2022
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W.P(MD)No.11661 of 2022 and
W.M.P(MD)Nos.8248 & 8252 of 2022

1.U.Manikandan
2.S.Durai
3.Justin Xavier
4.T.Balakrishnan

... Petitioners

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 34.

2.The Joint Commissioner
Hindu Religious and Charitable
Endowment Department,
Suchindram, Kanyakumari District.

3.The District Collector,
Collectorate, Nagercoil,
Kanyakumari District.



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4.The Manager,
Arulmigu Bhagavathi Amman Temple,
Kanyakumari,
Kanyakumari District.

5.The Assistant Engineer,
TANGEDCO,
Kanyakumari,
Kanyakumari District.

6.The Inspector of Police,
Kanyakumari Police Station,
Kanyakumari,
Kanyakumari District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, forbearing the respondents 1 to 6 from disconnecting the electricity and evicting the petitioners by removing the temporary roof in their shops in S.No.679/2, Thiruveni Sangamam, Anugu Saalai, Kanyakumari District without following due process of law.

For Petitioners : Mr.T.Lajapathi Roy

For Respondents

R1 to R3 & R6 : Mr.M.Lingadurai
Special Government Pleader

R4 : Mr.K.Sathya Singh
Standing Counsel



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ORDER

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This writ petition is filed seeking for issuance of writ of Mandamus, to forbear the respondents from disconnecting the electricity and evicting the petitioners by removing the temporary roof in their shops in S.No.679/2, Thiruveni Sangamam, Anugu Saalai, Kanyakumari District without following due process of law.

2.The contention of the learned counsel for the petitioners is that the petitioners were permitted to put up temporary structures in the licenced ground/land measuring 8 feet x 8 feet [64 sq.ft.] by the Commissioner in the year 1996. The petitioners put up a temporary structure and doing business of selling handicraft materials and showcase pieces from the year 1998 onwards. The petitioner were regularly paying the rent and the rent was also enhanced from time to time. Thereafter, dispute arises regarding fixation of roof and structures and fixation of higher rent. The petitioners along with other shop owners approached this Court and the same was settled out of Court during the year 2004. The licence was extended periodically from time to time. In the meanwhile, steps taken to disconnect the electricity connection and to remove the roof. The Executive Officer in



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his proceedings in Na.Ka.No.4176/2011-2/B2 dated 03.06.2022 issued communication to the Inspector of Police, Kanyakumari Police Station seeking police protection for evicting the petitioners on 13.06.2022.

3.It is submitted that the petitioners shops do not hinder any free flow of traffic, they only sell toys and other handicrafts made out of seashells. The photographs of the shops enclosed. It is further submitted that the shops in S.No.679/2 is classified as Blocks A, B, C, D, E & F, of which, only 63 shops licensed by the Commissioner, H.R. & C.E. Department and the remaining shops in Block B, C, D, E & F are unauthorized. With regard to the same, a writ petition in W.P.(MD).No.17868 of 2014 was filed seeking for Mandamus forbearing the respondents in converting the lands bearing Nos.679/1 and 679/2 and using the lands either by granting lease or otherwise for any commercial purpose in any manner by temporary constructions or by petty trading either on floor or in cycle or cart which would only destroy the environmental condition of the seashore, more particularly, Thiruveni Sangamam and the shores and beaches abutting Bay of Bengal, Indian Ocean and Arabian Sea.



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4.This Court in W.P.(MD).Nos.24832/2016, 17868/2014 and 19959/2015 by order dated 01.02.2019 appointed Advocate Commissioners to inspect the shops in Thiruveni Sangamam, Gandhi Mandapam, Temple zone and sea shore to find out the encroachments and other violations. In the meanwhile, the tarpaulin sheets roof got destroyed due to a fire accident took place on 09.01.2021 and the petitioners requested the Department for using temporary asbestos roof. This being so, the Executive Officer without issuing any notice and without following due process of law is proceeding to evict the petitioners through his proceedings in Na.Ka.No. 4176/2011-2/B2 dated 03.06.2022. Hence, petitioners sent a representation to the respondents on 09.06.2022 not to evict the petitioners without following the due process of law but the same was not considered till date.

5.The learned counsel for the 4th respondent submitted that only a licence was given to 38 persons for open space of 8 feet x 8 feet [64 sq.ft.] to run the petty business on daily licence basis. The shop owners were given permission to conduct small business in the vacant places specified by the Devaswom Board. The Government Order in G.O.Ms.No.223 dated 02.07.2004, guidelines strictly prohibits any permanent structure or roof.



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The Commissioner by his order Pa.Mu.No.47832/99/V3 dated 09.08.2004 granted permission to the Deputy Commissioner/Executive Officer of incorporated and unincorporated Devaswoms, Suchindrum for giving licence to 38 persons to do small business in the specified vacant land. This Court in W.P(MD).Nos.11008 to 11104 of 2015 passed an interim order wherein it was stressed and reiterated that the right given to 38 persons are only license, they are entitled to trade only petty articles, they are not entitled to put up any permanent structures, further as and when the Devaswom directs them to vacate the premises, they have to do so without any resistance. The place is also included in the Coastal Regulation Zone Notification 1991 superseded by Coastal Regulation Zone Notification 2011 issued by the Ministry of Environment and Forests, Government of India. The licence fee periodically increased and the licence was renewed from time to time. Though the licence is on a daily basis, licence amount is collected monthly. The proceedings of the first respondent in Na.Ka.No. 4176/2011/B2 dated 08.08.2016 was challenged and writ petitions filed in W.P(MD).Nos.17860 to 17876 of 2016. Against the order, they filed W.A. (MD).Nos.823 to 839 of 2016 in which the petitioners status confirmed as licencees and interim order passed.



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6.The respondent submitted that the petitioners do not come under Section 34A of the H.R.&C.E. Act, the petitioners are only licencees and permitted to use the property in a specified manner, if there is any deviation, the Devaswom Board is free to initiate action against them in accordance with law. It is further submitted that for constructing permanent structures in the licenced place and violating the Coastal Regulation Zone Notification, steps were initiated by the District Collector, Kanyakumari District. Following the same, the Commissioner also initiated steps to remove the permanent superstructures. Though the petitioners gave an undertaking both to the Department and to the Court that they will not violate any condition, by putting up any structure, they now admit that they have put up permanent structure using asbestos. The reason and justification given, is that earlier they removed the asbestos on the objections, replaced with tarpaulin which later caught fire and fire accident took place causing huge damage and thereafter they were permitted to put up shutters which caused damage to the tarpaulin which compelled them to put up asbestos. Whatever may be reason, putting up permanent structures is not permissible which is in gross violation to the licence condition.



Further, the petitioners representation and undertaking given by them that they would be putting up removable temporary structures with non-inflammable materials and to maintain the beauty and aesthetic nature of the temple and the shore can be considered and appropriate decision would be taken by the Commissioner. It is further submitted that the petitioners by filing barrage of writ petitions and suits have successfully stalled the implementation of any progressive welfare measures for the benefit of the Public, tourists and worshipers. He submitted that welfare and health safety of the public is of primary concern.

7.The learned counsel for the petitioners without prejudice to his submission come forward with a proposal stating that now the petitioners occupied an extent of 64 sq.ft. and paying a sum of Rs.1,920/- per month as rent, they also come forward to install temporary structures with non-inflammable materials which can be dismantled within five to six hours. Further, they agreed to increase licence fee of Rs.4,000/- which is double the amount of rent presently paid by the petitioners. They also undertake not to make any further construction in their shops and the petitioners in consultation and concurrence with Public Works Department make a



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temporary construction without affecting the aesthetic and architectural value of the temple and the seashore. They also undertake to use only fiber glass and non-inflammable materials for installation of the shops. They are ready and willing for any other suggestions or directions by the Government to enable their continuance in their shops and their primary concern is their continuance as licensee to run the shop and not to be disturbed since it is their only source of livelihood.

8.Considering the submissions and on perusal of the materials, it is seen that the petitioners representation is under consideration. The primary income of the temple is from letting out the open space for small traders. The petitioners admittedly carrying on their business from the year 1996. The only objection appears to be that the petitioners have put up permanent structures which is in gross violation contrary to the licence condition. In such view of the matter, the respondents are directed to consider the representation of the petitioners and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order.



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9. With the above observations, the writ petition stands disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

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Speaking Order / Non-Speaking Order

Internet : Yes / No

Index : Yes / No

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To

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M.NIRMAL KUMAR, J.

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Pre-delivery order made in

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13.10.2022
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