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W.P(MD)No.11663 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2022

CORAM

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.11663 of 2022 and
W.M.P(MD)Nos.8256 & 8257 of 2022

1.P.Rajan
2.M.Kannan
3.E.Periyasamy
4.S.Bindhu

... 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.



W.P(MD)No.11663 of 2022

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

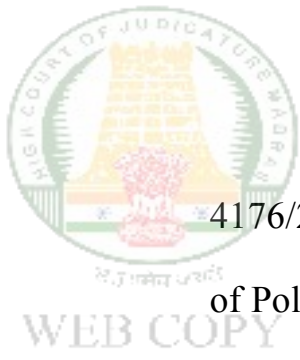


ORDER

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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 are sub-tenants and their principal are part of the 38 shops allotted 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 2005 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 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 were taken to disconnect the electricity connection and to remove the roof. The Executive Officer in his proceedings in Na.Ka.No.



4176/2011-2/B2 dated 03.06.2022 issued a 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 were 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 serene 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 an 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 by his proceedings in Na.Ka.No.4176/2011-2/B2 dated 03.06.2022. Therefore, the 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 not considered till date.

5.The learned counsel appearing 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 putting up permanent



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structure or roof. 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 granting 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 held that 38 persons are only licencees, 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 was 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 were 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 confirmed as licencees and interim order passed.



6.It is further submitted that the petitioners seek invoking of Section 34A of the H.R.&C.E. Act since they are tenants is fallacious, petitioners are only licencees and permitted to use the property in a specified manner as per licence conditions and if there is any violation, the Devaswom Board is free to initiate action against them in accordance with law. It is further submitted that petitioners for constructing permanent structures in the licenced place and violating the Coastal Regulation Zone Notification, steps 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, put up any permanent 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 and 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 made them to change to 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 would considered with regard to the undertaking given by them that they



would be putting up removable temporary structures with non-inflammable materials, by maintaining the beauty and aesthetic nature of the temple and the shore. The petitioners undertaking would be considered and 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. The primary concern is to maintain safety and welfare of the public.

7.Considering the submissions and on perusal of the materials, it is seen that the petitioners herein are sub-tenants and the licence was given in favour of the principal. Further, the licence condition does not stipulate any sub-tenancy, hence, the petitioners have no right seeking any relief. However, it is seen that the petitioners representation is under consideration. The primary income for the temple is by letting out the open space for small traders. The petitioners admittedly carrying on their business from the year 2005. The objections appear 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.



W.P(MD)No.11663 of 2022

WEB COPY

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

No costs. Consequently, connected miscellaneous petitions are closed.

Speaking Order / Non-Speaking Order
Internet : Yes / No
Index : Yes / No
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13.10.2022
[4/4]



W.P(MD)No.11663 of 2022

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W.P(MD)No.11663 of 2022

M.NIRMAL KUMAR, J.

cse

Pre-delivery order made in

W.P(MD)No.11663 of 2022

13.10.2022

[4/4]