



W.P(MD)No.13877 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.13877 of 2022 and
W.M.P(MD)Nos.9873 & 9874 of 2022

- 1.Ganesan
- 2.P.Chandran
- 3.S.Francies
- 4.S.Josh
- 5.T.Jeyabalan
- 6.Kabiriyal
- 7.M.Esaikiammal
- 8.M.Krishnapillai
- 9.Y.Alwin Bright
- 10.R.Iyyappan
- 11.T.Janarthanan
- 12.M.Pandian
- 13.Moorthi
- 14.Shirinivasa Shetly
- 15.Sivakaminathan
- 16.K.Stephen
- 17.H.Senthilkumar
- 18.K.Murugesan
- 19.Y.Renjith
- 20.P.Mohan
- 21.A.Nehuru
- 22.R.Anantha Senthilvel @ Senthil



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23.A.Vincent
24.L.Sutharsan
25.R.Sundarasivalingam
26.R.Lakshmanaperumal
27.T.Dinakaran
28.S.Thanammal
29.Subramaniyapillai
30.B.Balan
31.G.Muthusamy
32.K.Siva
33.P.Sundarsing

... Petitioners

Vs.

- 1.The Joint Commissioner/Executive Officer,
O/o.Joint Commissioner,
Hindu Religious and Charitable Endowment
[Annexed and Unannexed Temples]
Suseendram Head Office,
Kanyakumari District.
- 2.The District Collector,
Collectorate, Nagercoil,
Kanyakumari District.
- 3.The Manager,
Arulmigu Bhagavathi Amman Temple,
Kanyakumari,
Kanyakumari District.
- 4.The Inspector of Police,
Kanyakumari Police Station,
Kanyakumari,
Kanyakumari District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India,



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praying for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to permit the petitioners to run their shops as it is present structure in their allotted place situated near Alaimagal Lodge, Arulmigu Bhagavathi Amman Thirukovil, Kanyakumari, Kanyakumari District based on the petitioners' representation dated 21.06.2022.

For Petitioners : Mr.S.Saravanakumar

For Respondents

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

R2 & R4 : Mr.K.Sathya Singh
Standing Counsel

ORDER

The petitioners who are license holders to run the shop near Alaimagal Lodge, Arulmighu Bagavathi Amman Temple, Kanyakumari filed this writ petition seeking for Mandamus to direct the respondents to consider their representation dated 21.06.2022 and permit them to continue their business with the present superstructure which was put up in the allotted place.

2.The contention of the learned counsel for the petitioners is that the petitioners were permitted to run the temporary shops in the temple land



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near Alaimagal Lodge in the year 1996 by proceedings in Na.Ka.No. 4401/1996/B1 dated 31.09.1996. Thereafter, the petitioners were running the shops as per the rules and regulations. They are paying the license fee to the vacant lands to the third respondent without default. There are about 38 shops in the place who formed an association under the name of Arulmighu Bagavathi Amman Siru Viyaparigal Nala Sangam. The President and Secretary of the Association collect monthly rents from them and the same is remitted to the third respondent. Due to the Pandemic situation, 11 months rent could not be paid by the petitioners and later, the same was collected by the third respondent. The petitioners paid the monthly rent upto March 2022 and when the petitioners attempted to pay the arrears of rent to the third respondent, the same was refused to be received on the ground of pendency of writ petitions. The rent was periodically enhanced by the respondents 1 and 3 which was paid by the petitioners till date.

3.It is further submitted that in the year 2004, the temple authorities enhanced the vacant land rent for 38 shops by way of proceedings in Na.Ka.No.4401/1996/B1 dated 23.08.2004. One of the condition is that the 38 shop owners to remove the asbestos sheet roof from their shop and



directed them to put up the roof with tharpai and the same was complied with. This being so, on 09.01.2021 at about 3.00 a.m., the said 38 shops got fire, due to a fire accident all the shops gutted and the properties worth about Rs.1,87,05,000/-, damaged. The petitioners and other shop owners made representation to the third respondent seeking protection and continuance of their livelihood. The Board members passed a resolution in Na.Ka.No.146/2001/E1 permitting the petitioner to install shutters to prevent and to safeguard from the fire accident in future. Thereafter, the petitioner and others renovated their respective shops and put up asbestos sheet roof to enable to install shutters. The 38 shops are situated adjacent to Arulmighu Bagavathi Amman Temple, namely, Alaimagal Lodge. One portion of the shop covered by compound wall of the said Lodge. The shops allotted in the year 1996, doing business for the convenience and needs of the tourists and public, so far there have been no objections or complaint against the 38 shops from public or anyone.

4.The shop owners now come to understand that the respondents 1 to 4 are taking steps to remove the shops in the seashore and at the same time, they also planning to remove the asbestos sheet roof of the petitioners. Due



to the fire accident, on the representation of the petitioners, the respondents 1 to 3 permitted to install shutter for the safety and the petitioners put up temporary asbestos sheet roof and shutter for the safety and to avoid such incidents in future. The petitioners were provided with electricity connection only after approaching this Court in W.A.(MD).Nos.1258 to 1285 of 2012. This being so, the respondents 4 and 5 came to the petitioner's shop, informed that they are going to remove the shops in the seashore area, and are directed to remove the asbestos sheet from the petitioners shop. Further they directed the petitioners to remove asbestos and permanent structures on their own on or before 12.06.2022, otherwise the respondents would be engaging manpower to remove the asbestos sheets and permanent structures by force. It is further submitted that Kanyakumari is a very important tourist place, the petitioners are selling traditional products of the Country, especially ancient art, articles of Kanyakumari District. As per the permission granted on 31.08.1996, the petitioners are running the shops. Presently the Country is shining in many Departments and the Country is to achieve as incredible India and in such circumstances, alteration of shops at this present situation in the permissible area is unavoidable. Due to the development in the tourist place of



Kanyakumari, the shops were upgraded with their own cost. The alterations effected have not affected the beauty of the temple and sea. The petitioners jointly made representation to the respondents 2 and 3 to run the shops in its present condition. The representation was made on 20.06.2022 to the third respondent and the same was sent to the respondents 2 and 3 by way of registered post, despite receipt of the same no action was taken. On the other hand, the petitioners have impending fear that by force the asbestos sheets would be removed. It is further submitted that fundamental guarantee under the Constitution is very much available to the petitioners, to carry on with their business. Further, when the formation of States was done, Thiruvangoor Government had given 247 temples in Kanyakumari District to the Board of Suchindrum as annexed and unannexed temples. The Board consists of five members and they were appointed by the Governor of Tamil Nadu. The first respondent is the Secretary of the Board, since and now the Board members permitted the petitioner to put temporary shutters after the fire accident which was approved by the first respondent, now terming the same as violation does not arise. The petitioners are selling handicraft materials and seashell products which were purchased by the visiting tourists. These materials are flexible, fire prone, hence the asbestos



roof with proper cover is necessary. The petitioners approached the third respondent, requested him to stop the illegal removal and permit the petitioners to run the shops in peaceful manner. The third respondent failed to consider the same and replied that they have already fixed the date, hence all steps would be taken to remove the asbestos sheet roof and electric bulb with the help of the 4th respondent. Hence, having no other option the petitioners filed this writ petition for the aforesaid prayer.

5.The respondents filed their counter and 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 making any permanent 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, to give 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 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 as licencees permitted to do business confirmed and interim order passed.

6.It is further submitted that the petitioners falling under Section 34A of the H.R.&C.E. Act as tenants and lease rent to be payable will not be applicable in this case as the petitioners are only licencees and permitted to use the property in a specified manner following the licence conditions and



if there is any deviation, the Devaswom Board is free to initiate action against them in accordance with law. It is further submitted that by 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, 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 made and replaced with tarpaulin which later caught fire and a fire accident took place causing huge damage and thereafter they were permitted to put up shutters which cause damage to the tarpaulin hence made 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 would be considered with regard to the 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.



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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.

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 temporary construction without affecting the aesthetic and architectural value of the temple and the seashore. They also undertaken 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



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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 by 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 and contrary to the licence condition. Further, the Government had a proposal for “Swadesh Darshan” in Kanyakumari District which is a policy decision and for successful implementation of the policy decision, the petitioners cannot be an obstructors. In such view of the matter, the Commissioner, H.R.&C.E. Department, if needed to constitute a Committee, and take decision, otherwise to take a decision of the petitioners representation without further delay, preferably 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

cse



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WEB COPY

To

1. The Joint Commissioner/Executive Officer,
O/o. Joint Commissioner,
Hindu Religious and Charitable Endowment
[Annexed and Unannexed Temples]
Suseendram Head Office,
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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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