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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 21.06.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH**

**W.P No.18106 of 2023**  
**and W.M.P. No.17301 of 2023**

Erode Gani Market Dinasari Anaithu Siru Javuli Viyabarigal Sangam  
Regd. No.113/1996  
Rep. by its President,  
M.N.Noorsait @ Noor Mohammed  
S/o.S.Meeran Sahib  
No.1044, Brough Road, (M.S. Road)  
Erode – 1

Petitioner

VS.

1.The Secretary to Government,  
Local Authority Department,  
Fort St. George,  
Chennai – 600 009.

2.The Commissioner,  
Erode Municipal Corporation,  
Brough Road, (M.S. Road)  
Erode - 1.

Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 2<sup>nd</sup> respondent to permit the members of the petitioner association to continue their small places to the extent of 3 x 5 Sq.Ft. for selling clothes in the temporary shed at Gani Market, Panneerselvam Park, Erode.



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For Petitioner : Mr.C.Prakasam

For Respondents : Mrs.S.Mythreye Chandru  
Special Government Pleader for R1

Mr.A.Silambanan  
Additional Advocate General  
assist by  
Mr.Rajamathivanan  
Standing Counsel for R2

### **ORDER**

This writ petition has been filed for issue of writ of mandamus directing the 2<sup>nd</sup> respondent to permit the members of the petitioner Association to continue to do their business in the temporary shed at Gani Market at Erode District.

2.Heard Mr.C.Prakasam, learned counsel appearing on behalf of the petitioner, Mrs.S.Mythreye Chandru, learned Special Government Pleader appearing on behalf of the 1<sup>st</sup> respondent and Mr.A.Silambannan, learned Additional Advocate General appearing on behalf of the 2<sup>nd</sup> respondent

3.The case of the petitioner is that one Gani was owning an extent of 3.25 acres of land within the jurisdiction of Erode Municipality. He had gifted this property to the Municipality and small traders numbering about 430 were



given a space of 3 x 5 sq. ft. for doing their business. The 2<sup>nd</sup> respondent wanted to construct a shopping complex and hence, informed the small traders that they should vacate the shops and that they will be allotted shops after the completion of the shopping complex.

4. In the light of the above development, many of the small traders vacated and nearly 106 traders belonging to the petitioner Association continued to run the business in the existing place.

5. The grievance of the petitioner Association is that the traders are eking their livelihood only from income derived from the business run by them at Gani market in temporary sheds and attempts were made by the 2<sup>nd</sup> respondent to forcibly evict the small traders. Hence, the present writ petition has been filed before this Court for a direction to the 2<sup>nd</sup> respondent to permit the members of the petitioner Association to continue to do their business in the existing place.

6. The petitioner Association, after coming to know that a shopping complex is going to be constructed by the 2<sup>nd</sup> respondent, wanted shops to be allotted to them on a priority basis without participating in the tender. Hence, the



Association filed a writ petition in W.P.No.19847 of 2021 seeking for appropriate directions to allot shops in the new constructed commercial complex. This writ petition came to be disposed of by an order dated 14.12.2021 with a direction to the 2<sup>nd</sup> respondent Corporation to deal with the representation made by the Association and to take a decision, within the time frame fixed by this Court.

7.Pursuant to the above order, the 2<sup>nd</sup> respondent Corporation rejected the request made by the Association through proceedings dated 10.02.2022 on the ground that they are bound by G.O.Ms.No.92, dated 03.07.2007 and hence, they are duty bound to lease the shops only by inviting applications and conducting a public auction. Thereafter, the 2<sup>nd</sup> respondent also took steps to invite applications for allotting the shops in public auction to successful bidders.

8.The members of the petitioner Association realized the fact that they cannot afford to pay the rent that is fixed for the shops in the new commercial complex. Therefore, the Association gave up their claim for allotment of shops in the new shopping complex. Alternatively, for those members who continued to run the business in the existing place, the Association wanted to safeguard



their interest and hence, the present writ petition has been filed before this Court for a direction to the 2<sup>nd</sup> respondent to permit the members of the Association to continue their business in the existing place.

9. In the considered view of this Court, the Association after having taken a conscious decision to relocate their business to the shops in the new commercial complex, realized that it involves a cost factor and they want to wriggle out of the earlier stand taken by them. Whenever, any new shopping complex is constructed in the existing place, the Municipality or a Corporation, as the case may be, must do a balancing act to ensure that they augment sufficient income and at the same time, they also try to accommodate the persons who were already having a shop in the old market. The priority in allotment of shops in the new complex cannot be done, since the Corporation/Municipality is bound by the Government Orders which mandates that they must lease the shops only in a public auction. This mandate has been provided to ensure that there is no arbitrariness in allotment of shops and such allotment enables the Municipality/Corporation to earn maximum income. Under such circumstances, persons who were already doing the business in the old place, obviously will be put to some hardship. That by itself cannot be a ground to restrain the Corporation from proceeding further with the allotment



of the new shops by way of public auction and in the process of doing that, evicting those person who are continuing to stay in the old place.

10.The learned counsel for the petitioner brought to the notice of this Court an order passed by the Division Bench in W.A.No.771 of 2016, dated 01.09.2016, wherein, the interest of the existing tenants was considered and directions were given to the concerned Town Panchayat to give the first option to the existing traders while allotting the shops in the new shopping complex. On carefully going through the order that was relied upon by the learned counsel for the petitioner, it is seen that the order was passed based on the settlement that was arrived at between the parties in the Lok Adalat and Division Bench had merely recorded the terms of settlement in the order. In view of the same, this order cannot be taken to be a precedent in the present case.

11.In the light of the above discussion, this Court is not in a position to accede to the request made by the small traders belonging to the petitioner Association. However, considering the fact that it involves the livelihood of the small traders and they must be given some time to look for an alternative, this Court deems it fit to give some time for the small traders who were doing



business to vacate and handover possession to the 2<sup>nd</sup> respondent Corporation.

The space that is occupied by the small traders is required for the 2<sup>nd</sup> respondent for open space which will be utilized for parking of vehicles, loading and unloading of goods, etc.

12. In the result, this writ petition is disposed of with a direction to the members of the petitioner Association to vacate and handover possession of the shops to the 2<sup>nd</sup> respondent, within a period of sixty days from today. It is made clear that if the possession is not handed over to the 2<sup>nd</sup> respondent within the time stipulated by this Court, it is left open to the 2<sup>nd</sup> respondent take steps to take possession of the space occupied by the members of the Association. No Costs. Consequently, connected miscellaneous petition is closed.

**21.06.2023**

Index : Yes/No  
Internet : Yes/No  
Speaking Order/Non-Speaking Order  
Neutral Citation Case : Yes/No  
ssr

To

1. The Secretary to Government,  
Local Authority Department,  
Fort St. George,  
Chennai – 600 009.



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**N. ANAND VENKATESH, J.**

SSR

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