



W.P(MD)No.2573 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 08.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2573 of 2023

and

W.M.P(MD)Nos.2337 & 2338 of 2023

M.Chinthamani

... Petitioner

Vs

- 1.The Director of Health and Rural Welfare
O/o. The Director of Health and Rural Welfare,
Chennai.
- 2.The Joint Director of Health Services,
O/o.The Joint Director of Health and Rural Welfare,
Government Hospital campus,
Tenkasi,
Tenkasi District.
- 3.The Executive Engineer,
Public Works Department,
Building and Maintenance,
Anna Nagar,
Tirunelveli District.
- 4.The Assistant Executive Engineer,
Public Works Department,
Buildings (Construction and Maintenance) section,
Medical work,
Tenkasi, Tenkasi District.



W.P(MD)No.2573 of 2023

5.The General Manager,
Tirunelveli District Co-operative Milk
Producers Federation Ltd., (aavin))
Reddiarpatti Road,
Perumalpuram Post,
Tirunelveli -7.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.11520/Thiva/2023 dated 28.01.2023 served on petitioner on 30.01.2023 on the file of the second respondent and quash the same as illegal and consequently forbearing the respondents from evicting the petitioner from his Chinthamani Aavin Milk Centre located at Government District Headquarters Hospital, Tenkasi, Tenkasi District, within the time stipulated by this Court.

For Petitioner : Mr.Mohamed Sherbudeen

For Respondents : Mr.M.Lingadurai
Special Government Pleader for R.1 to R.4

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Special Government Pleader appearing for the respondents 1 to 4.

2.The writ petitioner is running a milk parlour in the premises of Tenkasi General Hospital. The petitioner was originally granted license but the said license expired on 30.06.2017 itself. However, he has been allowed to run the



W.P(MD)No.2573 of 2023

milk parlour. The petitioner has now been issued with notice dated 28.01.2023 calling upon him to vacate the premises. The Hon'ble Full Bench of the Madurai Bench of Madras High Court has already held that sufficient notice must be given even if a person is an encroacher. Granting 48 hours notice is clearly improper.

3.The learned Special Government Pleader would state that even though the impugned order reads that the petitioner has to vacate within 48 hours, only after eight days the authorities endeavoured to remove the encroachment. The petitioner is running a canteen and a milk parlour. Only the canteen was demolished and only thereafter the other writ petition filed by the writ petitioner was taken up for hearing.

4.Be that as it may, the respondents are permitted to license the petition mentioned site by resorting to tender process. The petitioner can also take part in the said tender process. The petitioner can continue to run the petition mentioned business till then. The moment license is issued in favour of the successful tenderer, the petitioner shall vacate the premises forthwith and without any delay. The petitioner through his counsel gives an undertaking that if he is not successful in the proposed tender process which will have to be conducted as per G.O(Ms)No.194 Health and Family Welfare Department dated



W.P(MD)No.2573 of 2023

21.06.2022 he shall hand over possession immediately without raising any dispute. If the petitioner breaches the said undertaking, the respondents are at liberty to evict the petitioner without any notice. The respondents can also avail police aid in that event.

5. With these directions, this writ petition is disposed of. The petitioner will of course, have the liberty to challenge the validity of the tender process if according to him some irregularity has been committed, but then such a challenge can be maintained only after the petitioner hands over the possession. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

08.02.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

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W.P(MD)No.2573 of 2023

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G.R.SWAMINATHAN, J.

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