



W.P(MD)No.5914 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD).No.5914 of 2023
and WMP(MD)No.5500 of 2023

Mahalingam

... Petitioner

Vs

1. The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai.
2. The Commissioner,
Kovilpatti Municipality, Kovilpatti,
Thoothukudi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the second Respondent from sealing and demolishing petitioner's Shop No.157 situated at Daily Market Kovilpatti, Thoothukudi District till allotment of alternative shop vide petitioner's representation, dated 26.01.2023.

For Petitioner : Mr. P. Banuprasath

For R1 : Mr.N.Muthu Vijayan
Special Government Pleader



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For R2 : Mr.P.Srinivas
Standing Counsel

ORDER

The Writ Petition has been filed in the nature of mandamus, seeking a negative direction against the second respondent/Commissioner, Kovilpatti Municipality, Kovilpatti, Thoothukudi District from sealing and demolishing the petitioner's Shop No.157 situated at Daily Market Kovilpatti, Thoothukudi District till allotment of alternative shop, consequent to the representation, dated 26.01.2023 given by the petitioner.

2.In the affidavit filed in support of the writ petition, the writ petitioner had stated that he is doing wholesale Banana Leaf business in Shop No.157 at Daily Market, Kovilpatti. It had been stated that the second respondent had informed that a building would be constructed and therefore, the petitioner should vacate the shop along with others, who are also having shops in the daily market. The other shop owners had filed **WP(MD)No.580 of 2023 by the Sivajirajan /vs/ The Secretary to Government and others**. All the writ petitions came up before learned Single Judge, who by order dated 09.02.2023 after hearing both sides had directed as follows:



“4.Though I am able to appreciate the plight of the petitioners herein, this Court will not be justified in preventing the local body from putting up a new construction in the place of existing one. It is seen that the scheme has been implemented by the local bodies across the State. My attention has been drawn to an earlier order dated 11.01.2023 made in WP No.35018 of 2022 by a learned Judge of this Court. The learned Judge while permitting the local body to go ahead with the auction proceedings had permitted the members of the petitioner association to continue to remain in possession of the allotted premises till 31.03.2023 and thereafter vacate and hand over possession to the local body to enable them to construct a new building.

5.I am of the view that a similar approach can be adopted in this case also. The first relief I can grant to the petitioners is that they can remain in possession of the existing premises till 31.03.2023. They have to necessarily vacate and hand over possession on or before 01.04.2023. It appears that during the pendency of the writ petitions, the Municipality called for a meeting of all the stakeholders. The municipality has identified the premises of new bus stand at Kovilpatti as the alternative site for accommodating the petitioners for the interregnum period. Draw of lots was held. Nine persons appear to have been allotted. In these circumstances, these writ petitions are disposed of with the following directions :



a) *I direct the Kovilpatti Municipality to conduct a fresh draw of lots for all the occupants for accommodating them in the new bus stand premises at Kovilpatti. The new bus stand can be divided into two parts : The built up area and the vacant site. It appears that already 140 shops have been earmarked in the built up area.*

b) *The petitioners herein and the 9 persons who have already been allotted can take part in the draw of lots for the built up area at new bus stand premises, Kovilpatti.*

c) *Preference can given to those who were running provisional store and medical shops. Appropriate rent shall also be fixed accordingly.*

d) *The respondent municipality is directed to provide basic amenities so that the petitioners herein can carry on their business activities as before. In other words, the local body will have to ensure that appropriate arrangements are made for sanitation, water supply, electricity supply, street lights and security.*

e) *The local body will issue formal proceedings addressed to all the petitioners herein permitting them to move to the alternative site.*

f) *The petitioners can very well form an association or body and take charge of putting up a temporary structures in the vacant site at new bus*



stand premises for the intervening period.

g) The learned standing counsel states that work orders have already been issued for putting up the new construction. It will be commenced in the first week of April 2023 and concluded by the end of October 2023. The Contractor is directed to adhere to this time schedule.

h) After the new construction is put up, public auction shall be conducted for all the new shops one by one. The petitioners can also take part in the said public auction. The petitioners herein who are the existing licensees will be given preference and priority in the sense that if they match the highest bid or offer, they will be allotted respective shops.

i) If there is no consensus among the petitioners, there shall be competitive bidding among the petitioners. However, only those who have cleared all the arrears payable to the local body as on 31.03.2023 will be given the said preference.

j) Public auction will be conducted in a transparent manner. The entire proceedings will be duly videographed.

k) All other aspects are left to the discretion of the local body. It is open to the Municipal Commissioner to evolve appropriate formula for resolving the issue”.



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3.It is stated by the learned Standing Counsel for the second respondent/ Commissioner, Kovilpatti Municipality, Kovilpatti, Thoothukudi District that after the said order, the petitioner was issued with a notice, dated 18.02.2023 in Na.Ka.No.3295/2021/C1 to participate in the lot. However, the petitioner did not respond to the notice.

4.The learned counsel for the petitioner claims that the notice was never served on the petitioner herein.

5.At any rate, the petitioner is also to be considered for allotment of shop in the new place, which is identified for all the shop owners, who are all carrying business at daily market. The order of the learned Single Judge would bind not only those writ petitioners in WP(MD)No.580 of 2023, but also the petitioner who can very well joined with those writ petitioners.

6.Now, the petitioner seeks further time. This request should be placed before the concerned respondent and this Court cannot consider the request.



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7. Accordingly, this Writ Petition stands disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

17.03.2023

NCS : Yes/No
Index : Yes / No
Internet: Yes/ No

PNM

To

1. The Secretary to Government,
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Secretariat, Chennai.
2. The Commissioner,
Kovilpatti Municipality, Kovilpatti,
Thoothukudi District.



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C.V.KARTHIKEYAN, J.

PNM

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