



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)Nos.6599 to 6601 of 2023

and

W.M.P.(MD)Nos.6258, 6259, 6261, 6263, 6260 and 6262 of 2023

W.P.(MD)No.6599 of 2023:-

D.Vijayanand

... Petitioner

vs.

1.The Commissioner of Municipal Administration,
6th Floor, Ezhilagam, Annexure Building,
Chepauk, Chennai- 600 005.

2.The Commissioner,
Usilampatti Municipality, Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned e-tender notice in Roc.No.808/2022/E1, dated 06.03.2023 issued by the second respondent and to quash the same and consequently, to restrain the second respondent, his men or agents from evicting the petitioner from Shop in I.U.D.P.No.119/96 situated at Usilampatti Bus Stand, Usilampatti till 31.03.2026.

W.P.(MD)No.6600 of 2023:-

A.Pandian

... Petitioner

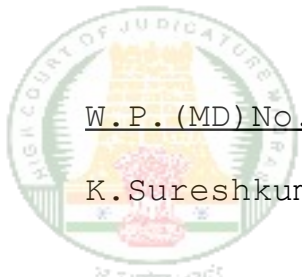
vs.

1.The Commissioner of Municipal Administration,
6th Floor, Ezhilagam, Annexure Building,
Chepauk, Chennai- 600 005.

2.The Commissioner,
Usilampatti Municipality, Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned e-tender notice in Roc.No.808/2022/E1, dated 06.03.2023 issued by the second respondent and to quash the same and consequently, to restrain the second respondent, his men or agents from evicting the petitioner from Shop in I.U.D.P.No.119/91 situated at Usilampatti Bus Stand, Usilampatti till 31.03.2026.



W.P. (MD) No. 6601 of 2023:-

K. Sureshkumar

... Petitioner

vs.

1. The Commissioner of Municipal Administration,
6th Floor, Ezhilagam, Annexure Building,
Chepauk, Chennai- 600 005.

2. The Commissioner,
Usilampatti Municipality, Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned e-tender notice in Roc.No.808/2022/E1, dated 06.03.2023 issued by the second respondent and to quash the same and consequently, to restrain the second respondent, his men or agents from evicting the petitioner from Shop in I.U.D.P.No.119/99 situated at Usilampatti Bus Stand, Usilampatti till 31.03.2026.

For Petitioner	: Mr. P. Athimoolapandian
For R1	: Mr. J. Ashok Additional Government Pleader
For R2	: Mr. Veera Kathiravan Additional Advocate General for Mr. G. Austin (in all cases)

COMMON ORDER

These Writ Petitions have been filed by Shop Keepers in the nature of a Certiorarified Mandamus seeking to call for the records relating to e-tender notice in Roc.No.808/2022/E1, dated 06.03.2023 issued by the second respondent, Commissioner, Usilampatti Municipality and to quash the same and to direct the second respondent from evicting the petitioners from their respective shops at Usilampatti Bus Stand, Usilampatti, till 31.03.2026.

2. There are three Writ Petitions filed by the three separate Shop Owners. Since arguments were advanced by the learned Counsel for the petitioners and by the learned Additional Advocate General for the respondents in common and facts also overlapped, it is only prudent that a common order is passed in all the three Writ Petitions.

3. Heard Mr. P. Athimolapandian, learned Counsel for the petitioners, Mr. J. Ashok, learned Additional Government Pleader for the first respondent and Mr. Veera Kathiravan, learned Additional Advocate General assisted by Mr. Y. Austin, learned Counsel for the



second respondent.

4. Let me take up as an illustration the facts in W.P.(MD) No.6599 of 2023. This Writ Petition had been filed by P.Vijayanand, who in his affidavit, had stated that he is the licensee at Old Shop No.9, New Shop I.U.D.P.No.119/96 at Usilampatti Bus Stand, Usilampatti. It was allotted in the year 1975. Thereafter, it was transferred in his name in the year 1999. He is running a tea and snack shop.

5. It had been stated that the second respondent had renovated the bus stand and had issued license in the year 2007 and granted 9 years licence from 01.10.2007 to 30.09.2016. Thereafter, the shop was brought for auction and the petitioner was successful bidder and was issued licence from 01.04.2017 to 31.03.2026.

6. It was stated that the second respondent in the impugned order referred to above had called the petitioner for a discussion for construction of new Usilampatti Bus Stand on 13.03.2023. It was unanimously decided that since there is a congestion in the existing bus stand, a new bus stand has to be constructed.

7. The petitioner claims that the second respondent had directed the petitioner to vacate the shop, since the present bus stand is to be demolished for construction of a new bus stand at the present place, where the petitioner is running a shop. He claims that an e-tender notice was issued on 06.03.2023 and published in the Dinakaran Daily Tamil Newspaper on 09.03.2023 for the tender to be held on 28.03.2023, thereby, violating the procedure under Rule 20 of Tamil Nadu Tender Transparency Rules, 2000. Hence, the Writ Petition has been filed seeking to quash the said e-tender notice.

8. It was stated by the learned Counsel for the petitioners that similar Writ Petitions in W.P.(MD) Nos.6494 of 2023 and 6497 of 2023, had been filed, which had come up for consideration before this Court on 24.03.2023. On that particular date, the learned Counsel for the petitioners had stated that the petitioners therein had participated in the meeting dated 13.03.2023 and had stated that he had not questioned the e-tender notification, but rather sought protection of possession for a reasonable period of time. In the said Writ Petition, this Court had observed as follows:

"4. The learned Additional Advocate General, who takes notice on behalf of the second respondent states that the grievances of the petitioners would be addressed by the second respondent, who had already conducted a meeting, not only with the petitioners, but also with other shop keepers on 13.03.2023 and that an appropriate decision would be taken. Such decision should be taken, keeping in mind that the petitioners are having lease period till



5.The learned Additional Advocate General also pointed out that as per terms of lease, the petitioners specifically agreed that the lease could be frustrated, if the land is required for public use and the petitioners should hand over the land.

6.Certainly, if the land is categorized for public purpose, then that right is always vested with the respondent. But still the respondents may also keep in mind the interest of the petitioners and take an appropriate decision.

7.As on date, the writ petitions are a little premature. The petitioners have to wait for the decision taken by the second respondent, which might give relief to the petitioners. Though the meeting was convened on 13.03.2023, the petitioners are at liberty to give any fresh representation.

8.With the above directions, all the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed."

9.The learned Additional Advocate General had stated that the very same order, as stated in the aforementioned Writ Petitions, can be passed in the present Writ Petitions.

10.But, however, the learned Counsel for the petitioners protested that an other learned Single Judge, had passed a different order also granting protection and that this Court should follow that particular order. That order is not binding on me.

11.However, a legal point has been raised, namely, violation of Rule 20 of Tamil Nadu Tender Transparency Rules, 2000, which reads as follows:

"20. Minimum time for submission of tenders.-

(1) The Tender Inviting Authority shall ensure that adequate time is provided for the submission of tenders and a minimum time is allowed between date of publication of the Notice Inviting Tenders in the relevant Tender Bulletin or in the newspapers whichever is later and the last date for submission of tenders. This minimum period shall be as follows.-

(a) for tenders upto rupees two crores in value, fifteen days; and

(b) for tenders in excess of rupees two crores in value, thirty days.

<https://www.mhc.tn.gov.in/judis> (2) Any reduction in the time stipulated as per sub-



rule (1) has to be specifically authorized by an authority superior to the Tender Inviting Authority for reasons to be recorded in writing."

12. The learned Counsel for the petitioners also stated this particular fact in the affidavit filed in support of these Writ Petitions. One fact which must be kept in mind is that, a tender, which is issued by any authority, involves an offer to participate in the tender. Once documents are submitted, then the participants offer a bid amount for the works as claimed in the tender notice. Then there is a beginning of a contractual relationship between the individual, who submits the document, and the tender issuing authority. The contract is not completed, till the tender issuing authority accepts the bid. To a little extent, even if that particular individual, who offers a bid, is not accepted as a highest bidder, once the documents are taken on record, a contractual relationship begins and exists between the offerer and the tender issuing authority. That is why under Section 11, if there are any violations, an appeal provision is provided, giving a right to either one of the parties to question the procedure. But if an individual does not place the bid at all, there is no contractual relationship between him and the tender issuing authority.

13. A person, who does not participate in the tender has no right to question any rule or condition of the tender notification. The petitioners herein had not participated in the tender process. They are shop owners. They have no intention to participate in the tender. They cannot place reliance on Rule 20 of the Tamil Nadu Tender Transparency Rules, 2000. Even if there is a fault in that, the further sub clause in Rule 20 specifically states that for reasons, the time period can be reduced. Even in the Indian Evidence Act, 1872, there is a difference between "shall presume" and "conclusive proof". There is still a gap and even if the word "shall" is used in a legislation, for it to be conclusively proved, there must be a further step to be taken. The legislation has also given a window that the time period can be reduced, if a resolution is passed. Therefore, on the very locus, the petitioners will have to suffer.

14. The Writ Petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
30.03.2023

These petitions having been posted on Monday the Seventeenth day of April Two Thousand Twenty Three under caption "For Being Mentioned". In pursuance to the order of this Court dated 30.03.2023 and mde herein in the presence of the above said Advocate, this



Court made the following order.

The matter has been listed today under the caption "for being mentioned".

2. Heard the learned counsel for the petitioner, learned Additional Government Pleader appearing for the first respondent and also the learned Additional Advocate General assisted by the learned counsel appearing for the second respondent.

3. On perusing the order already passed let me clarify that the observations from paragraph Nos 10 to 13, have been incorporated only owing to additional arguments advanced by the petitioner herein. But, the order in WP(MD).No. 6494 and 6497 of 2023, may be followed by the respondents in so far as the petitioners are also concerned.

4. The order stands clarified to that extent.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/05/2023

Sub Assistant Registrar (CS)

cmr

To

1. The Commissioner of Municipal Administration,
6th Floor, Ezhilagam, Annexure Building,
Chepauk, Chennai- 600 005.

2. The Commissioner,
Usilampatti Municipality, Madurai District.

+1 CC to M/s.SPL.GP (SR-19324[F] dated 03/04/2023)

W.P. (MD) Nos. 6599 to 6601 of 2023
30.03.2023

KB(04.05.2023) 6P 4C