



W.P.(MD)Nos.7171 and 8322 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 22.06.2023

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF
JUSTICE**

AND

The HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.P(MD)No.7171 of 2023

and

W.M.P(MD)Nos.6761 and 6762 of 2023

and

W.P.(MD) No.8322 of 2023

and

W.M.P(MD)Nos.7660 and 7661 of 2023

E.Ravikumar .. Petitioner in W.P(MD)No.7171 of 2023

S.Niranjana .. Petitioner in W.P(MD)No.8322 of 2023

Vs.

1.The Theni Allinagaram Municipality,
Rep. by its Commissioner,
Municipality Office,
Theni.

2.The Executive Engineer,
WRM Department,
Old Government Hospital Road,
Theni,
Theni District.

.. Respondents in both W.Ps.



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COMMON PRAYER: PetitionS under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the first respondent in Na.Ka.No.831/2023/A3 dated 15.03.2023 and quash the same as illegal and consequently forbear the respondents from evicting the petitioners from their shop(Shop Nos.1A, 19A respectively), in Kamaraj Bus Terminus, Theni.

For Petitioner : Mr.M.Mahaboob Athiff
For R-1 : Mr.G.Kaleeswaran,
Standing Counsel
For R-2 : Mr.S.P.Maharajan,
Special Government Pleader

COMMON ORDER

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

We have heard Mr.M.Mahaboob Athiff, learned counsel for the petitioners, Mr.G.Kaleeswaran, learned Standing Counsel for the first respondent and Mr.S.P.Maharajan, learned Special Government Pleader for the second respondent.



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2. Learned counsel for the petitioners submits that the petitioners had obtained the writ property on lease from the local authority respondent No.1 in auction. The petitioners abide by all the terms and conditions of the auction and in accordance with the terms and conditions of the auction, constructed a shop. Now, though a notice is given terminating the lease so also directing the petitioners to evict, no fault lies with the petitioners as the petitioners have not violated any of the terms and conditions of the lease. Learned counsel submits that under the Right to Information Act 2005, the petitioners sought an information as to whether the petitioners are one of the encroachers amongst 166 encroachers. Respondent No.2 replied in negative. As the petitioners are not encroachers, there is no reason to cancel the lease granted in favour of the petitioners and evict them.

3. Learned counsel for respondent No.1 submits that by mistake, the auction was conducted in respect of the writ property on which the petitioners constructed a shop. The same is a water body. In view of that, the lease was cancelled and the direction to evict the petitioners was given. It is further submitted that the petitioners constructed the shop without permission.



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4. Learned Special Government Pleader for respondent No.2 submits that the writ property is on a water body and no construction activity could be carried out.

5. Respondents 1 and 2, affirm that the shops constructed by the petitioners are on a water body.

6. From the factual matrix on record, it cannot be disputed that respondent No.1 auctioned the vacant plots. The petitioners are the successful bidders in the auction and were granted lease of the said vacant plots so as to construct a shop for the purpose of their livelihood. No fault can be attributed to the petitioners. It appears that respondent No.1 under misconception had leased out the property.

7. Though the petitioners cannot be faulted with or they are not responsible for any of the acts of commissions or omissions for taking the property on lease, still as the said construction is on a water body, the construction cannot be protected *inter alia* the relief cannot be granted to the petitioners.

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8. The petitioners, if so advised, are at liberty to file appropriate proceedings for compensation as may be permissible under Law, in that event, all contentions of respective parties are kept open. The petitioners may vacate the writ shops within fifteen days from today.

9. With the above observations, the writ petitions are disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

(S.V.G., C.J.)

(R.S.M., J.)

22.06.2023

NCC : Yes/No
Index : Yes/No

PM

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PM

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