



W.P(MD)Nos.10430 to 10446 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)Nos.10430 to 10446 of 2023

and

**W.M.P(MD)Nos.9250, 9252, 9254, 9261, 9255, 9257, 9263, 9266,
9269, 9272, 9258, 9268, 9262, 9270, 9264, 9271, 9286, 9288, 9295,
9296, 9297, 9299, 9253, 9259, 9277, 9278, 9302, 9304, 9256, 9260,
9265, 9267, 9273, 9274 of 2023**

W.P(MD)Nos.10430 to 10446 of 2023

Karthigaisamy

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. by the Secretary,
Municipal Administration and Water Supply Department,
Secretariat,
Fort St. George,
Chennai - 9.
- 2.The Commissioner of Municipal Administration,
Ezhilagam, Annex Building,
Chepauk,
Chennai.



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3.The Commissioner
Usilampatti Municipality,
Usilampatti,
Madurai District.

... Respondents

PRAYER : Writ Petition is 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.808/2022/E1 dated 19.04.2023 on the file of the third respondent and quash the same as illegal and consequently direct the respondents to re-induct the petitioner as tenants and provide him shop in the proposed New Bus Stand at Usilampatti without conducting fresh auction and also to provide alternate temporary shops until the completion of project namely, New Bus Stand at Usilampatti.

In all Writ Petitions

For Petitioners : Mr.T.Lajapathi Roy,
Senior Counsel
for M/s.Lajapathi Roy and Associates
For Respondents : Mr.N.Muthu Vijayan - for R1
Special Government Pleader



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Mrs.D.Farjana Ghoushia - for R2
Special Government Pleader
Mr.Veerakathiravan,
Additional Advocate General
assisted by Mr.Austin - for R3

COMMON ORDER

Heard Mr.T.Lajapathi Roy, learned Senior Counsel on behalf of the petitioners herein, Mr.N.Muthu Vijayan, learned Special Government Pleader for the first respondent, Mrs.D.Farjana Ghoushia, learned Special Government Pleader for the second respondent, Mr.Veerakathiravan, learned Additional Advocate General assisted by Mr.Austin, learned counsel for the third respondent.

2. The Writ Petitions have been filed in the nature of Certiorarified Mandamus seeking interference with an order of the third respondent/ Commissioner, Usilampatti Municipality, Usilampatti, dated 19.04.2023 in Na.Ka.No.808/2022/E1 and to direct the respondents to re-induct the petitioners as a tenants and provide shops in the proposed new bus stand at Usilampatti without conducting fresh auction and also



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to provide alternate temporary shops until completion of the project namely, New Bus Stand at Usilampatti.

3. In all the Writ Petitions the same relief has been sought. All the Writ Petitioners were lessees of shops at Usilampatti Bus Stand. They had all been issued with notices calling upon them to vacate since the respondents had put up a plan for construction of a new bus stand. Even on earlier occasion, sporadically, several individuals who had taken shops on lease had filed Writ Petitions and on hearing the learned counsels and the learned Additional Advocate General for the respondents and also the Special Government Pleader, this Court had refused to accede to the request sought by the petitioners therein.

4. The reliefs sought in these Writ Petitions, in my opinion are self contradictory. The reliefs sought are for a Certiorarified Mandamus seeking interference of an order by which the petitioners were directed to vacate and handover possession.



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5. In the same breath, it is also stated that they must be re-inducted after the bus stand is constructed. This would naturally mean they will have to vacate because if they do not vacate, the bus stand could not be constructed. The third aspect is that they should be given alternate shops till the new construction is put up. Again this relief would run contradictory to the first relief sought that they should not be evicted. The word used in the relief is "re-induct" which naturally means that they are today not in possession and seek to come back once again as to run the shops.

6. Even otherwise, the learned Senior Counsel on behalf of the Writ Petitioners drew the attention of this Court to Sections 321 and 322 of the Tamil Nadu District Municipalities Act, 1920 and stated that when any order is passed by the Executive Council, there is an appeal provision available and the time limit for filing such an appeal would be 30 days and that under the notice which is impugned, just 7 days had been given to vacate the shops. However, the petitioners had been inducted by grant of lease and as an illustration in the case of the petitioner in W.P.(MD) No.10430 of 2023, by proceedings dated



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04.10.2017 in Na.Ka.No.999/2013/அ1 the lease period was from 01.04.2017 till 31.03.2026. The petitioner was granted lease of shop No.92. The lease deed is relied on by the petitioner that he should continue to be in possession till 31.03.2026.

7. However, the very terms of the lease, will have to applied and abided by the petitioners herein. One of the clauses of the lease is as follows :

"மன்றம் விரும்பினால் எவ்வித காரணமும் இன்றி முன்னறிவிக்கை செய்து உரிய காலத்தின் இடையில் உரிமத்தை நிறுத்தி விட அதிகாரம் உண்டு."

8. Another clause of the lease is as follows :-

"மேற்படி கடைகளுக்கு நகராட்சிக்கு தேவைப்படும்போது தாங்கள் எவ்வித ஆட்சேபணையின்றி அப்போதுள்ள நிலையிலேயே இடத்தை திரும்ப ஒப்படைக்க வேண்டும்."



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9. The terms are very clear that the respondents have retained a right to resume the shops and to claim back possession in case of any exigency. The exigency which is now pointed out is that the respondents have to construct a new bus stand.

10. It is pointed out by the learned Senior Counsel that in an earlier Writ Petition, it had been stated by the petitioner therein that the existing bus stand is in land of about 2 acres and that the new bus stand would be constructed in land of 1-1/2 acres. It is therefore, stated that the shops need not be vacated.

11. This is a decision which has to be taken by the respondents and certainly this Court cannot examine as to the manner in which the bus stand is going to be built or the plan of the bus stand and whether the shops will have to be vacated or not vacated. That argument, will necessarily have to fail.

12. There is yet another argument which has been presented by the learned Senior Counsel for the petitioners, wherein he pointed out



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the provision of the Tamil Nadu Motor Vehicles Rules, 1989, more particularly, to Rule No.45 wherein, it had been stated that if any public stand and in this case, the learned Senior Counsel indicted the bus stand which is to be constructed as a public stand, necessary approval will have to be obtained from the Director and Town and Country Planning and the procedure enunciated will have to be followed. The respondents would certainly appreciate the stand of the petitioners because now they have been made aware of this particular fact and I am confident that they would proceed in manner know to law and the Court also is of the opinion that the respondents have stood benefited by this stand taken by the learned Senior Counsel to their advantage and the respondents now being enlightened with this provision may act accordingly, and proceed to get necessary permission.

13. One further stand taken by the learned Senior Counsel for the petitioners is by drawing attention to a Division Bench Judgment of this Court in *W.P.(MD) Nos.21204 of 2019* batch, in *Tanjore Managara /Thalaimai kadaikani Varthaga Sangam, Rep. by its President S.Dharmaraj Vs. The Tanjore Corporation*, Rep. by its Commissioner,



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Tanjore District and others, wherein, the Division Bench had stated that as follows in paragraph 29 (ii) :-

(ii) The owners of the permanent shops, who were the erstwhile licensees of the Corporation shall be permitted to continue their trading activities in the proposed temporary licensed shops subject to payment of license fee, which is determined by the first respondent Corporation, which shall be as per P.W.D. rates. This arrangement is purely temporary till the expiry of the time fixed by the Corporation and the traders have no right to continue beyond the said period."

14. The Division Bench, had stated that the owners of the permanent shops who are erstwhile licensees shall be permitted to continue the trading activities in the proposed temporary licensed shops subject to payment of license fee. This is a direction given in that particular Writ Petition with respect to the facts in that particular Writ Petition.



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15. It is also seen that the Writ Petitions had been filed before the Division Bench. Here, the Writ Petitioners have sought three different prayers which are couched in one prayer and each one of them are contradictory to the other. The first claim is that they should not be evicted. Then they claimed that if the new bus stand is constructed, they must be given shops in the new bus stand, which naturally means that they must concede that they should be evicted. They also state as a third alternate that they must be given an alternate place by the respondents herein. The petitioners cannot then question the notice issued to vacate. They must show bonafide by voluntarily vacating and not by raising issues questioning the notices issued. They have no right to continue in the place as seen from the licence granted to the petitioners herein. The respondents have every right to resume possession of the shops in case of exigencies. Building a bus stand is for the benefit of the entire public in that particular area. Building a Bus stand is for the benefit of not only to the general public there but also for all the travellers who come. I am not impressed with the arguments advanced.



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16. Accordingly, the Writ Petitions are dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

28.04.2023

Index :Yes/No
Internet :Yes/No
NCC : Yes / No
RM



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C.V.KARTHIKEYAN, J.

RM

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