



WP(MD)No.12636 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.12636 of 2022

and

WMP(MD)No.8947 of 2022

T.Ilangovan

... Petitioner

v.

1.The Commissioner,
Pudukottai Municipality,
Pudukottai.

2.The Assistant Engineer (O&M),
Tamil Nadu Generation and Distribution
Corporation Ltd (TANGEDCO),
Electricity Distribution Division,
Pudukottai District.

3. ...

4. ...

5.The General Manager,
M.M.296, Pudukottai Co-operative Milk Producers Union Ltd.,
Aavin, Kalyanaramapuram,
Pudukottai District.

... Respondents



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[R.3, R.4 exonerated from the array of parties vide order dated 21.06.2022]

WEB [R.5 impleaded vide order dated 05.08.2022]

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the second respondent to restore the electricity connection bearing No.06-113-007-627 granted for shop measuring 64 sq.ft situated at Charles Nagar, Pudukottai.

For Petitioner : Mr.M.Rajarajan

For Respondents : Mr.P.Mahendran
for R.1

Mr.S.Deenadhayalan,
Standing Counsel
for R.2

No appearance for R.5

ORDER

The petitioner, claiming to be a licensee of Aavin and running a parlour at Charles Nagar, Pudukottai, has filed this writ petition for a mandamus directing the second respondent to restore the electricity service connection.



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2.Learned Counsel for the petitioner submitted that based on the permission given by the first respondent Municipality, the Aavin has allotted a shop to this petitioner to run an Aavin Parlour. The petitioner is also running the parlour from the year 2019. However, at the instance of the first respondent, the second respondent has disconnected the service connection.

3.Learned Counsel for the first respondent submitted that the petitioner was provided with a license for running the shop admeasuring 64 sq.ft, however, the petitioner has put up some extensions and has occupied the entire road margin. Therefore, the petitioner was issued a notice to remove the shop and it was also intimated to the second respondent / Electricity Board to disconnect the service connection.

4.Learned Standing Counsel for the second respondent / Electricity Board submitted that based on the instructions of the first respondent / Municipality, they have disconnected the service connection. He further submitted that pursuant to the orders of this Court, the Electricity service connection is now restored.



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5. Heard the learned Counsel for the petitioner, learned Counsel for the first respondent and the learned Standing Counsel for the second respondent. There is no representation for the fifth respondent.

6. Admittedly, the place in which the petitioner was permitted by the first respondent Municipality to put up a shop is at the road margin. The Hon'ble Supreme Court, time and again, reiterated that footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and in fact, their use for a private purpose frustrates the very object of its existence. The margins of the road and streets are meant for the common use for the pedestrians. However, with the connivance of some officers, permissions are granted to put up shops on these margins, leaving the general public to walk on the roads, leading to causing inconvenience to the pedestrians as well as commuters on the road and leads to tragic accidents.



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7. Even otherwise, the road belongs to the Highway Department, over which, the first respondent Municipality is not having any control. As per Section 26(2) of the Tamil Nadu Highways Act 2001, the State Highways Department is empowered to grant licence to put up a temporary structure with the concurrence of the District Collector concerned, after obtaining a no objection from the concerned Police Station as to whether this would cause any nuisance to the public and the traffic in that area. While so, without any authority, the first respondent has permitted the petitioner to put up a shop at the road margin, as if the road is their property.

8. In similar circumstances, this Court, in ***Chinnamasanam v. District Collector, Virudhunagar and Others*** [WP(MD)No.20277 of 2017, decided on 27.06.2023], has issued the following directions:-

“1. The writ petitioner is not having any right or authority to establish a shop on a road margin of a Highway without getting any prior permission and therefore, he is not entitled for the relief sought for in this writ petition. However if he has suffered any loss on account of permission granted by



the General Manager, Virudunagar Co-operative Milk Producers Union, it is open to the petitioner to claim damages as against the General Manager of the Virudunagar Co-operative Milk Producers Union, in a manner known to law.

2.The Secretary to the State Highways Department and the Secretary to the Municipal Administration and Water Supply Department shall constitute a Committee and identify the number of shops permitted by the respective Departments all over the State and ensure the strict compliance of the relevant Acts and Rules on grant of license on road margins and ensure the convenience of the common public is not affected.

3.The State Highways Department and the Municipal Administration Department shall also frame guidelines for granting such licenses on a road margin in accordance with the the Tamil Nadu Highways Act, and the District Municipalities Act.

4. The respective departments shall also ensure that the pathways/sidewalks on the margin of roads/streets are not occupied or encroached for any other purpose. No costs. Consequently connected miscellaneous petition is closed.”



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9. Since the petitioner is operating the shop with the permission of the first respondent, who really is not having any authority over the subject place, the petitioner is not entitled for any relief as sought for in the writ petition. However, the petitioner is at liberty to claim damages as against the first respondent / Municipality and also against the General Manager of Pudukottai Co-operative Milk Producers Union, in the manner known to law.

Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
NCC : Yes / No
Internet : Yes
gk

12.09.2023

To

The Commissioner,
Pudukottai Municipality,
Pudukottai.



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B.PUGALENDHI, J.

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