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W.P(MD)No.2784 of 2014



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2023

CORAM :

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR  
and  
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P(MD)No.2784 of 2014  
and  
M.P(MD)No.1 of 2014

S.Palani

... Petitioner

vs.

1. The District Collector,  
Tirunelveli District.

2. The Assistant Executive Engineer,  
(State Highways)  
Highway Office, North Car Street,  
Palayamkottai, Tirunelveli District.

3. The Executive Officer,  
Arulmigu Palayanchalai Kumaraswamy  
Thirukovil, Tirunelveli Junction,  
Tirunelveli-627 001.

4. The Inspector of Police,  
Palam Police Station (Law & Order)  
Tirunelveli-627 001.

... Respondents

**PRAYER :** Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondents to restore the petitioner's shop bearing Shop No.24, SN High Road, Tirunelveli Junction to its original position and to pay appropriate compensation for the illegal demolition of the same.



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For Petitioner : Mr.G.Prabhu Rajadurai  
For R1 to R3 : Mr.P.Thilakkumar  
Government Pleader  
For R4 : Mr.S.Manikandan  
Government Advocate(Crl.Side)

### **ORDER**

**(Order of the Court was made by D.KRISHNAKUMAR, J.)**

The prayer in this writ petition is for issuance of a Writ of Mandamus, directing the respondents to restore the petitioner's shop bearing Shop No.24, SN High Road, Tirunelveli Junction, to its original position and to pay appropriate compensation for the illegal demolition of the same.

2. According to the petitioner, the premises bearing Shop No.24, S.N High Road, Tirunelveli Junction measuring about 15.5 x 15.5 sq.ft belongs to the 2<sup>nd</sup> respondent who leased out the said land to the petitioner's father one Subramanian on a ground rent of Rs.75/- per month. The petitioner's father constructed a structure therein and was running a Tiffin Centre by name, Mani Tiffin Centre. After the death of his father in November 2006, the petitioner and his three brothers continued to run the said Tiffin Centre. While so, in order to convert the said Tiffin Centre as Madapalli of the 3<sup>rd</sup> respondent temple, the 3<sup>rd</sup>



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respondent influenced the 2<sup>nd</sup> respondent to evict the petitioner from the shop in question. Accordingly, the 2<sup>nd</sup> respondent issued an eviction notice dated 04.12.2006 to remove the petitioner's shop stating that the said shop is encroaching the service road. The petitioner filed W.P.No. 11294 of 2006 challenging the said notice and a Division Bench of this Court by order dated 23.11.2010 allowed the said writ petition holding that the said shop does not belong to the 2<sup>nd</sup> respondent and quashed the eviction notice dated 04.12.2006. While so, on 15.04.2014, the 2<sup>nd</sup> respondent trespassed into the petitioner's shop and demolished the same with the help of the 4<sup>th</sup> respondent. Thereafter, when the petitioner tried to put back utensils in the shop, the 4<sup>th</sup> respondent threatened him not to enter the said shop. Hence, this writ petition.

3. Learned counsel for the petitioner fairly submitted that if the shop in question is situated in S.No.961/1 which belongs to the Highways Department, the petitioner cannot have any grievance for vacating the said shop, but according to the learned counsel, the said shop is situated in S.No.1093 which belongs to the 3<sup>rd</sup> respondent temple and in the affidavit filed in support of this writ petition, it has been advertently stated that the said shop belongs to the 2<sup>nd</sup> respondent. Therefore, the 2<sup>nd</sup> respondent has no jurisdiction for initiating action to remove the



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petitioner from the shop in question which has been leased out to the petitioner by the 3<sup>rd</sup> respondent temple authorities. Thus, the learned counsel prayed for a Mandamus as stated supra.

4. Learned Government Pleader appearing for the respondents 1 to 3 submitted that the shop in question belongs to the Highways Department and therefore, they have rightly taken action which is perfectly correct. He further submitted that the petitioner himself has admitted in his affidavit that the shop in question belongs to the 2<sup>nd</sup> respondent.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. It is the admitted case of the petitioner that S.No.961/1 belongs to the Highways Department and S.No.1093 belongs to the 3<sup>rd</sup> respondent temple, in which, the shop in question is situated. While it is the case of the petitioner that the shop in question is not situated in the Highways' land, the respondents state that since the petitioner put up the shop in question encroaching the Highways' land, it was removed. Though the petitioner averred in his affidavit that the shop in question



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belongs to the 2<sup>nd</sup> respondent, during the hearing, learned counsel for the petitioner disputed the said fact stating that the said averment is an inadvertent mistake and submitted that the place in question belongs to the 3<sup>rd</sup> respondent. Be that as it may, in order to give quietus to the issue, we direct the respondents 1 and 2 to survey the lands in S.No. 961/1 and S.No.1093. If the survey reveals that the petitioner has encroached upon the Highways' land in S.No.961/1, and put up shop in question, without any further notice, the petitioner has to immediately vacate the shop in question, if he is in possession of the shop as on date, otherwise, it is open to the respondents 1 and 2 to remove the encroachment made by the petitioner. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

7. At this juncture, learned counsel for the petitioner submitted that even assuming that the petitioner has encroached upon the Highways' land, an opportunity should be granted to the petitioner. However, the petitioner himself in his affidavit has averred that he has been in possession of the shop belongs to the 2<sup>nd</sup> respondent, but the learned counsel for the petitioner during the hearing, has disputed the said fact. It is also stated that the petitioner has already been removed



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from the shop in question. Therefore, in the light of the law laid down in

**Aligarh Muslim University and others vs. Mansoor Ali Khan**

reported in **(2000) 7 SCC 529**, wherein, the Hon'ble Supreme Court held that when only one conclusion could be drawn, the action taken without notice is not vitiated on the ground of absence of notice, and considering the above facts and decision, we are not inclined to accept the contention of the petitioner. Further, it is the specific case of the petitioner that he is in possession of S.No.1093 and if that be the situation, the question of encroachment will not arise and consequently granting of opportunity to the petitioner also may not arise. However, if the petitioner is aggrieved by any illegal removal from the place in question by the 2<sup>nd</sup> respondent, it is open to him to work out his remedy before the appropriate forum seeking compensation.

8. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

**[D.K.K.,J.] & [R.V.,J.]**  
**09.01.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
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To

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Tirunelveli District.

2. The Assistant Executive Engineer,  
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**and**  
**R.VIJAYAKUMAR, J.**

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**ORDER MADE IN**  
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**DATED : 09.01.2023**