



W.P(MD)No.24788 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.12.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.24788 of 2023

and

W.M.P.(MD)No.20978, 20979 and 25202 of 2023

G.Kumar

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Municipal Administration
and Water Resources,
Fort St.George, Chennai – 600 009.

2.The District Collector,
O/o. The District Collector,
Ramanathapuram District.

3.The Commissioner,
Department of Municipal Administration
and Water Resources,
Ramanathapuram Municipality,
Ramanathapuram District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the Impugned Notice Na.Ka.No.3108/2023/A1 dated 29.09.2023 on the file of the Respondent No.3 and quash the same as illegal within the time stipulated as fixed by this Court.

For Petitioner : Mr.T.Thirumurgan

For Respondents : Mr.S.RA.Ramachandran,
Addl. Government Pleader for R1 & R2.
Mr.K.Saravanan,
Standing Counsel for R3.

ORDER

Heard both sides.

2.The writ petitioner is a councillor of Ramanathapuram municipality. The petitioner is eking out his livelihood by running a petty shop near the entrance of Ramanathapuram railway station. The site was originally allotted in favour of one Thangam. The petitioner had entered into some kind of an arrangement with the original allottee. The petitioner has now been called upon to vacate and hand over the said site



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to the municipality. Notice to this effect was issued on 29.09.2023. The same was put to challenge in this writ petition.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for. His primary argument is that since the petitioner had been raising questions as municipal councillor, to wreak vengeance, the impugned order came to be passed. The specific argument of the learned counsel for the petitioner is that the impugned notice is vitiated by malafides. He also would state that the site in question does not in any way affect the traffic movement at all. He produced the necessary photographs to that effect.

4.Since interim order was originally granted, to vacate the same, the municipal administration has filed W.M.P.(MD)No.25202 of 2023. The learned standing reiterated all the contentions set out in the affidavit filed in support of the same. He called upon this Court to vacate the interim order and dismiss the writ petition.



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5.I carefully considered the rival contentions and went through the materials on record. I place on record the submission of the learned standing counsel for the local body that after the petitioner is evicted and the site is taken over, it will not be allotted to any other person.

6.Recording the said undertaking, I restrain the local body to allot the petition mentioned site in favour of any private party or third party.

7.It is true that the originally allottee was one Thangam. But the fact remains that the petitioner has been running the petty shop for the last several years. The learned counsel for the petitioner would state that without proper documentation, it was the petitioner who was running the shop for close to 20 years. In any event, there was an agreement between the petitioner and the allottee in the year 2011. It is true that the terms of allotment prohibit such sub-leasing arrangements. But then, the local body had not taken any action. It has virtually recognized the petitioner. Monthly rent was collected only from the petitioner. In these circumstances, this Court will have to take note of the ground reality.



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Even while directing the petitioner to surrender the site in question to the local body on or before 30.12.2023, I direct the local body / Commissioner, Ramanathapuram Municipality to allot an alternative site in favour of the petitioner. The learned standing counsel strongly submitted that since the whereabouts of Thangam are not known, they would consider allotting an alternative site only to the legal heirs of Thangam as per G.O.(Ms)No.92 dated 03.07.2007.

8.Admittedly, Thangam is no where in the picture for the last several years. Even the municipal authorities are not aware of Thangam's whereabouts. Therefore, the authorities need not go in search of Thangam at this point of time. It is the petitioner who has been in occupation and possession of the petition mentioned site. Therefore, the petitioner is permitted to submit an application to the third respondent seeking allotment of alternative site in his own name. The third respondent shall issue proceedings in favour of the petitioner on or before 30.12.2023. The issuance of proceeding in favour of the petitioner and surrender of possession by the petitioner will take place simultaneously.



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9.The impugned order is upheld and the writ petition is disposed of with the aforesaid directions. No costs. W.M.P.(MD)No.25202 of 2023 is allowed. Consequently, connected miscellaneous petitions are closed.

11.12.2023

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

1.The Principal Secretary,
Department of Municipal Administration
and Water Resources,
Fort St.George, Chennai – 600 009.

2.The District Collector,
O/o. The District Collector,
Ramanathapuram District.



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G.R.SWAMINATHAN, J.

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