



W.P.(MD).No.24936 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 12.10.2023

CORAM

**THE HON'BLE MR JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR JUSTICE V.LAKSHMINARAYANAN**

W.P.(MD).No.24936 of 2023
and
W.M.P.(MD).Nos.21122 and 21123 of 2023

K.S.Muthu

.. Petitioner

Vs.

- 1.The Divisional Engineer (H),
O/o. The Divisional Engineer,
Construction and Maintenance,
Madurai West,
Madurai.
- 2.The Assistant Divisional Engineer (H),
Construction and Maintenance,
Madurai West,
Madurai.
- 3.The Commissioner,
Madurai Corporation,
Anna Maligai,
Madurai.
- 4.The Inspector of Police (L&O),
Mattuthavani Police Station,
Madurai.



W.P.(MD).No.24936 of 2023

5. The Assistant Executive Engineer,
TANGEDCO,
K.Pudur,
Madurai.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, by calling for the records of the 2nd respondent in respect of the eviction notice bearing proceeding number ந.க.எண்.5/2023/இ.வ.அ. dated 03.10.2023 and declare the same as void, illegal, arbitrary and consequently directing the respondents 1 and 2 not to evict the petitioner from the petty shop situated at Madurai - Natham Road (Madurai - Natham Salai) Kilometer 0/0 – 1/6, adjacent to Mattuthavani flower Market, Mattuthavani, Madurai on the basis of the petitioner's representation dated 07.09.2023.

For Petitioner : Mr.M.Ponniah

For R-1, R-2 & R-4: Mr.N.Satheeshkumar
Additional Government Pleader

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM,J.)

The eviction notice issued by the Highways Department in proceedings dated 03.10.2023 is sought to be quashed in the present Writ Petition.



W.P.(MD).No.24936 of 2023

2. The writ petitioner states that he got the leasehold right of running a petty shop for flower retail vending nearby Mattuthavani flower market. Admittedly, the period of licence expired in the year 2014 and the petitioner is running the petty shop for the past about nine years without any licence or permission from the competent authorities of the Highways Department. The petitioner has instituted a suit in the year 2015 in O.S.No.262 of 2015 and an order of injunction was granted not to evict the petitioner, except under due process of law. Therefore, the authorities have initiated appropriate action under the provisions of the Tamil Nadu Highways Act, 2001 and an eviction notice was issued affording opportunity to the writ petitioner.

3. The learned counsel for the petitioner states that the petitioner has already submitted an explanation/defence not to evict him. Despite the same, the authorities are attempting to dispossess the petitioner and therefore, the petitioner is constrained to move the present Writ Petition.

4. The learned counsel for the petitioner made a submission that the subject petty shop is the only livelihood for the family of the petitioner and



W.P.(MD).No.24936 of 2023

he being a visually impaired person running the petty shop with the assistance of his wife. Thus, dispossession would affect his livelihood and therefore, some leniency is to be shown in the present case.

5. The learned Additional Government Pleader appearing for the respondents 1, 2 and 4 strenuously objected the contentions raised on behalf of the petitioner by stating that any such leniency would cause prejudice to the interest of public. The petty/bunk shops nearby the market area are causing traffic congestions and the road users are unable to enter into the flower market freely. Therefore, the authorities have initiated action to evict the encroachers. The eviction drive was completed in respect of all other shops nearby Mattuthavani flower market except the petitioner's shop, since the petitioner has moved the present Writ Petition before this Court. The learned Additional Government Pleader further contended that any such permission, if granted, the authorities may not be in a position to regulate the traffic in that location and therefore, the Writ Petition is to be rejected.

6. Considering the rival submissions made on behalf of the parties to the *lis*, admittedly, the licence granted in favour of the writ petitioner



W.P.(MD).No.24936 of 2023

expired in the year 2014. The petitioner is running the petty shop without any licence or permission from the Highways Department for the past about nine years. Any misplaced sympathy in such matters by the Court would cause greater prejudice to the public interest and the public interest should prevail against the private interest. Any interference would cause traffic congestion in commercial location and therefore, unlikely and not desirable.

7. Contrarily, the petitioner may submit an application before the competent authority for providing alternate location for the purpose of running their business in the manner known to law. There are schemes for providing vending shops in urban areas. Therefore, the petitioner is at liberty to submit an application before the competent authority and on receipt of any such application, the authorities competent shall consider the same sympathetically and by following the procedures as contemplated under any scheme, which is in force for street vendors by strictly following the rules and regulations. Thus, there is no impediment for the respondents to evict the petitioner and all other encroachers in that locality.



W.P.(MD).No.24936 of 2023

8. With the above observations, the Writ Petition stands dismissed.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.,J.) (V.L.N.,J.)
12.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

- 1.The Divisional Engineer (H),
O/o. The Divisional Engineer,
Construction and Maintenance,
Madurai West, Madurai.
- 2.The Assistant Divisional Engineer (H),
Construction and Maintenance,
Madurai West, Madurai.
- 3.The Commissioner,
Madurai Corporation,
Anna Maligai,
Madurai.
- 4.The Inspector of Police (L&O),
Mattuthavani Police Station,
Madurai.
- 5.The Assistant Executive Engineer,
TANGEDCO,
K.Pudur, Madurai.



WEB COPY



W.P.(MD).No.24936 of 2023

S.M.SUBRAMANIAM,J.
and
V.LAKSHMINARAYANAN,J.

Lm

W.P.(MD).No.24936 of 2023

12.10.2023