



W.P(MD)No.29157 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2023

CORAM

THE HONOURABLE **MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.29157 of 2022

and

W.M.P(MD)No.23107 of 2022

Syed Ali Fathima

... Petitioner

Vs.

- 1.The Executive Magistrate / Collector,
Collectorate Complex,
Kanyakumari District.
- 2.The Chairman / District Collectorate,
The District Animal Market Monitoring Committee,
District Collectorate,
Kanyakumari District.
- 3.The Tahsildar,
Poothapandi Taluk,
Kanyakumari District.
- 4.The Sub Divisional Executive Magistrate,
The Revenue Divisional Officer,
RDO Office,
Visuvasapuram,
Thovalai,
Kanyakumari District.
- 5.Food, Health & Drugs Administration,
Office of Assistant Director of Health & Family Welfare,
Krishnan Koil,
Kanyakumari District.



W.P(MD)No.29157 of 2022

6.The Block Development Officer,
Block Development Officer,
Thovalai,
Kanyakumari District.

7.The Panchayat President,
Madavalayam Village Panchayat,
Thovali Taluk,
Kanyakumari District.

8.Nooril Aalam

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the sixth respondent to remove the beef stall to a place of isolation by considering the petitioner's representation, dated 10.12.2020 as well as 01.11.2022 within a time frame fixed by this Court.

For Petitioner : Mr.M.M.Iqbal

For R-1 to R-5 : Mr.M.Lingadurai
Special Government Pleader

For R-6 & R-7 : Mr.M.Senthil Ayyanar

For R-8 : Mr.G.Anto Prince

ORDER

Heard the learned Counsel on either side.



W.P(MD)No.29157 of 2022

2. The writ petitioner is a permanent resident of Madavalayam Village.

Her allegation is that the eighth respondent is unauthorisedly running a beef stall in the vicinity. The petitioner claims that the activities of the eighth respondent are posing nuisance to her and her family. The learned Counsel appearing for the petitioner would strongly contend that the petitioner's right to clean environment guaranteed under Article 21 of the Constitution of India has been seriously infringed in this case. He took me through the averments set out in the affidavit filed in the support of this writ petition and called upon this Court to issue Mandamus to the official respondents as prayed for.

3. The contesting respondent has filed counter affidavit and also typed set of papers. The learned Counsel appearing for the eighth respondent pointed out that this is the third round of litigation. Earlier a public interest litigation was filed. A petition under Section 133 of Cr.P.C., was also instituted. Those cases were filed by the petitioner's husband. Since the petitioner's husband could not succeed in his object, the present writ petition has been engineered. It is further contended that the petitioner's family is having a pathway dispute with the eighth respondent and that is why the present writ petition has been filed.

4. The learned Counsel appearing for the eighth respondent called upon this Court to dismiss this writ petition.



W.P(MD)No.29157 of 2022

5. The learned Special Government Pleader representing the official respondents as well as the local body produced the letter signed by the Panchayat President. It reads that the eighth respondent is carrying on his business activities in a clean and hygienic manner. It is further set out therein that the eighth respondent is running only a chicken stall.

6. I have carefully considered the rival contentions and gone through the materials on record.

7. Even though the Panchayat President had stated that the eighth respondent is running only a chicken stall, the eighth respondent himself would admit before this Court that he is running a beef and mutton stall.

8. Two issues arises for consideration. The first issue is whether the petitioner can enforce a private right against the eighth respondent. This issue is no longer *res integra*. The Hon'ble Apex Court in ***Kaushal Kishor Vs. State of Uttar Pradesh and Others in Writ Petition (Criminal) No.113 of 2016*** dated 03.01.2023 had authoritatively laid down that fundamental rights under Article 19 / 21 can be enforced even against persons other than the State or its instrumentalities. The case of the petitioner is that on account of the unhygienic manner in which the business activities of the eighth respondent is being conducted, her rights under Article 21 of the Constitution of India has been



W.P(MD)No.29157 of 2022

infringed. I therefore, hold that this writ petition is maintainable in view of the recent pronouncement in ***Kaushal Kishor's case***. The Government of Tamil Nadu has issued the Tamil Nadu Village Panchayats (Prohibition or regulation of the use of places for slaughtering animals and licensing of slaughterers) Rules, 1999. Rule 3 and 6 is as under:

3. Regulation of slaughtering by issue of licence.- No person shall, without a licence issued by the Executive Authority, slaughter, cut up or skin or permit to be slaughtered, cut up or skinned any cattle, horse, sheep, goat or pig or poultry or fish in any place in the village other than in a public slaughter house, if any, provided by the Village Panchayat:

Provided that the Executive Authority may allow any animal to be slaughtered in such places other than temples or their precincts within the village as he thinks fit on occasions of festivals and ceremonies or as a special measure:

Provided further that nothing contained in this Rule shall be deemed to prohibit the slaughter of animals for private use but not for sale:

Provided also that nothing contained in the Rule shall apply to places used by the Central or the State Government for the purposes specified in these Rules.



W.P(MD)No.29157 of 2022

6. Responsibility for the Licensee to dispose of the unusable of the slaughtered animal.- *It is the responsibility of the person who slaughters any animal aforesaid to remove any unusable remains of the slaughtered animal from the premises of the slaughter house and dispose them in the manner specified by the Village Panchayat, failing which licence shall be liable to be cancelled or suspended for such period as the Executive Authority may decide."*

9. The learned Counsel for the eighth respondent categorically asserts that in the petition mentioned premises, no slaughter takes place and that the slaughter is done at Nagercoil and only the meat alone is brought to the petition mentioned shop. Even for running a beef stall, obviously, the eighth respondent will must have obtained a license. The stand of the local body is that the petitioner is obtained only a license for running chicken stall. The eighth respondent can be allowed to carry on his business activities only after he obtains license. If the eighth respondent has not obtained proper license for running a beef / mutton stall, certainly it is the duty of the official respondents to prevent the same from being run. The petitioner has given a representation dated 01.11.2022 in this regard. The sixth respondent shall enquire into the petitioner's complaint and pass an order in the light of what has already been stated above. Such an order only passed by the sixth respondent within a period of three (3) weeks from the date of receipt of a copy of this order. This writ



W.P(MD)No.29157 of 2022

petition stands disposed of as mentioned above. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

01.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Btr

To

- 1.The Executive Magistrate / Collector,
Collectorate Complex,
Kanyakumari District.
- 2.The Chairman / District Collectorate,
The District Animal Market Monitoring Committee,
District Collectorate,
Kanyakumari District.
- 3.The Tahsildar,
Poothapandi Taluk,
Kanyakumari District.
- 4.The Sub Divisional Executive Magistrate,
The Revenue Divisional Officer,
RDO Office,
Visuvasapuram,
Thovalai,
Kanyakumari District.
- 5.Food, Health & Drugs Administration,
Office of Assistant Director of Health & Family Welfare,
Krishnan Koil, Kanyakumari District.



WEB COPY



W.P(MD)No.29157 of 2022

G.R.SWAMINATHAN, J.

Btr

6.The Block Development Officer,
Block Development Officer,
Thovalai,
Kanyakumari District.

7.The Panchayat President,
Madavalayam Village Panchayat,
Thovali Taluk,
Kanyakumari District.

W.P(MD)No.29157 of 2022

01.02.2023