



W.P(MD)Nos.27032 and 27033 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

W.P(MD)No.27032 of 2023
and
W.M.P.(MD) No.23195 of 2023
&
W.P.(MD) No.27033 of 2023
and
W.M.P.(MD) No.23203 of 2023

W.P.(MD) No.27032 of 2023:

S.Venkatachalam

... Petitioner

vs.

1. The District Collector,
Karur District, Karur.

2.The Commissioner,
Karur City Municipal Corporation,
Karur.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, restraining the respondents from evicting the petitioner in T.S.No.491, Shop No.369(N), Jawahar Bazar, Dindigul Road, Karur District, without following due process of law.



W.P(MD)Nos.27032 and 27033 of 2023

W.P.(MD) No.27033 of 2023:

B.Soundarammal

... Petitioner

VS.

1. The District Collector,
Karur District, Karur.

2. The Commissioner,
Karur City Municipal Corporation,
Karur.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, restraining the respondents from evicting the petitioner in T.S.No.491, Shop No.371(N), Jawahar Bazar, Dindigul Road, Karur District, pending disposal of the above writ petition.

For Petitioner

: Mr.B.Prasanna Vinoth
along with Mr.A.N.Ramanathan
(in both writ petitions)

For Respondents

: Mr.S.Kameswaran
Government Advocate for R1

Mr.L.Prabakaran
for Mr.K.Balasubramani
Standing Counsel for R2
(in both writ petitions)



WEB COPY



W.P(MD)Nos.27032 and 27033 of 2023

COMMON ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

This common order will now dispose of the captioned 'two main Writ Petitions' (hereinafter 'WPs' for the sake of brevity, convenience and clarity) and the captioned 'two Writ Miscellaneous Petitions' (hereinafter 'WMPs' for the sake of brevity, convenience and clarity) thereat.

2.Captioned matters pertain to two shops situate in T.S.No.491 in Jawahar Bazar, Dindigul Road, Karur District and details of the same in a tabulation is as follows:

Sl. No.	Name of Writ Petitioner	Shop No.	T.S.No.	Total Extent	Remarks
1.	S.Venkatachalam, Son of Thiru K.V.Sellamuthu Pillai	369	491	56 Sq.ft.	Photocopying Shop (described as 'Xerox Shop')
2.	B.Soundarammal, Wife of Late Balasubramaniam – S/o.Thiru K.V.Sellamuthu Pillai	371	491	135 Sq.ft.	Garment Shop

3. Mr.B.Prasanna Vinoth, along with Mr.A.N.Ramanathan, learned counsel on record for the writ petitioners are before us. Before we proceed further, we make it clear that captioned 'W.P.(MD) No.27032 of



W.P(MD)Nos.27032 and 27033 of 2023

2023' shall be referred to as 'I-WP' for the sake of convenience and 'W.P.

(MD) No.27033 of 2023' shall be referred to as 'II-WP' for the sake of

convenience. Learned counsel submits that one

Thiru.K.V.Sellamuthupillai, father of writ petitioner in I-WP and father-

in-law of writ petitioner in II-WP purchased the aforementioned shops

sometime in 1930 but it has been averred in the writ affidavit that Shop

No.227 was 'allotted', therefore, it is not clear as to whether it is a

purchase or allotment. Thereafter, learned counsel submits that late

Sellamuthupillai (father of writ petitioner in I-WP and father-in-law of

writ petitioner in II-WP) who had 191 Sq.ft. in all and was running a

bakery. It is also submitted that after the demise of Sellamuthupillai, writ

petitioners in I-WP and II-WP made an oral partition of 191 Sq.ft. and

the resultant two portions were assigned Shop Nos.396 and 371.

4. From the writ affidavit of the petitioners and the accompanying typed set, it is clear that as early as 1946 (more than 75 years ago), the second respondent Municipality has sent a communication dated 23.08.1946 bearing reference D.Dis.6323/46 and a scanned reproduction of this communication as placed before us as part of the typed set by the writ petitioners is as follows:



W.P(MD)Nos.27032 and 27033 of 2023

WEB COPY

Copy of D. Dis. 6323 /46 dated 23.08.1946 of the collector of Trichy.

Encroachment – Karur Municipality – Ward No. 1 / T.S. 491 – Block – 12 License

(1) Sanction is accorded to allow on license E.C Nos. 193 and 194 of 1944 –45 as noted below subject to such conditions as may be imposed by the commissioner Karur Municipality and subject to the condition that the nature and dimension of the encroachments are not altered.

(2) E.C.195 and 196 / 44-45 – covering slabs over the drain- Exceeds the prescribed length of 3 and there is no documentary evidence in support of these two encroachments. The Tahsildar, Karur is requested to report whether the party will be willing to reduce the length to the allowable minimum.

E.C. 197. Tin sun shade over E.C. 194 (low platform). The Tahsildar is requested to direct the party to state whether he cannot raise the encroachment by 2' more.

E.C. No.	T.S. No. in which	Name of encroacher	Nature of	Extent
	I.C. is made.		Enct.	
193 / 44-45.	491	K.V. Sellamuthupillai.	Wooden plat	135-sq.ft.
194 / 44-45	"	do	form.	
			Cement flooring	56 "

Karur Municipal Office E.C. 193 / 44-45. 194 / 44-45 dated 26-9-46.

Copy of Collector's proceedings D.Dis. 6323/46 dated 23-8-46 is communicated to Town Surveyor for information. E.C. No. 197 shall be deleted from the encroachment register.

DESPATCHED
1 OCT 1946

For Commissioner.

5. Be that as it may, there is a reference to some earlier round of litigation more than 18 years ago. This is vide W.P.(MD) No.4720 of 2005 filed by husband of II writ petitioner and W.P.(MD) No.4721 of 2005 filed by I writ petitioner. Though there is a specific averment in paragraph 4 of writ affidavit that both these writ petitions came to be disposed of on 14.07.2005, learned counsel submitted that copies of the order are not available. Therefore, we ferreted out the same from records section of this Court and these two orders are as follows:



WEB COPY



W.P(MD)Nos.27032 and 27033 of 2023

16

1
BEFORE THE MADRAS BENCH OF MADRAS HIGH COURT
DATED: 14.04.2025
CORAM:
THE HONOURABLE MR. JUSTICE A. KULASEKARAN
W.P. NO. 4720 of 2025
W.P.M.D. NO. 2025 of 2025

Devasubramani S. Nani Petitioner
Versus
1. The District Collector,
Karur District at Karur.
2. The Commissioner,
Karur Municipality, Karur. Respondents

The petition filed under Article 226 of the Constitution of India praying for a writ of Habeas Corpus, as stated therein.

For Petitioner : Mr. A. Gandhi
For Respondents : Mr. P. Srinivas

ORDER

The petitioner has filed this writ petition praying for an issuance of writ of Habeas Corpus, to call for the records relating to the order of eviction issued by the Commissioner, Karur Municipality, Karur in File No. D4/5/82, dated 17.05.2005 the second respondent herein and quash the same.

2. Though, the relief sought for in this writ petition is for the larger relief, I have allowed counsel for the petitioner confined his argument to the limited extent to permit the petitioner to submit a representation to the respondents and to

17

2

2 orders
1
A. KULASEKARAN, J.
skn

Direct the respondents to consider and dispose of the representation thereafter.

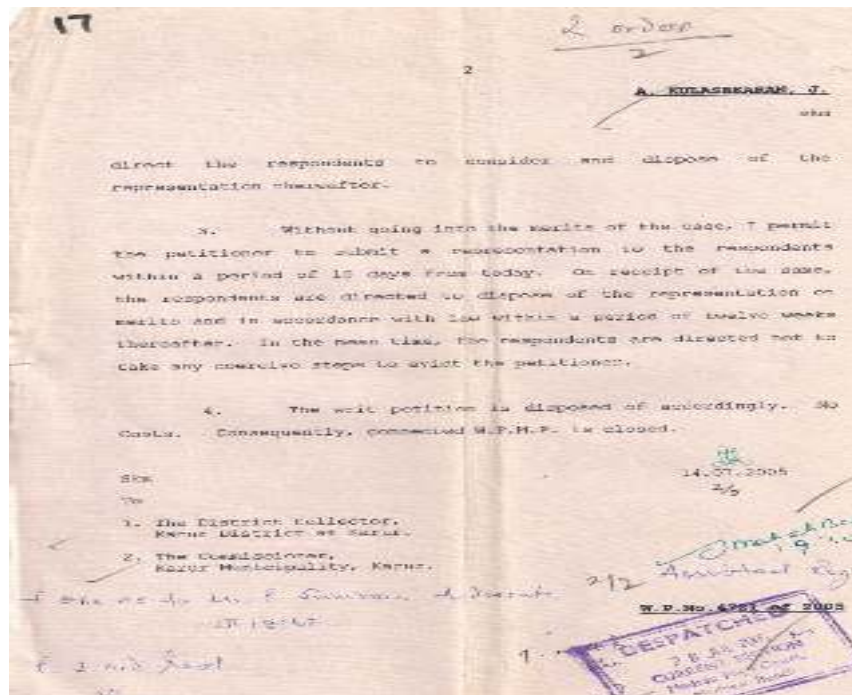
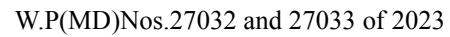
3. Without going into the merits of the case, I permit the petitioner to submit a representation to the respondents within a period of 15 days from today. On receipt of the same, the respondents are directed to dispose of the representation on merits and in accordance with law within a period of twelve weeks thereafter. In the mean time, the respondents are directed not to take any coercive steps to evict the petitioner.

4. The writ petition is disposed of accordingly. No costs. Consequently, connected W.P.M.D. is closed.

skn
To
1. The District Collector,
Karur District at Karur.
2. The Commissioner,
Karur Municipality, Karur.

- 1 one copy to Mr. A. Gandhi - Advocate,
18.04.25
2 one copy to Mr. P. Srinivas - Advocate,
18.04.25
P. 2 and 2 set.

14.07.2025
19.7.05
19.7.05
W.P. No. 4720 of 2025
DISPATCHED
18.07.2025
18.07.2025
18.07.2025





W.P(MD)Nos.27032 and 27033 of 2023

WEB COPY

6. Learned counsel submitted that on 04.11.2023, officials of second respondent Corporation visited the premises of I and II writ petitioners (aforementioned two shops) informed them that they are encroachers and that they should remove the encroachment on or before 11.11.2023. The complaint of the writ petitioners is that this exercise is being done without adhering to due process of law.

7. Issue notice.

8. Mr.S.Kameswaran, learned Government Advocate accepts notice for first respondent and Mr.K.Balasubramani, learned Standing Counsel accepts notice for second respondent and he is before this Court along with Mr.L.Prabakaran, learned counsel.

9. From the rival submissions the following points come to light:

9.1 The proceedings dated 23.08.1946 alluded to supra clearly says that 135 Sq.ft. plus 56 Sq.ft. (then in the name of Thiru.K.V.Sellamuthupillai) is an encroachment.



9.2 The aforementioned two orders of a Hon'ble Single Judge both dated 14.07.2005 have been made in writ petitions assailing orders of eviction dated 17.05.2005 bearing reference No.D4/75/02 as regards the two shops. It has also been made clear by the Hon'ble Single Judge that the orders do not go into merits of the matter and it merely permits the petitioners to submit a representation and gives a directive for disposal of the same within fifteen days.

9.3. Learned counsel submits that it is not clear as to whether representations (pursuant to aforementioned 14.07.2005 orders) were given. Therefore, we deem it appropriate to say that the aforementioned two orders (both dated 14.07.2005) pale into insignificance i.e., they neither impede nor provide impetus to the legal drill now at hand.

10. As regards the present position, there is no dispute that the matter is governed by 'Tamil Nadu Urban Local Bodies Act, 1998' [hereinafter 'Local Bodies Act' for the sake of brevity, convenience and clarity] which came into force on and from 13.04.2023. Before we proceed further, we also deem it appropriate to record that we have noticed that learned counsel for petitioner submits that there is no title deed qua 191 Sq.ft. or two shops though it has been averred that



properties were purchased by late Thiru.K.V.Sellamuthupillai. In this regard, the only contention that may be of some relevance turns on Section 128 of Local Bodies Act. Section 128 of Local Bodies Act captioned 'power to remove encroachment from public place' vests Commissioners of Local Bodies with the power to remove and a procedure has been laid down. The provision that is relevant is Section 128(1)(b) together with the proviso thereat which reads as follows:

'128.Power to remove encroachment from public place.- (1) The Commissioner may, -

(a).....

(b) remove any immovable structure whether permanent or of temporary nature encroaching the street or public place or the [land belonging to municipality or vested with the municipality] within the municipal limit, after issuing a show cause notice for such removal, returnable within a period of seven days from the date of receipt thereof;

Provided that the Commissioner shall consider any representation received within the time limit, before passing final orders.'

11. Though from the narrative thus far, it is clear at this stage that the two shops appear to be encroachments, learned counsel made a fervent plea that it may be appropriate to grant one opportunity to the



writ petitioners to show title if they have the same.

WEB COPY

12. This Court having considered the entire matter, having captured the trajectory the matter has taken thus far (over the last 75 years) now makes the following order:

- (a) The second respondent shall issue a show-cause notice for removal as mandated in Section 128(1)(b) of Local Bodies Act forthwith;
- (b) the noticees, namely writ petitioners in I-WP and II-WP shall respond within seven (7) days;
- (c) if any representation is to be made within the meaning of proviso to Section 128(1)(b) of Local Bodies Act, the same shall also be given within this seven days time frame;
- (d) depending on the cause shown, the matter shall be concluded one way or the other by the second respondent (keeping in mind observations in this order) within a fortnight therefrom;
- (e) we would be requisitioning a report (by way of a post script) from the second respondent with a caveat that if necessary the captioned WPs will be



W.P(MD)Nos.27032 and 27033 of 2023

resuscitated; and

(f) removal of the shops (if that be so) will be on conclusion of aforementioned Section 128(1)(b) of Local Bodies Act proceedings which in turn will be within the time frame as indicated above.

13. Captioned WPs are disposed of with the aforementioned directives and observations. Captioned WMPs are disposed of as closed.

(M.S., J.) (R.S.V., J.)
09.11.2023

Index : No
Internet : Yes
Neutral Citation : Yes
PKN

PS: Though captioned WPs and WMPs are disposed of as closed, 2nd respondent is directed to file a report in this Court in the next listing which will be on **08.12.2023**. List under the captioned 'FOR REPORT'.



W.P(MD)Nos.27032 and 27033 of 2023

WEB COPY

- To
1. The District Collector,
Karur District, Karur.
 2. The Commissioner,
Karur City Municipal Corporation,
Karur.



WEB COPY



W.P(MD)Nos.27032 and 27033 of 2023

M.SUNDAR, J.
and
R.SAKTHIVEL, J.

PKN

ORDER MADE IN
W.P(MD)Nos.27032 and 27033 of 2023

09.11.2023