



W.P.(MD)No.15022 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

and

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.(MD)No.15022 of 2024

and

W.M.P.(MD)Nos.13183 & 13210 of 2024

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.



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4.The Inspector of Police (L & O),
Mattuthavani Police Station,
Madurai.

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

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the second respondent in respect of the eviction notice bearing proceeding தாக்கீது எண்.16/2024 (SH72A)/இவஅ/27/06/2024 and declare the same as void, illegal, arbitrary and consequently directing the respondents 1 & 2 not to evict petitioner from the Petty shop situated at Madurai – Natham Road (மதுரை – நத்தம் சாலை), Kilometer 0/0 – 2/6, adjacent to Mattuthavani flower market, Mattuthavani, Madurai on the basis of the petitioner's representation dated 03.11.2023.

For Petitioner : Mr.M.Ponniah

For Respondents 1 & 2 : Mr.N.Satheesh Kumar,

Additional Government Pleader

For Respondent No.3 : Mr.K.Sivabalan

Standing Counsel



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For Respondent No.4 : Mr.T.Senthil Kumar

Additional Public Prosecutor

For Respondent No.5 : Mr.S.Deenadhayalan

Standing Counsel

O R D E R

[Order of the Court was made by R.SURESH KUMAR, J.]

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records of the second respondent in respect of the eviction notice bearing proceedings தாக்கீது எண். 16/2024 (SH72A)/இவஅ/27/06/2024 and declare the same as void, illegal, arbitrary and for a consequential direction to the respondents 1 & 2 not to evict the petitioner from the Petty shop situated at Madurai – Natham Road (மதுரை – நத்தம் சாலை), Kilometer 0/0 – 2/6, adjacent to Mattuthavani flower market, Mattuthavani, Madurai, on the basis of the petitioner's representation dated 03.11.2023.

2.The petitioner admittedly is an encroacher at the road margin in the Madurai – Natham Road between kilometer 0/0 to 2/6 adjacent to Mattuthavani Flower Market, Mattuthavani, Madurai.



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3. Such an encroachment was already sought to be removed by the respondents. At that time, the petitioner already had approached this Court filing a writ petition in W.P.(MD) No.24936 of 2023. The said writ petition was disposed of by a Division Bench of this Court on 12.10.2023, where the following orders have been passed:

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



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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.

8. With the above observations, the Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed."

4. Pursuant to the said order passed by the Court, the respondents acted upon and evicted the petitioner from the said encroached area.

5. Once again, the petitioner has put up his petty shot by making encroachment second time and therefore, this time, the present notice dated 27.06.2024, has been issued by the respondents ie., fifth respondent, which is impugned herein.



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6. Heard the learned Counsel for the petitioner who would submit that, in the earlier order passed by the Court as referred to above dated 12.10.2023, the petitioner was permitted to make an application to the authorities to seek alternative site for locating his petty shop for his livelihood and in such case, if any such application is filed by the petitioner that was directed to be considered by the authorities sympathetically.

7. Pursuant to the said direction, the petitioner had given such request on 03.11.2023, to the District Collector as well as the third respondent. However, so far no alternative allotment has been given. Therefore, till such alternative arrangement is made, the petitioner wants to continue in the encroached portion. Hence, the petitioner seeks indulgence of this Court.

8. Heard the learned Additional Government Pleader appearing for the first and second respondents as well as the learned Standing Counsel appearing for the third respondent.

9. Since the road belongs to the second respondent, naturally action has to be taken by the second respondent. Also the



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third respondent has to verify whether any such encroachments are made in the Corporation lands otherwise, if any alternative site is sought for as directed by this Court in the earlier order, that application shall also be considered in accordance with law and accordingly, a decision shall be taken. Merely because his application is pending with the respondents, the petitioner cannot claim justification to continue, though he had already been removed pursuant to the earlier order. In that view of the matter, this Court is inclined to pass the following order:

“(i) that there is no impediment for the respondents to proceed in accordance with the impugned notice dated 27.06.2024, as admittedly it is an encroachment in the Highways land belonging to the second respondent. Therefore, the 27.06.2024 notice cannot be interfered with by this Court. Hence, it can be acted upon by the respondents.

(ii) Insofar as the application dated 03.11.2023, by way of representation made by the petitioner to the third respondent is concerned, the same shall be considered by the third respondent and if possible suitable alternative site can be found and communication to that effect can be made to the petitioner.



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(iii) It is made clear that the consideration of the application of the petitioner dated 03.11.2023 and orders to be passed by the third respondent as directed above is no way connected with the immediate action on the part of the second respondent and other respondents to act upon on the impugned notice to remove the encroachment as quick as possible in accordance with the provisions of law.”

10.With the aforesaid direction, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[R.S.K.,J.] & [G.A.M.,J.]

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Neutral Citation : Yes/No

Index : Yes/No

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and
G.ARUL MURUGAN, J.

MR

ORDER MADE IN
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