



W.A(MD)Nos.156 of 2022 and 1244 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2025

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

W.A(MD)Nos.156 of 2022 & 1244 of 2023

1.W.A(MD)No.156 of 2022:

S.M.Ali

... Appellant/Petitioner

vs.

1.The District Collector,
Office of the District Collector,
Dindigul.

2.The Corporation Commissioner,
Office of the Corporation Commissioner,
Dindigul,
Dindigul District.

... Respondents/Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 29.11.2021 made in W.P(MD)No.19769 of 2021 on the file of this Court.



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2.W.A(MD)No.1244 of 2023:

S.Kanthasamy

... Appellant/Petitioner

vs.

1.The District Collector,
Office of the District Collector,
Dindigul.

2.The Corporation Commissioner,
Office of the Corporation Commissioner,
Dindigul,
Dindigul District.

... Respondents/Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 29.11.2021 made in W.P(MD)No.20413 of 2021 on the file of this Court.

In both W.As':

For Appellant : Mr.M.Sheik Abdullah

For R – 1 : Mr.S.S.Madhavan
Additional Government Pleader

For R – 2 : Mr.J.Lawrance
Standing Counsel



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COMMON JUDGMENT

(Judgment of the Court was delivered by J. NISHA BANU, J.)

Since the issue involved in both the writ appeals are one and the same, they are disposed of by this common judgment.

2. The present Writ Appeals are directed against the Common order passed by the Writ Court dated 29.11.2021 made in W.P(MD)Nos.19769 and 20413 of 2021.

3.The short facts leading to the filing of the Writ Petitions are that the appellants/writ petitioners had the benefit of being allotted with shops at Kamarajan Bus stand – shopping complex. The administration of the said shopping complex comes under the purview of the Dindigul Corporation. The appellants/writ petitioners have been regularly paying the rent for the shops allotted to them. Meanwhile, the appellants/writ petitioners' licence and lease was extended by the second respondent from 03.02.2017 to 02.02.2026. While being so, the second respondent issued a circular stating that the petitioners' shops including other shops will be demolished and assured them that they would be allotted with new shops without any condition.



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4. It is the contention of the learned counsel for the appellants that after completion of the construction work, since the second respondent did not allot shops for the appellants/writ petitioners, the appellants/writ petitioners have initiated civil suits before the Additional District Munsif Court, Dindigul in O.S.Nos.505 of 2017 and 473 of 2017. During pendency of the suits, the second respondent filed an affidavit of undertaking that if the shops were demolished or reconstructed, then the appellants would have the benefit of being allotted with one such shop. The said undertaking memos were recorded. Since the same were not considered, the appellants made a representation before the respondents 1 and 2 on 25.10.2021 to act in accordance with the undertaking letters given by the second respondent. Since the second respondent has not taken any steps to hand over the shops as per the undertaking memos, dated 17.04.2018, the appellants/writ petitioners have filed the Writ Petitions.

5.The writ Court, after considering the materials available on record, dismissed the Writ Petitions, wherein, it is held as follows:

“8.A perusal of the judgments of the District Munsif Court which were all dated 27.04.2021, indicate that there was an objection in marking the said undertaking Memos. But, however, with objections, they were marked as documents on behalf of the plaintiffs.



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9.Finally, the learned District Munsif in the course of the judgments, after taking note of the memos and also framing specific issues with respect to reallotment of the shops to the petitioners, found against the petitioners herein, and in effect, dismissed the suit. One of the main grounds, on which, the suit was dismissed, was that the petitioners filed suits only for injunction restraining the second respondent/Corporation Commissioner from interfering with peaceful possession, but pursuant to the filing of the memo, they had not taken any steps to amend the plaint seeking re-allotment of shops. That, as a finding is based on the evidence available before the District Munsif Court, Dindigul. That is, a finding, based on evidence, and, this Court can neither interfere with nor examine its correctness or otherwise.

10.Judicial judgments have been passed by the District Munsif Court. Once a judgment had been passed on the basis of analysis of the evidence, this Court will necessarily have to give respect to such judgment. It must also be noted that the petitioners herein, had not chosen to mark the said Memos, during the cross examination of the witness for the defendant. It was marked during the chief examination of the plaintiff witness. Therefore, the memo was never tested or rather put to the witness for the defendant/Corporation. It only remains as a document. To be considered as evidence it will necessarily have to pass through the tests of admissibility, of being proved in manner known to law, and being relevant and also being genuine.

11.There was an objection raised by the defendants when the plaintiffs had tried to mark the memos as documents on behalf of the plaintiffs it was marked as Ex.P.W.6 and it was marked with objections. When a particular exhibit is marked with objections, there is a duty cast upon on the Trial Court to explain and give reasons with respect to the objections raised. The judgment in this point is **Bipin Shantilal Panchal Vs. State of Gujarat and another 2001 (3) SCC**, wherein, a direction had been given by the Hon'ble Supreme Court, no doubt in a criminal case, but also incidentally stating that the rule laid would be applicable even for trial of



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civil cases that when objections are raised while marking documents, the trial Court should note down the objections and address the objections at the time of delivering the final judgment.

12.In the instant case, with respect to issue No.4, which specifically related to whether the plaintiff was entitled to any further relief particularly, since the plaint relief was restricted for injunction not to disturb their peaceful possession, the learned District Munsif had examined the said document namely the objection memo and had observed that it was only a part of the Court records and had also stated that unless the plaintiff had amended the plaint seeking necessary relief for re-allotment, the Court cannot step-in and pass any such order.

13.I am conscious of the fact that under Order VII Rule 7 of the Code of Civil Procedure, whereby every plaint must contain the specific relief asked, the Code of Civil Procedure also provides that a Court can pass such orders as it deems fit in the circumstances of the case, but granting allotment of a shop would be exceeding the jurisdiction of the Court as that would go much far beyond the relief which had been sought. In any suit for injunction, if there is threat of dispossession without following due process of law, the Court can extend its jurisdiction and prevent such dispossession being undertaken even though the words without due process of law might not have actually been incorporated in the relief sought. But when the prayer is limited to that particular aspect, the Court cannot go beyond and grant practically a mandatory injunction of allotment of a shop.

14.I am afraid that this Court cannot grant any relief to the petitioners herein. The learned Additional Advocate General, had made a statement that whenever the shops namely, new shops, which are reconstructed are put up for auction, the petitioners can always participate as, any other individual who is interested in participating in an auction of such nature.

15.A direction is given to the second respondent/Corporation



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Commissioner of Dindigul to reconcile the accounts and if payments are to be paid back to the petitioners herein, such amount should be returned back to the writ petitioners within a period of six weeks from the date of receipt of a copy of this order.

16.The Writ Petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also closed.”

Aggrieved over the dismissal of the writ petitions, the appellants have filed the present Writ Appeals.

6. The learned Additional Government Pleader appearing for the first respondent submitted that whenever shops, namely, new shops, are reconstructed, they are usually hosted for auction. Therefore, it is for the appellants to participate as any other individual in the auction of such nature and therefore, the writ appeal filed by the appellants are liable to be dismissed.

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. Perusal of the materials available on record would reveal that the District Munsif Court, Dindigul had dismissed the suits filed by the appellants. Further, the District Munsif Court, Dindigul stated that the objection memo was only a



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part of the Court records and also stated that unless the plaintiff has amended the plaint, seeking necessary relief for re-allotment, the Court cannot step in and pass such an order. Placing reliance on the undertaking given by the second respondent dated 17.04.2018, the appellants/writ petitioners have prayed for a direction to the second respondent therein to allot a shop to each of the petitioners in the said shopping complex under the Dindigul Corporation. It is to be noted that the appellants/writ petitioners have not sought for any prayer for mandatory injunction restraining the second respondent from not allotting the shops to any other except the writ petitioners herein.

9. Therefore, this Court is of the firm opinion that the Writ Court, considering the above facts and circumstances of the case has rightly dismissed the Writ Petitions which this Court does not find any illegality or irregularity to interfere with. Accordingly, these Writ Appeals stand dismissed. There shall be no as to costs.

[J.N.B.,J.] & [S.S.Y.,J.]
25.02.2025
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NCC : Yes / No
Index : Yes / No
Internet : Yes
ps/sts

To

- 1.The District Collector,
Office of the District Collector,
Dindigul.
- 2.The Corporation Commissioner,
Office of the Corporation Commissioner,
Dindigul, Dindigul District.



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J.NISHA BANU, J.
and
S.SRIMATHY, J.

ps

ORDER MADE IN
W.A(MD)Nos.156 of 2022 and
1244 of 2023

DATED : 25.02.2025
(2/2)