
(2000) 06 MAD CK 0033

In the Madras High Court

Case No : Writ Petition NO. 10590 of 2000 and 10860 of 1995 and W.M.P.No. 15261 of 2000 and 17258 of 1995

A. Kasiammal

APPELLANT

Vs

Corporation of Madras and another

RESPONDENT

Date of Decision : 30-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Madras City Municipal Corporation Act, 1919 — Section 220, 222, 227

Citation : (2000) 3 CTC 90

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : Mr. D. Rajagopal, for the Appellant; Mr. E.R.K. Moorthy, for the Respondent

Judgement

1. The petitioner has filed the Writ Petition No.10590 of 2000 to quash the impugned notice issued by the Corporation authorities wherein the

petitioner has been directed to vacate the enforcement made by her in pavement 23, Thanga Salai. It has been further mentioned in the said notice

that if there is any stay order already obtained, the petitioner should produce the same within three days. Learned counsel for the petitioner has

sent a reply on 19.6.2000 stating that the petitioner had already filed a writ petition in W.P.NO.10860 of 1995 for a mandamus forbearing the

Corporation of Chennai from removing the bunk run-by the petitioner in the pavement opposite to Government Press, Mint Street. Chennai,

except by due process of law. This Court by order dated 16.8.1995 in W.M.P.No. 17258 of 1995 has directed the party to maintain status quo.

Hence the present impugned notice is illegal and in contravention of the interim order of this Court granted in the earlier writ petition.

2. It is the contention of the learned counsel for the petitioner that on 5.5.1995, the Tamil Nadu Khadi and Village Industries Board has directed

the petitioner to locate a cobblers Bunk under the Adi Dravidar Welfare Scheme at Mint Street, opposite to Government Press. Pursuant to the

said order of allotment, the petitioner applied for licence to the Corporation. Admittedly, no licence had been granted and before ever the

application for licence is made the bunk had been installed. Now that the application for the issue of licence is pending before the Corporation. The

Corporation authorities may be directed to dispose of the said application and till such time the running of the bunk by the petitioner need not be

disturbed.

3. I have carefully considered the contention of the learned counsel for the petitioner. When the petitioner has been allotted by the Khadi and

Village Industries Board a Cobbler bunk to have it installed opposite to the Government Press, Mint Street, it is the duty of the petitioner to apply

for the licence from the Corporation. Only after obtaining such licence, the bunk shop can be installed in the pavement in the public road. When

admittedly, no such licence had been granted, there cannot be any dispute that the occupation of the petitioner is that of the trespasser and no

more. In this case, there is no dispute that the petitioner had installed the bunk shop before ever any application was made to the Corporation for

the issue of licence. In that case, it cannot be said that the petitioner had installed the bunk on the ground of delay in disposal of the application of

the petitioner for the grant of licence. Such a plea would be available only if the petitioner had installed the bunk after submitting the application for

licence.

4. When at the inception the petitioners action is illegal and his occupation- is an unauthorised one, his possession cannot be safeguarded as he has

no right as held by this Court in *Saraswathi v. The Tahsildar, Poonamallee Taluk, Thiruvallur District*, 1998 (III) M.L.J. 21. Admittedly, the

jurisdiction of this court under Article 226 of the Constitution of India can be invoked to protect the existing legal right as held by Division Bench of

this Court in *Tiruchirapalli Palporul Virkum Thozhilalar Sangam Vs. The Commissioner, Corporation of Tiruchirapalli, Tiruchirapalli*, . Hence it is

clear that a wrong doer cannot invoke the extraordinary jurisdiction of this court

under Article 226 of the Constitution of India to prevent the legal actions of the authorities in safeguarding the public property from unauthorised occupation. Hence this Court is of the opinion that the writ petition is totally misconceived and accordingly the same is not maintainable.

5. Learned counsel for the petitioner further contended that the application for grant of licence before the Corporation is pending from 1995. When the learned counsel for the petitioner is requested to produce the copy of the application, he pointed out page No. 8 of the typed set which is the representation sent by the petitioner dated 8.6.1995. The representation clearly reveals that when an attempt was made to remove the bunk shop of the petitioner. She submitted the said representation requesting the authorities not to remove the bunk shop as she would obtain the licence from the corporation within a few days. As the records before the Court do not establish that the petitioner is in occupation of the premises either after obtaining the licence or in anticipation of a licence after submitting the application, the petitioner's possession cannot be protected as the same is unauthorised one.

6. Hence the Writ Petition No.10590 of 2000 is dismissed. Consequently, W.M.Ps are also dismissed. No costs.

7. In view of the disposal of Writ Petition No.10590 of 2000. no further orders are necessary in the Writ Petition No.10680 of 1995 as the same is also for the same relief.