

(2008) 09 MAD CK 0091

Madras High Court

Case No: Writ Petition No. 8492 of 2005

K. Chokkar

APPELLANT

Vs

The Corporation of Madurai

RESPONDENT

**Date of Decision:** Sept. 26, 2008

**Acts Referred:**

- Constitution of India, 1950 - Article 19(1)
- Madurai City Municipal Corporation Act, 1971 - Section 356, 358, 358(1)

**Hon'ble Judges:** K. Chandru, J

**Bench:** Single Bench

**Advocate:** G.R. Swaminathan, for the Appellant; Suresh Kumar, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

The petitioner is running a two wheeler cart stand. By a resolution passed by the Corporation council dated 02.09.2005,

that no private cart stand will be permitted within 500 meters of the compound wall of the Corporation bus stand and that the petitioner's cycle

stand situated within 300 meters, which is contrary to the Corporation council resolution therefore licence was refused to the petitioner. Hence he

had filed the present writ petition. He had also obtained an interim injunction dated 14.09.2005.

2. On notice from this Court, the Corporation has filed a counter affidavit dated 24.09.2008, wherein, it has been stated that u/s 358(1) of the

Madurai City Municipality Act, 1971,(for short "the Act), a person can open a private cart stand or continue to operate a private cart stand, then

he should obtain a licence from the Commissioner concerned. However, the petitioner has been operating a cart stand since 11.06.2004 without

any permission and it is per se illegal. It is also stated that if the petitioner makes an application to open a private cart stand beyond 500 meters

from the existing Arapalayam Bus Stand, his application may be considered.

3. However, the learned Counsel appearing for the petitioner sought to make a distinction between Sections 356 and 358 of the Act and made it

appear as if there are two different compartments. Unless there a licence granted to any private person he cannot operate a cart stand. The

Corporation fixing a 500 meters limit, the petitioner can question it only on the ground of violation the Article 19(1)(g) of the Constitution of India.

Any commercial activity within the Corporation limit is subjected to the restriction imposed by statute and if the statute makes a restriction which

reasonable based on a public policy, it can not be said that the petitioner's right under 19(1)(g) is violated. In any event, Sections 356 and 358 of

the Act cannot be read in isolation. While the corporation has powers to grant a licence for starting any cart stand to a private or public cart stand,

it will be as per the extant Rules. It is based on the policy that the public cart cannot lose revenue due to the private cart stand and it could not

deprive the public interest. The same view has been taken in respect of Tirunelveli Corporation and Kovilpatti Municipality by this Court. Under

such circumstances, the writ petition is misconceived and devoid of merits and the same stands dismissed

4. It is also surprising that the petitioner operates a cart stand without a licence only on the strength of an interim order of this Court. It is

unfortunate that the person like the petitioner can run a cart stand without licence and particularly under the strength of the order of this Court. This

Court has not given any positive direction in favour of the petitioner. In any event, it is open to the Corporation to take appropriate steps in this

regard.