



W.A.Nos.2295 of 2018 etc.batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.Nos.2295, 2296, 2297, 2298, 2307, 2303, 2301, 2306, 2304, 2300,
2305, 2308, 2302, 2299, 2332, 2331, 2330, 2333, 2325, 2327, 2326, 2374,
2373, 2376, 2375, 2352, 2358, 2356, 2351, 2355, 2363, 2350, 2362, 2365,
2354, 2357, 2359, 2367, 2433, 2360, 2364, 2361, 2455, 2482, 2481, 2453,
2483, 2452, 2457, 2472, 2460, 2458, 2473, 2456, 2467, 2459, 2454, 2466 of
2018 & 42 of 2019

S.Sasikumar	..	Appellant in WA.2295/2018
O.Veeran	..	Appellant in WA.2296/2018
K.Palpandy	..	Appellant in WA.2297/2018
P.Sankar	..	Appellant in WA.2298/2018
K.Lingappan	..	Appellant in WA.2307/2018
P.Dhanaraj	..	Appellant in WA.2303/2018
S.M.Sivasamy	..	Appellant in WA.2301/2018
O.Ilayaraja	..	Appellant in WA.2306/2018
K.Viswasam	..	Appellant in WA.2304/2018
K.P.Murugan	..	Appellant in WA.2300/2018
R.Sekar	..	Appellant in WA.2305/2018
M.P.Muthuraj	..	Appellant in WA.2308/2018
P.S.Balan	..	Appellant in WA.2302/2018



W.A.Nos.2295 of 2018 etc.batch

Mahesh Kumar	..	Appellant in WA.2299/2018
M/s JPM Retail Flower Shop		
rep.by its sole proprietor Mr.A.Jahan	..	Appellant in WA.2332/2018
P.Perumal	..	Appellant in WA.2331/2018
R.Rajan	..	Appellant in WA.2330/2018
S.Sathish	..	Appellant in WA.2333/2018
T.N.Nagarajan	..	Appellant in WA.2325/2018
K.T.Raja	..	Appellant in WA.2327/2018
M.K.Nagaraj	..	Appellant in WA.2326/2018
M/s S.Nagarathinam and Sons		
Flower Retailers rep.by its		
Manager S.Ganesan	..	Appellant in WA.2374/2018
B.Subash	..	Appellant in WA.2373/2018
R.Panner Selvam	..	Appellant in WA.2376/2018
G.Narayanan	..	Appellant in WA.2375/2018
A.Palanisamy	..	Appellant in WA.2352/2018
A.Anaikutty	..	Appellant in WA.2358/2018
S.Dharmaraj	..	Appellant in WA.2356/2018
R.Murugavel	..	Appellant in WA.2351/2018
V.Murugan	..	Appellant in WA.2355/2018
M.Sivakumar	..	Appellant in WA.2363/2018
N.Arumugam	..	Appellant in WA.2350/2018
J.Thomas Peter	..	Appellant in WA.2362/2018
S.Gopalakrishnan	..	Appellant in WA.2365/2018
S.Rajamani	..	Appellant in WA.2354/2018
S.William Eliyas	..	Appellant in WA.2357/2018
Muthuraman	..	Appellant in WA.2359/2018
S.Selvam	..	Appellant in WA.2367/2018
Dinesh	..	Appellant in WA.2433/2018
Selvakumar	..	Appellant in WA.2360/2018
K.Kathirvel	..	Appellant in WA.2364/2018
P.Desilva Daniel Raj	..	Appellant in WA.2361/2018
P.Thanasekar	..	Appellant in WA.2455/2018
T.Alagarsamy	..	Appellant in WA.2482/2018
K.A.Gopi	..	Appellant in WA.2481/2018



W.A.Nos.2295 of 2018 etc.batch

K.Muralimohan	..	Appellant in WA.2453/2018
A.Nithyanandam	..	Appellant in WA.2483/2018
G.Balaji	..	Appellant in WA.2452/2018
S.V.Shanmugavel	..	Appellant in WA.2457/2018
R.Velmurugan	..	Appellant in WA.2472/2018
A.Manivannan	..	Appellant in WA.2460/2018
S.Loganathan	..	Appellant in WA.2458/2018
P.Muthukumar	..	Appellant in WA.2473/2018
A.Varadaraj	..	Appellant in WA.2456/2018
R.Rajendran	..	Appellant in WA.2467/2018
K.G.Chandrasekar	..	Appellant in WA.2459/2018
C.Settu	..	Appellant in WA.2454/2018
S.Venkatesan	..	Appellant in WA.2466/2018
K.Ravi	..	Appellant in WA.42/2019

v.

1. Government of Tamil Nadu
represented by its Secretary
Housing and Urban Development Department
Fort St.George
Chennai 600 009
2. The Member Secretary
Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008
3. The Chief Executive Officer
Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008 .. Respondents 1 to 3 in all
the WA's, except WA.2332/18
4. Chennai Pushpa Viyabarigal and



W.A.Nos.2295 of 2018 etc.batch

Commission Agentugal Sangam
represented by its President Mr.Uthappan

No.18/2, Gangaianman Koil Street

T.Nagar, Chennai 600 017

..

R4 in WA.2295/2018

(R4 impleaded vide order of Court

dt. 19.09.2023 in CMP.6107/2020 in

WA.2295/2018)

5. J.Vasudevan

(R5 impleaded vide order of Court

dt. 19.09.2023 in CMP.13624/2022 in

WA.2295/2018)

..

R5 in WA.2295/2018

6. S.Govindaraj

(R4 impleaded vide order of Court

dt. 19.09.2023 in CMP.9769/2020

in WA.2361/2018)

..

R4 in WA.2361/2018

7. Chennai Metropolitan Development Authority

represented by its Member Secretary

No.1, Gandhi Irwin Road

Egmore, Chennai 600 008

8. The Chief Executive Officer I/c

Chennai Metropolitan Development Authority

No.1, Gandhi Irwin Road

Egmore, Chennai 600 008

9. The Commissioner

Corporation of Chennai

Rippon Building

Chennai 600 003

..

R1 to R3 in WA.2332/2018

Writ Appeals are filed under Clause 15 of the Letters Patent, against
the common order dated 09.10.2018 made in W.P.No.2392, 2399, 4662 of



W.A.Nos.2295 of 2018 etc.batch

2016, 3715 of 2018, 2394, 2393, 2139, 2226, 2117, 2822, 2144, 2140, 2138, 2137, 4632, 3712, 2398, 2388, 1135, 2385, 2386, 3462, 3477, 3463, 3461, 2389, 4664, 6080, 5254, 5244, 4663, 5242, 5249, 2397, 5245, 2395, 4666 of 2016, 6086 of 2018, 2395, 6081, 7107, 6839, 6084, 5248, 5252, 5251, 5250, 3716, 2390, 5253, 3714, 2391, 4665, 7591, 7108, 7106, 6082, 5247, 5246 of 2016, respectively.

For Appellants :: Mr.S.Sadasharam in WAs.2295 to 2298, 2307, 2303 of 2018

Mr.R.Nalliyappan in WAs.2301,2306, 2304, 2300, 2305, 2308, 2302, 2299 of 2018

Mr.R.Veeramani in WA.2332/2018

Mr.N.Manokaran in WAs.2331, 2330, 2333, 2325, 2327, 2326 of 2018

Mr.V.Nicholas in WA.2374/2018

Mr.Adithya Varadarajan
for M/s K.V.Law Firm in WA's.2373, 2376, 2375 of 2018

Mr.T.S.Kani in WAs.2352, 2358, 2356, 2351, 2355 of 2018 & 42/2019

Ms.Shobana.R in WAs. 2363, 2350, 2362, 2365, 2354, 2357 of 2018

Mr.K.Shivakumar in WAs.2359, 2367, 2433, 2360, 2364, 2361, 2455, 2482, 2481, 2453, 2483, 2452, 2457, 2472, 2460, 2458, 2473, 2456, 2467,



WEB COPY



W.A.Nos.2295 of 2018 etc.batch

2459, 2454, 2466 of 2018

For Respondents ::

Mr.P.Kumaresan
Additional Advocate General
assisted by Mrs.P.Veena Suresh
Standing Counsel for CMDA

Mrs.Geetha Thamaraiselvan
Special Government Pleader
for the State

Mr.V.Raghavachari, Senior Counsel
for Mr.M.V.Seshachari for R4
in WA.2295/2018
Mr.M.Rajasekar for
R5 in WA.2295/2018
Mr.T.Kishorekumar for
R4 in WA.2361/2018

COMMON JUDGMENT

(Judgment of the Court was made by D.KRISHNAKUMAR,J.)

The instant intra-Court appeals are directed against the common order dated 09.10.2018 passed by the writ Court rejecting the relief sought for by the appellants/writ petitioners.

2. The learned counsels appearing for the appellants submitted that



W.A.Nos.2295 of 2018 etc.batch

the appellants are running the retail flower vending shops in Badrian Street, Chennai occupying an extent between 20 and 200 square feet respectively and they have been regularly paying the tax to the Corporation for the past several years. It is also their case that more than 130 retail flower vending shops are doing the retail flower vending business in the area called as Flower Bazaar Bus Stand/Flower Bazaar Police Station. While so, the third respondent issued the notice dated 06.10.2015 directing the appellants to stop the unauthorized wholesale flower business and to vacate the premises within seven days of the receipt of notice, failing which action would be initiated for eviction. In the meanwhile, since an order of eviction was passed, the appellants were constrained to file the Writ Petition Nos.2822 of 2016 etc., batch seeking an order to forbear the respondents from preventing the appellants to carry on their retail flower vending business in the place in question, on the ground that they were not provided with an opportunity of hearing before ordering eviction. However, the writ Court has rejected the relief sought for by the appellants with a further direction to the respondents to lock and seal the premises occupied by the appellants. Therefore, the appellants have filed the instant intra-Court appeals before this Court.



W.A.Nos.2295 of 2018 etc.batch

3. Mr.P.Kumaresan, learned Additional Advocate General appearing for the respondent-CMDA, strongly objecting to the relief sought for by the appellants, submitted that in the earlier round of litigation, when the Chennai Retail Flower Merchants Welfare Association represented by its President, Badrian Street, Chennai, in which the appellants were also members, filed W.P.No.1589 of 2012 seeking to quash the G.O.(Ms)No.10, Housing and Urban Department dated 06.01.2012 and to direct the respondents to recognize the members of the petitioner Association as retail flower vendors, the writ Court, by order dated 23.04.2012, did not accept the contentions of the Association as has been made by the appellants herein and dismissed the said writ petition. Subsequently, when the Chennai Pushpa Viyabarigal and Commission Agentugal Sangam represented by its President Mr.Uthappan filed W.P.No.10852 of 2015 seeking a direction to the respondents to implement the G.O.(Ms)No.10, Housing and Urban Department dated 06.01.2012 and also to initiate action under Section 379(a) of the Chennai City Municipal Corporation Act to evict the retailers, the writ Court, considering the submission of the learned counsel for the Sangam confining his prayer for a direction to the respondents to consider



W.A.Nos.2295 of 2018 etc.batch

the representation dated 31.01.2015, directed the respondent-CMDA to pass orders on the said representation on merits and in accordance with law.

Therefore, the learned Additional Advocate General submitted that when the said orders have attained finality, the appellants have no right to re-agitate the very same issue before this Court when the respondents have already taken action for evicting the appellants from the place in question for running the wholesale flower business. But the appellants, in the second round of litigation, have again filed the writ petitions seeking the very same relief and the same has been rightly rejected by the order under appeal, taking note of the earlier orders passed by this Court, which requires no interference.

4. Mr.V.Raghavachari, learned Senior Counsel appearing for the Chennai Puspha Viyabarigal and Commission Agentugal Sangam, which has been impleaded as the fourth respondent in W.A.No.2295 of 2018, reiterating the stand of the respondent-CMDA, brought to the notice of this Court that in the earlier round of litigation, when the Writ Petition No.1589 of 2012 filed by the Chennai Retail Flower Merchants Welfare Association



W.A.Nos.2295 of 2018 etc.batch

was already dismissed by this Court holding that the members of the Association like the appellants herein are not entitled to run the retail flower vending shops in the place in question taking note of the earlier orders passed by this Court, the appellants have once again filed the writ petitions seeking the very same relief, as though they are distinct and falling in a separate class. Further, the order under appeal is very clear that the appellants are running the wholesale flower business and not the retail business as alleged in the writ petitions/appeals. The learned Senior Counsel further submitted that when another set of writ appeals in W.A.Nos.2393 to 2399 of 2018 against the very same impugned order came up for consideration before this Court, the Division Bench, by order dated 09.11.2018, confirming the order of the writ Court, has observed in paragraph-13 as follows:-

“13. One more endeavour was made by the Chennai Retail Flower Merchants Association by filing WP.No.1589/2012 and it was also dismissed on 23.04.2012 by taking into consideration that the 1st respondent therein had considered the entire aspect in issue and passed the impugned order, which does not



WEB COPY



W.A.Nos.2295 of 2018 etc.batch

require any interference by this Court in the said writ petition. The learned Judge, after taking note of the above cited orders, has recorded the finding that this Court, through the said orders, has consistently held that all these vendors in Badrian Street, Chennai-1, are doing wholesale flower business and the Inspection Report of the officials of the 2nd respondent/CMDA would also disclose the said fact and despite repeated directions passed by this Court for eviction of wholesale traders and though it was carried out by locking and sealing, the traders had the audacity to break open the lock and seal and criminal cases also came to be registered and noted that FIRs also came to be filed.”

Therefore, the said order is squarely applicable in the present cases. Moreover, in the present writ appeals, when this Court has raised a query as to whether the respondent CMDA is the competent authority to initiate action for eviction of the flower vendors from the place in question, in the light of Section 2(14) of the Tamil Nadu Specified Commodities Markets (Regulation of Location) Act, 1996 defining “wholesale trade”, meaning a sale or purchase of any specified commodity for purpose other than direct consumption or use by the purchaser and shall include holding of stocks or



W.A.Nos.2295 of 2018 etc.batch

warehousing of such specified commodity at any place in the market area (but does not include any sale or purchase by any primary producer or retail trader, as the case may be, of such specified commodity) and any such seller, buyer, holder of stock or warehouse-keeper shall be deemed to be a “wholesale trader” or whether the competent authority is the Market Committee under Section 21 to lock and seal the premises which are otherwise in lawful occupation of the appellants and dispossess the persons who are otherwise in lawful occupation thereof for contravention of the provisions of the Tamil Nadu Act 24 of 1996, referred the said issue for a decision by the Full Bench of this Court. The said reference was answered by the Full Bench vide order dated 19.01.2021, in paragraph-18, as follows:-

“18.Accordingly, we answer the reference in the following terms :

(i)The provisions of the Tamil Nadu Act 24 of 1996 authorise the local authority as defined in Section 2(5) of the Act 24 of 1996 and not the market committee to lock and seal the premises for contravention of the provisions of the Act.



WEB COPY



W.A.Nos.2295 of 2018 etc.batch

(ii)The local authority is empowered to factually determine whether the persons concerned are carrying on wholesale trade in the non-market areas. It is not necessary that this factual determination should be preceded by criminal prosecution as contemplated under Section 47 of the Act.”

In the light of the decision of the Full Bench answering the issue that the provisions of the Tamil Nadu Act 24 of 1996 authorise the local authority as defined in Section 2(5) of the Act 24 of 1996 and not the Market Committee to lock and seal the premises for contravention of the provisions of the Act and that the local authority is empowered to factually determine whether the persons concerned are carrying on wholesale trade in the non-market areas, the only question to be considered by the Division Bench, as answered by the Full Bench in paragraph-18, is whether the persons concerned are carrying on the wholesale trade in the non market area. In the light of the aforesaid background, the learned Senior Counsel submitted that no interference is called for with the impugned order, as the writ petition filed by the Association on behalf of its members like the appellants on the same issue has already been dismissed by this Court. Therefore, he sought for



W.A.Nos.2295 of 2018 etc.batch

dismissal of the present writ appeals also.

WEB COPY

5. We have heard the respective learned counsels appearing for the appellants and the respondents and also perused the records.

6. The point for consideration in the present appeals is whether the appellants are running the wholesale or retail flower vending business in the place in question or whether there is any violation of the principles of natural justice as alleged by the appellants.

7. So far as the first part as to whether the appellants are running the wholesale or retail flower vending business in the place in question, is concerned, according to the appellants, the Full Bench of this Court has answered the reference holding that the respondent CMDA is the competent authority under Section 2(5) of the Act 24 of 1996 and not the Market Committee for initiating action for eviction of the vendors from the place in question. Once this has been answered, the next question that arises for our consideration in the present appeals is whether the appellants are running



W.A.Nos.2295 of 2018 etc.batch

the retail flower vending business in the subject place as claimed by them.

In this context, the learned Additional Advocate General appearing for the respondent CMDA has drawn our attention to the earlier order passed in W.P.No.1589 of 2012 dated 23.04.2012, wherein the writ Court has referred to the earlier order of the Division Bench observing as follows:-

“22. That apart, the Division Bench of this Court, in Writ Appeal No.693 of 2011, by an order dated 7.7.2011, has clearly held that the CMDA has totally complied with the directions given by this Court in W.P.Nos.29809 of 004 and 12909 of 2009. Paragraphs 5 to 7 of the order made therein are usefully extracted hereunder:-

“5.At the time of admission of the writ appeal on 9.6.2011, learned Special Government Pleader appearing for the respondents submits that in view of the direction given by the learned Single Judge in a batch of writ petitions in the impugned order dated 12.1.2011, though individuals notices were served to attend the public hearing on 16.5.2011 at 11.30 a.m., subsequently, due to non-service of notice on all the traders, once again notices were served and



W.A.Nos.2295 of 2018 etc.batch

hearing dates were fixed as 10.6.2011 and 13.6.2011 and accordingly requested time to proceed with the matter after completion of the public hearing. Subsequently, the matter was adjourned. Finally, when the writ appeal came up for final disposal, a status report was filed by the second respondent/CMDA stating that apart from other grounds, notices were served to all the 130 traders in batches, so attend a personal hearing and out of 130 traders, 53 traders attended the personal hearing and given their contentions in writing, stating that they were doing retail business and requested CMDA not to vacate them from Badrian Street, George Town and permit them to continue their retail business.

6.It is also stated in the status report that the contentions of the traders have been examined and it has been concluded that the traders are doing wholesale business in the Badrian Street. Further, it is observed that the individual is not purchasing flower from Koyambedu Wholesale Market complex, instead



W.A.Nos.2295 of 2018 etc.batch

they are procuring from other places and transporting the flowers by train, bus, mini vans to Badrian Street, George Town area.

7. Therefore, a detailed order was passed on 6.7.2011 after issuing individual notices. In view of the said individual order passed by the respondents in accordance with the directions given by the learned Single Judge, the above writ appeal is closed. In view of the order passed by the respondents, we hope that the respondents will strictly follow the order in the interest of the public. We are satisfied that the respondents have totally complied with the directions given by the learned Single Judge, while quashing the order passed by the respondents impugned in the writ petition. Consequently, the connected M.P. is closed. However, there shall be no order to costs.”

Subsequently, when the Chennai Pushpa Viyabarigal and Commission Agentugal Sangam represented by its President Mr.Uthappan filed W.P.No.10852 of 2015 seeking a direction to the respondents to implement the G.O.(Ms)No.10, Housing and Urban Department dated 06.01.2012 and



W.A.Nos.2295 of 2018 etc.batch

also to initiate action under Section 379(a) of the Chennai City Municipal Corporation Act to evict the retailers, the writ Court, considering the submission of the learned counsel for the Sangam confining his prayer for a direction to the respondents to consider the representation dated 31.01.2015, directed the respondent-CMDA to pass orders on the said representation after putting on notice the persons concerned and to pass orders on merits and in accordance with law as expeditiously as possible, not later than eight weeks from the date of receipt of a copy of the order and communicate the decision taken to the writ petitioner as well as the concerned persons. Now the grievance of the appellants is that the respondents have not provided the opportunity to them in the light of the aforesaid order and straightaway passed the order dated 15.12.2015 for evicting the appellants from the place in question.

8. We have also perused the order dated 15.12.2015 passed by the respondents. Even though a reference has been made to the order passed by this Court, nowhere it indicates of any opportunity granted to the appellants. Therefore, according to the appellants, when they are running the retail



W.A.Nos.2295 of 2018 etc.batch

flower vending shops in small portions ranging from 20 to 200 square feet respectively, the said order cannot be given effect to. It is also brought to our notice that pursuant to the reference being answered by the Full Bench of this Court, the Division Bench has appointed an Advocate Commissioner to inspect the shops and the detailed report of the Advocate Commissioner has also been taken on file on 6.6.2022. Therefore, according to the appellants, when subsequent events have taken place after the earlier orders of this Court, the respondents cannot contend that the earlier orders have become final and the granting of opportunity to the appellants would only be an useless formality. Though the defence taken by the respondents is that such opportunity would only be an useless formality, particularly when the writ Court has already gone into the issue in the earlier writ petition, however, in the cases on hand, when the Division Bench referred the matter to the Full Bench for a decision and the Full Bench has also answered the reference and thereafter an Advocate Commissioner was also appointed to find out whether the appellants are carrying on the retail business and the report also says that they are running the shops in portions ranging between 20 and 200 square feet respectively, the said aspects cannot be ignored.



W.A.Nos.2295 of 2018 etc.batch

However, it is the case of the respondents that these appellants are running wholesale business and not trading in retail as claimed by them. It is also their case that if the appellants are running only retail business, they have to place all the materials before the authority to prove that they are doing only retail business, except placing reliance on the report of the Advocate Commissioner. To this extent, we are also having some reservation, since it is the contention of the respondents that after the Advocate Commissioner's report, the appellants have not produced any material to show that they are running only the retail business. Therefore, considering the rival submissions, we are unable to decide the said fact as to the carrying of retail business by the appellants in the place in question.

9. However, we cannot leave the issue as it is. Therefore, considering the submissions of the learned counsels for the parties and taking note of the earlier order passed by this Court in W.P.No.10852 of 2015 dated 15.04.2015, to meet the ends of justice, we are of the considered view that the appellants shall be granted an opportunity to establish their case before the authority concerned that they are running the retail flower vending shops



W.A.Nos.2295 of 2018 etc.batch

in the place in question, since the respondents have straightaway passed the order dated 15.12.2015 for eviction of the appellants.

10. In fine, the writ appeals stand disposed of with the following directions:-

- (i) The order dated 15.12.2015 shall be construed as a show cause notice and the appellants are directed to submit their individual objections/reply before the respondent CMDA with all the relevant records to prove that they are running only the retail business in the place in question, within a period of four weeks from the date of receipt of a copy of this order.
- (ii) Needless to mention that the authority concerned shall also serve notice to the impleaded respondents within a period of four weeks from the date of receipt of the objections from the appellants.
- (iii) On receipt of such notice, the impleaded respondents are also entitled to submit their reply within a period of two weeks therefrom to the authority concerned.
- (iv) Thereafter, the respondent CMDA shall consider the individual objections made by the appellants as well as the reply of the impleaded respondents, taking into consideration the earlier order passed by this Court and if any evidence to show that they are running retail business in the said area, and pass appropriate orders as



W.A.Nos.2295 of 2018 etc.batch

expeditiously as possible.

(v) It is made clear that the entire exercise shall be completed by the respondents within a period of four months from the date of receipt of a copy of this order.

Consequently, all the pending civil miscellaneous petitions shall stand closed. There shall be no order as to costs.

(D.K.K.,J.)

(P.B.B,J.)

Index : yes/no

19.09.2023

Neutral citation : yes/no

SS

To

1. The Secretary to Government of Tamil
Housing and Urban Development Department
Fort St.George
Chennai 600 009

2. The Member Secretary
Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008

3. The Chief Executive Officer
Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008



W.A.Nos.2295 of 2018 etc.batch

4. The Commissioner
Greater Chennai Corporation
Rippon Building
Chennai 600 003

WEB COPY



WEB COPY



W.A.Nos.2295 of 2018 etc.batch

D.KRISHNAKUMAR,J.

AND

P.B.BALAJI,J.

SS

W.A.Nos.2295 of 2018 etc.batch

19.09.2023