

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

W.P.No.28404 of 2015
and M.P.No.1 of 2015

Chennai Koyambedu Flower Whole sale
Merchant Association,
rep.by its Secretary,
Rondian
FC 119, Kamarajar Flower Market,
Koyambedu, Chennai - 600 092.

... Petitioner

vs.

1.State of Tamilnadu
rep.by its Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai - 9.

2.The Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi Irwin Road,
Egmore, Chennai - 8.

3.The Market Management Committee,
rep.by its Chief Administrative Officer,
Koyambedu Wholesle Market Complex,
Koyambedu, Chennai.

... Respondents

Prayer :- Writ petition filed under Article 226 of the constitution of India praying for a writ of certiorari calling for the entire records relating to the impugned proceedings of the third respondent in No.01/2015-16/A.Ni.Ku/Vu.Po/Ko/1068/2014 dated 04.09.2015 and quash the same as illegal and against the provisions of the Tamilnadu Specified Commodities Market (Regulation of Location) Act 1996, Tamilnadu Act 24 of 1996 and the Tamilnadu Transparency in Tenders Act 1998.

For Petitioner
For Respondents

: Mr.E.Vijay Anand
: Mr.V.Jayaprakash Narayanan,
Special Govt. Pleader for R1
Mr.A.Kumar for R2
Mr.M.Velmurugan for R3

O R D E R

With the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal at the admission stage itself.

2. The petitioner is a whole sale merchant association whose members are registered licensees in the market. The members of the petitioner's association possess registered license to carry on the trade in the market and they are allowed to do sell only notified items. While so, the third respondent issued notice dated 04.09.2015 which is alleged to be affixed on 08.09.2015 calling upon a single tender to sell sugarcane, plantain, ginger and other materials which are essential for celebration of Vinayaka Chathurthi, in the premises of the flower market. The said auction notice is being questioned by the petitioner association in this writ petition contending that outsiders cannot do business in the market and only the licence holders permitted by the third respondent alone are entitled to do business. That apart, a contractor is also going to be appointed for collecting tollfee, in the area earmarked for the shops for the ingress and egress of loaded vehicles for unloading the goods. Therefore the petitioner challenges the notice dated 04.09.2015 and quash the same as contrary to the provisions of the Tamil Nadu Specified Commodities Markets (Regulation of Location) Act 1996.

3. Heard Mr.E.Vijay Anand, learned counsel appearing for the petitioner, Mr.V.Jayaprakash Narayanan, learned Special Govt. Pleader appearing for the first respondent, Mr.A.Kumar, learned counsel appearing for the second respondent and Mr.M.Velmurugan, learned counsel appearing for the third respondent.

4. As rightly pointed out by Mr.M.Velmurugan, by producing plan of the market, the proposed site is a vacant site and allowing of persons to do business for five days for selling the necessary items for celebration of Vinayaga Chathurthi will not affect the petitioner. The sketch shows that the area to be allotted to the vendors for five days is only a vacant site and it has got no connection with the petitioners' shops. Moreover, separate entry and exist have been shown in the map for entry of the vehicles to bring the goods into the market. Moreover, it is only a seasonal business and with an idea to provide all items in the one place, the respondents have formulated and allowed the vendors to do the business only for five days. The said decision taken by the third respondent is in the interest of general public.

5. Though Mr.E.Vijay Anand, learned counsel appearing for the petitioner would submit that license holders alone are allowed to do business in the market, the said contention cannot be sustained for the simple reason that the sale is only for four or five days and that the items which are allowed to be sold for such period has got nothing to do with the items that are being sold by the petitioner association.

6. When the third respondent has got power under Section 21 of the Act to grant license to the persons to deal with specified commodities, the said authority has got implied and ancillary powers to allow the persons for a temporary period of five days so as to cater the needs of the public. Such a decision has been taken in the interest of public reasoning that the third respondent has got power under the Tamilnadu Specified Commodities Markets (Regulation of Location) Act 1996. As observed earlier, even if it is not spelt out in the act, it is embedded in the Act and the authority has got all ancillary powers and incidental powers to do.

7. That apart, as per Section 20 (3) of the Tamilnadu Specified Commodities Markets (Regulation of Location) Act 1996, the Chief Administrative Officer is permitted to allow other persons, other than licensees to do business in the market. When the statute authorises the Chief Administrative Officer to permit the other persons also, there cannot be any prohibition for the third respondent to allow other persons to do business in the market. In the absence of such power, as observed earlier, incidental power is always available to the authority. Hence, the petition fails.

8. Taking into consideration the earlier order passed by this court in W.P.No.27189 of 2013 dated 03.10.2013, in the interest of the petitioners as well as the proposed vendors and the general public, the same direction is required to be given and therefore direction given in para 8 of the order of this court dated 03.10.2013 in W.P No.27189 of 2013 are reiterated and the same direction is given in this writ petition also. Para 8 of the order of this court dated 03.10.2013 is usefully extracted as follows -

8. In view of the same, I am inclined to dispose of the writ petition with the following conditions -

(a) The respondent is directed to ensure that temporary shops are located only at the vacant space available just behind the flower market ;

(b) Licensees should be allowed to use only Gate No.18;

(c) Vehicles should not be parked on the side of the road or blocking Gate No.18 ;

(d) There should not be any hindrance to the members of the petitioner association ;

(e) The respondent should ensure that all the temporary shops are removed by 17.09.2015; and

(f) It is also the responsibility of the respondent to clean the premises immediately after discontinuing the occupation of temporary shops.

9. In the result, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

rgr

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

- 1.The Secretary,
State of Tamilnadu,
Housing and Urban Development Department,
Fort St.George, Chennai - 9.
 - 2.The Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi Irwin Road,
Egmore, Chennai - 8.
 - 3.The Market Management Committee,
rep.by its Chief Administrative Officer,
Koyambedu Wholesle Market Complex,
Koyambedu, Chennai.
- + 1 cc to Mr.M.Velmurugan, Advocate SR 49767
- + 1 cc to Mr.E.Vijay Anand Advocate SR 49032
- + 1 cc to Govt.Pleader SR 49264

cnr(co)
prk14/9

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