

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.10803 of 2016

Dr.Ambedkar Small Shops Traders Association
rep. by its President, A.Veerasingam

.. Petitioner

Vs

The Member Secretary
Chennai Metropolitan City Development Authority
Egmore, Chennai 600 008.

.. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus to direct the respondent to handover the shops to all the allottees, who were given letters of allotment on 17.11.1999.

For Petitioner : Mr.R.Vijaya Raghavan

For Respondents : Mr.M.Karthikeyan

O R D E R

Heard Mr.R.Vijaya Raghavan, learned counsel appearing for the petitioner and Mr.M.Karthikeyan, learned counsel appearing for the respondent and with the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2.The Petitioner is an association of Small Shop Traders who were allotted shops in the Anna Fruit Market, Phase-I, Koyambedu Market. Though such allotment came to be made during 1999 to 97 persons, who are stated to be the members of the petitioner Association, physical possession was not handed over to them, as the allotments were thrown into litigation. At the instance of the another Association called as the Chennai Fruit Commission Agents Association, a litigation which had commenced by the Association in Writ Petitions being W.P.Nos.28520 and 28521 of 2011, was dismissed by the Hon'ble Division Bench and with regard to the right of the petitioner Association herein, which was the second respondent in those Writ Petitions, the Hon'ble Division Bench made the following observations:

"25 Before parting with the matter, we would like to place on record that the Court Commissioner has submitted a fair report clearly observing that there is no obstruction to the ingress and egress to the petitioners' shops and the also, inflow and outflow of air and light to their shops is not affected. However, there is the problem of congestion, which ought to be effectively addressed at first. There is no dispute that on inspection, it was found that there were several encroachments and the common space was also used by the allottees for keeping their goods. It is also not in dispute that the allocation of platform on the service road to new shops may add to the congestion in the already heavily choked and clogged wholesale shopping complex. Though the said platforms were not used as service roads, the service road is left intact for loading and unloading of goods by the shop owners and for garbage vans and other such services. Some small kiosks were already found located on the service road. But, service road is not available for being converted into shopping lanes, as there are already several encroachers. The other Technical Member has submitted the separate report in tune with the official stand of the respondent-authority.

26 Noticing the said report and also certain photographs produced before us, it is evident that the area in question is clogged and there is severe congestion in the area. This congestion was on account of the alleged encroachers on the service road also. No doubt, the platform is not a part of service road and also, the ownership and title do not vest with the allottees or the purchasers. However, it is for the authority to ensure that the market complex is neat and clean with clear service road, wherein, the movement of people and vans is easily possible. Even if allotments are made on the platform shops, they should be strictly regulated in such a way that they do not spread their trading activity outside the allotted area. The original allottees/vendors be also directed to conform to the terms and conditions and not to create any congestion in the open space available for the benefit of all, by dumping their goods outside the allotted area."

The petitioner Association has submitted a representation on 08.09.2015 for allotment of Platform Shops and since the representation was not considered, the petitioner is before this Court.

3.The petitioner Association claims that its members are the persons whose names find placed in the list drawn pursuant to the lot conducted on 20.11.1998. Copy of which has been filed in the typed set of papers, which shows that there are totally 97 persons who are said to have been selected in the lot conducted on 20.11.1998.

4.However, this fact cannot be verified at this juncture, since the respondent has not filed any counter affidavit, despite reasonable time granted to them. In any event, the representation having been received by the Office of the respondent, they are bound to consider the same and pass orders on merits and in accordance with law and communicate the same to the petitioner.

5.In the light of the above, without going into the merits of the claim made by the petitioner, there will be a direction to the respondent to consider the petitioner's representation dated 08.09.2015 and pass a speaking order on merits and in accordance with law, and communicate the same to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

The Writ Petition is disposed of accordingly. No costs.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Member Secretary
Chennai Metropolitan City Development Authority
Egmore, Chennai 600 008.

+ 1 cc to Mr.R.Vijaya Raghavan, Advocate Sr 23421

KR/25/4/16

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