

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.12891 of 2016

& W.M.P.No.11264 of 2016

S.Govindaraj

.. Petitioner

Vs.

1. The Appellate Authority/
Secretary to Government,
Housing and Urban Development Department,
Govt. of Tamil Nadu, Chennai-600 009.

2. The Chief Executive Officer,
Chennai Metropolitan Development Authority,
No.1, Gandhi-Irwin Salai,
Chennai-600 008.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the first respondent to grant interim stay in the Appeal dated 27.09.2012 filed by the petitioner under Section 45(1)(iii) of the Tamil Nadu Specified Commodities Market (Regulation of Location) Act, 1996, preferred against the orders passed by the second respondent in Letter No.K1/1194/04-3, dated 06.07.2011.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.V.Jayaprakash Narayanan, Spl.G.P.

ORDER

The petitioner has filed this Writ Petition praying for the issuance of a Writ of Mandamus to direct the first respondent to grant interim stay in the Appeal dated 27.09.2012 filed by the petitioner under Section 45(1)(iii) of the Tamil Nadu Specified Commodities Market (Regulation of Location) Act, 1996, preferred against the orders passed by the second respondent in Letter No.K1/1194/04-3, dated 06.07.2011.

2. It is averred by the petitioner in the affidavit filed in support of the Writ Petition that he is an agriculturist having

lands situated in Vellore District and cultivating these lands by raising flowers and other crops and selling them. The petitioner is in occupation of the shops situated in the premises bearing Door Nos.6/1 and 18/B, Badrian Street, Chennai-600 001 and selling agricultural produce of flowers from the premises whenever he gets sufficient yield from the said lands. It is further stated by the petitioner that the Government of Tamil Nadu in the year 1996, enacted a law called "The Tamil Nadu Specified Commodities Market (Regulation of Location) Act, 1996", which is an Act to regulate the location of market areas and wholesale markets in respect of specified commodities in Chennai Metropolitan Planning Area and other local areas and to establish market committees to manage and control different markets established in different market areas for different specified commodities and also to provide for matters connected therewith or incidental thereto. In pursuant to the enactment of the said Act, the Government of Tamil Nadu notified the "Koyambedu Area" as a special market as per Section 19 of the said Act and all the wholesale traders of flowers, vegetables, fruits and other perishable goods were shifted to Koyambedu area. Some of the traders who are doing retail trade and few of the primary producers of flowers and vegetables are alone continuing their business in the George Town area.

3. It is further stated by the petitioner that the second respondent-CMDA, vide letter dated 12.02.2010 in K1/1194/2004, while observing that the petitioner is a whole-sale trader of flowers, directed him to stop the business of selling flowers in Badrian Street, Chennai-1 and on failure, his business materials will be seized. Pursuant to the said letter dated 12.02.2010, the petitioner sent a representation, dated 22.02.2010 to the concerned authority, requesting him to hold proper enquiry and afford reasonable opportunity of hearing to him to put forth his case. Thereafter, the petitioner challenged the eviction order, dated 12.02.2010 passed by the second respondent herein, in W.P.No.4142 of 2010 before this Court on the ground that he is a primary producer of flowers and the said Act is not applicable to him. This Court, after hearing the parties, by order dated 12.01.2011, directed the second respondent/CMDA to hold enquiry and after affording reasonable opportunity to him and others, pass orders in accordance with law.

4. Subsequently, the second respondent issued notice for an enquiry, for which, the petitioner submitted reply, in pursuant to which, the second respondent passed final orders on 06.07.2011 without considering the records produced by the petitioner to prove his cultivation and sale of flowers at Badrian Street, Chennai-1. Hence, the petitioner challenged the said eviction order, dated 06.07.2011 passed by the second

respondent/CMDA, by way of an appeal under Section 45(1)(iii) of the said Act, before the first respondent on 27.09.2012 along with a stay petition and the same have not been heard, inspite of reminder petitions, dated 05.12.2013, 22.05.2014 and 22.12.2015 to the first respondent, requesting for an early hearing of the appeal petition. It is the grievance of the petitioner that in the meantime, the second respondent issued an eviction notice, dated 06.10.2015 asking the petitioner to stop doing business in the said Badrian Street, Chennai-1, inspite of the fact that appeal and stay petition are pending on the file of the first respondent. Even the subordinates of the second respondent came to the petitioner's place of sale of agricultural produce (flowers) on 18.01.2016 and stopped his business. Immediately, on 19.01.2016, the petitioner sent one more representation to the respondents requesting them to permit the petitioner to sell his agricultural produce as before, till the appeal petition is decided by the Government.

5. It is the further grievance of the petitioner that till date, the respondents failed to consider his request. Therefore, the petitioner filed Writ Petition No.5102 of 2016 before this Court, challenging the above said eviction notice, dated 06.10.2015 issued by the second respondent and the said Writ Petition is pending. In spite of the fact that the appeal petition and stay petition are pending before the first respondent and as there is delay in considering the same, the second respondent ordered for eviction and ban of the sale of flowers in Badrian Street, Chennai-1, thereby, it is affecting the livelihood of the petitioner and according to the petitioner, the same is violative of his rights guaranteed under Article 21 of the Constitution of India. Hence, the petitioner has filed this Writ Petition for the above relief.

6. Heard both sides.

7. Taking into consideration the factual aspects of the matter, though this Court is not inclined to give positive direction as sought for by the petitioner as it is the prerogative of the first respondent to grant stay or not, pending appeal, however, this Court, without going into the merits of the case, directs the first respondent to expedite the hearing of the said stay petition, conduct enquiry, give an opportunity of personal hearing to the petitioner and necessary parties, pass appropriate orders and dispose of the said stay petition, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. Till the said stay petition is disposed of by the first respondent, the parties shall maintain status-quo that is existing as on today. It is made clear that this Court has not

expressed any opinion on the merits of the claim of the petitioner and it is for the first respondent to decide the same while disposing of the said stay petition.

8. With the above observations and directions, the Writ Petition is disposed of. No costs. W.M.P. is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Copy to

1. The Appellate Authority/
Secretary to Government,
Housing and Urban Development Department,
Govt. of Tamil Nadu, Chennai-600 009.
2. The Chief Executive Officer,
Chennai Metropolitan Development Authority,
No.1, Gandhi-Irwin Salai,
Chennai-600 008.

+2cc to Mr.S.Doraisamy, Advocate Sr.22385 & 21630
+1cc to The Government Pleader sr.22216

W.P.No.12891 of 2016

gj (CO)
srg(12/04/2016)

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