

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2016

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The Hon'ble Mr.Justice K.K.Sasidharan

**C.R.P.(PD)Nos.4286 to 4289 and 4290 of 2015, 4462 to 4466 of 2015,
3475 and 2821 of 2016**

and

M.P.Nos.1, 1,1 1,1 of 2015 C.M.P.Nos.17704, 14333 of 2016

C.R.P.(PD)No.4286 of 2016

The Member Secretary,
Chennai Metropolitan Development Authority,
Thalaimuthu Natarajan Building,
No.1 Gandhi Irwin Road,
Egmore, Chennai-600 008.

...Petitioner

Vs.

1. K.P.L. Retail Flower Shop,
Rep. by Proprietor
Mr.P.Perumal,
No.28, Badriyan Street,
Flower Bazaar,
George Town,
Chennai-600 001.

2. The Commissioner,
Corporation of Chennai,
Chennai – 600 003.

... Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the fair and decreetal order passed by the V Assistant City Civil Court at Madras, dated 30.04.2016, in I.A.No.963 of 2012, in O.S.No.5952 of 2012.

In all C.R.Ps.

For Petitioners	:	Mr.C.Johnson
For Respondent-1	:	No appearance
For Respondent-2	:	Mr.V.C.Selvasekaran Standing Counsel for Corporation

COMMON ORDER

The first respondent in the respective Civil Revision Petitions, filed Civil Suits, in O.S.Nos.5952 ,2795 of 2012, 674, 690 of 2013, 5957 2738,1402,5950,6005,6260 of 2012 , 124 of 2013 and 2798 of 2012 before the V Assistant Judge, City Civil Court, Chennai, praying for a decree of declaration that they are the Retail Flower Vendors, doing business in the schedule to the plaint, and for permanent injunction, restraining the petitioner from interfering with their peaceful conduct of business.

2. The Suits were opposed by the petitioner, by filing written statement.

3. Before the trial Court, the first respondent, in the respective Civil Revision Petitions filed Applications for appointment of an Advocate Commissioner to inspect the property, measure it and note down its physical features. The learned trial Judge allowed the Applications. Feeling aggrieved, the Chennai Metropolitan Development Authority, Chennai, is before this Court.

4. Heard the learned counsel for the petitioner and the learned Standing Counsel for Corporation. None appears on behalf of the first respondent, in the respective Civil Revision Petitions.

5. The first respondent, in the respective Civil Revision Petitions, filed Suits claiming that they are in possession of the site allotted by the petitioner herein, and they are doing business as Retail Flower Vendors. The affidavits filed in support of the Interlocutory Applications for appointment of Advocate Commissioner indicates that it was only to prove their possession of the respective area and the business in retail flower

vending, they have sought appointment of Advocate Commissioner.

6. In a suit for declaration, and consequential relief, there is no question of appointing Advocate Commissioner, and that too, for the purpose of reporting about the possession of the shops by the parties. This aspect was not considered by the learned trial Judge. I am, therefore, of the view that the trial Court was not correct in appointing Advocate Commissioner pursuant to the Applications filed by the plaintiffs in the respective Suits.

7. In the result, the Orders impugned in these Civil Revision Petitions are set aside. The Interlocutory Applications filed for appointment of Advocate Commissioner are dismissed.

8. The Civil Revision Petitions are allowed, as indicated above. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

02.12.2016

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Index : Yes/No

Internet ; Yes/No

To

V Assistant Judge, City Civil Court,
Chennai.

K.K.Sasidharan,J.,

arr

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