

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

W.P.No.2259 of 2016 &
WMP Nos.1951 & 1976 of 2016

E.Durai ... Petitioner

vs.

- 1 The Member Secretary,
Chennai Metropolitan Development Authority
No.8 Gandhi Irwin Road
Egmore, Chennai-600 008
- 2 The Chief Executive Officer
Chennai Metropolitan Development Authority
No.8, Gandhi Irwin Road
Egmore, Chennai-600 008
- 3 Chennai Pushpa Viyabargial and
Commission Agentugal Sangam
Represented by its President
Mr.Uthappan
No.18/2 Gangaianman Koil Street
T.Nagar, Chennai - 600 017
And also at
FA-11 Kamarajar Malar Angadi
Koyambedu Chennai 600 092

(R-3 is impleaded as per Order Dated: 04/10/2016
in WMP No.8519/2016 in W.P.No.2259/2016)

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records of the 2nd respondent pertaining to the impugned Letter dated 06.10.2015 bearing No.K2/6035/14, quash the same and direct the respondents not to interfere with the retail flower vending business of the petitioner at Shop No. 25/13 at Badrian Street, Chennai 600 001 and award costs.

For Petitioner : Mr.K.V.Subramanian, Sr. Counsel
for M/s. K.V.Subramanian Asso.

For Respondents: Mr.Karthikeyan,
Standing Counsel - for R1 & R2

Mr.M.V.Seshachari - for R3

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of Certiorarified Mandamus, to call for the records of the 2nd respondent pertaining to the impugned letter dated 06.10.2015, to quash the same and direct the respondents not to interfere with the retail flower vending business of the petitioner at Shop No. 25/13 at Badrian Street, Chennai 600 001.

2.1 It is the case of the petitioner that originally, there was one Wholesale Market Complex at Kothavalchavadi near High Court campus in George Town area. In order to reduce the congestion, whole sale flowers, fruits and vegetable markets were moved to Koyambedu and accordingly an integrated Wholesale Market Complex was constructed and developed at Koyambedu with a major share of funds from the Flower Vendors also. The petitioner was allotted a shop bearing No.FD 117 in Block No.'D' of the Koyambedu Wholesale Market Complex.

2.2 According to the petitioner, he is carrying on retail business and he is not carrying on any wholesale flower business. When the respondent sought to evict the petitioner by order dated 12.02.2010, the petitioner challenged the same by way of writ petition in W.P.No.12348 of 2010 contending that he is carrying on only the business on retail trade. By order dated 16.06.2010, this court disposed of the writ petition giving permission to the petitioner to carry on the sale of flowers business in retail. But, however, if the petitioner indulge in wholesale trade, gave liberty to the respondents to take action against the petitioner.

2.3 Thereafter, Chennai Retail Flower Merchants Welfare Association filed a writ petition in W.P.No.1589 of 2012 challenging the proceedings dated 06.01.2012 and to direct the respondents to recognize the members of the petitioner as the Retail Flower vendors. This court, by order dated 23.04.2012, dismissed the writ petition and also observed as follows in paragraph No.24 of the order:-

"24. One more aspect that has to be seen is that the petitioner association has come up with the present writ petition alleging that all its members are Retail flower vendors. But, however, it has been found by the officials of the CMDA that they are only wholesale vendors. In my considered view, the said finding arrived at by the authorities of CMDA need not be doubted. The first respondent has considered the entire aspect in issue and passed the impugned order, which does not require any interference by this court in this writ petition."

2.4 From the above, it is clear that this court accepted the finding arrived at by the authorities of CMDA to the effect that the members of the association are not retail flower vendors and that they are wholesale vendors.

3. It is not in dispute that the petitioner herein is also a member of the association. Further, this court observed that the finding arrived at by the authorities of the CMDA need not be doubted.

4. When this court had given a specific finding that the members of the association are not doing retail business and that they are only doing wholesale business and the said order has become final for the reason that the respondents have not challenged the said order, I do not find any reason to give a contrary finding in this writ petition.

5. Mr. K. V. Subramanian, learned Senior Counsel, appearing for the petitioner submitted that atleast, in the future, the request of the petitioner for permitting him to do retail business in the said place may be considered by the respondents. Further, the learned Senior Counsel submitted that the petitioner is also willing to give an undertaking to the effect that the petitioner shall not do wholesale business and he will confine his business only to retail trade.

6. Mr. Karthikeyan, learned Standing Counsel, appearing for the respondents 1 and 2 submitted that in the event of the petitioner giving a representation to the respondents 1 and 2, the same will be considered by them after conducting proper enquiry.

7. The learned Senior Counsel also submitted that the petitioner shall give his representation to the respondents 1 and 2 within one week from today.

8. Since this court had already found that the petitioner is a whole seller, I do not find any reason to interfere with the impugned order passed by the second respondent.

9. For the reasons stated above, the writ petition is dismissed. However, it is open to the petitioner to give a representation to the respondents 1 and 2 to the effect that he would carry on only retail business and not wholesale business in the said place along with an affidavit of undertaking and in the event of the petitioner giving the representation along with the undertaking, the respondents 1 and 2 may consider the same and pass appropriate orders, after conducting proper enquiry, within a period of three weeks from the date of submission of the representation. No costs. consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

Rj
To

1 The Member Secretary,
Chennai Metropolitan Development Authority
No.8 Gandhi Irwin Road
Egmore, Chennai-600 008

2 The Chief Executive Officer
Chennai Metropolitan Development Authority
No.8, Gandhi Irwin Road
Egmore, Chennai-600 008

+1cc to Mr.M.Karthikeyan,Advocate sr.25474

+1cc to Mr.M.V.Seshachari,Advocate sr.25109

+1cc to Mr.K.V.Subramanian,Advocate sr.25641(28/4/2017)

W.P.No.2259 of 2016 &
WMP Nos.1951 & 1976 of 2016

nm(co)
ss (27/4/2017)