

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.26086 of 2016 & 19861 of 2017 and
WMP.Nos.22363 & 22364/2016 and 21440 of 2017

WP.No.26086 of 2016

A.Murugan

...Petitioner

Vs

- 1.The Secretary to Government
Housing and Urban Development
Department, Fort St George
Chennai-9.
- 2.The Member Secretary
Chennai Metropolitan Development Authority
Egmore, Chennai-8.
- 3.The Chief Vigilance Officer
Chennai Metropolitan Development Authority
Egmore, Chennai-8.
- 4.The Chief Administrative Officer
Market Management Committee
Koyambedu Wholesale Market Complex,
Koyambedu, Chennai-92.
- 5.The District Collector,
Chennai District.
- 6.The Tahsildar,
Aminjikarai Taluk,
Chennai District.
- 7.The Inspector of Police,
K-10, Koyambedu Police Station,
Koyambedu, Chennai-107.

8.P.Kumar

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of Mandamus directing the respondents Nos.1 to 7 to take necessary action against the 8th respondent for unlawfully and illegally encroaching the Government owned Koyambedu Wholesale Market and in front of shop premises in Shop No.E-22, Periyar Vegetable Market, Koyambedu Commercial Complex, Chennai-92, owned by the petitioner.

For Petitioner : Mr.T.Sundaravadanam
For Respondents : Mr. A.N.Thambidurai
Spl GP for R1, R5 to R7
Mr.K.Rajasrinivas for R2 and R3
Mr.M.Velmurugan for R4
Mr.R.Vijayaraghavan for R8

WP.No.19861 of 2017

P.KumarPetitioner

vs.

1.The Chief Administrative Officer,
Market Management Committee,
Koyambedu Wholesale Market Complex,
Koyambedu,
Chennai-600 092.

2.A.MuruganRespondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari to call for the records of 1st respondent notice dated 12.07.2017 in கடித எண். அநிகு/அ1/288/2016 நாள் 12/07/2017 and quash the same.

For Petitioner : Mr.R.Vijayaraghaven

For Respondents : Mr. Mr.M.Velmurugan for R1
Mr.T.Sundaravadanam for R2

WEB COPY
COMMON ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent both the writ petitions are taken up for final disposal.

WP.No.26086 of 2016

2 The petitioner claims that he is doing business of selling fresh wholesale vegetables in Kothaval Chawdi in George Town area and after koyambedu Wholesale Vegetable Market came into place, he got wholesale trader certificate and trading license for sale of goods under the Tamil Nadu Specified Commodities Markets (Regulation of Location) Act, 1996. The petitioner has been provided with the said sale certificate and trading license in respect of Shop No.E-22, Periyar Vegetable Market Koyambedu Commercial Complex, Chennai-92. The petitioner claims that he has purchased the said shop on 04.01.2016 from the original allottee viz., Thiru.T.E.Chidambaram who was given original allotment during the year 1997. The petitioner would further state that recognizing his purchase, the Trader Registration certificate was issued on 07.04.2016 by the Market Management Committee (4th respondent). It is a specific case of the petitioner that the 8th respondent who has no right whatsoever, had encroached upon the said shop and started selling vegetables and when it was questioned, he has also filed suit in OS.No.516 of 2016 on the file of VIth Assistant City Civil Court, Chennai for permanent injunction and yet another suit in OS.No.951 of 2016 on the file of XVIth Assistant City Civil Court, Chennai for declaration of document in Doc.No.1/2016 dated 04.01.2016 executed by the T.V.Chidambaram in favour of the petitioner as null and void and both suits were pending without any interim orders. The petitioner in this regard has also submitted a representation on 09.04.2016 and it was also followed by yet another representation dated 19.04.2016 and despite receipt and acknowledgment of the said representations, no action has been taken. The petitioner also lodged criminal complaint on the file of the Jurisdictional Police Station. Since no action was taken, he filed Crl.O.P.Nos.11883 and 11884 of 2016 on the file of this Court and vide order dated 13.06.2016, this Court dismissed both the Criminal Original Petition granting liberty to the petitioner to workout his remedy in the manner known to law. The petitioner alleging inaction on the part of the concerned officials with regard to the above said representations, came forward to file this writ petition.

WP.No.19861 of 2017

3 The petitioner who is arrayed as 8th respondent in WP.No.26086 of 2016 has filed this writ petition alleging that he was a tenant under one T.E.Chidambaram Chettiyar in respect of Shop No.E.22 on a monthly rent of Rs.10,000/- and also paid advance of Rs.5,00,000/- to him and he is carrying on business of selling Corriander leaves in wholesale and he is carrying on the said business for the past 21 years ever since from the year 1996 and four employees were also working under him and the said business is only sole source of his livelihood and the

petitioner would further aver that having become aware of the fact that the T.E.Chidambaram Chettiar wanted to sell the said shop, he had also made an offer to purchase the said property for a sum of Rs.70,00,000/- and however, he was postponing the decision for some reason and came to know that attempts were made by the 2nd respondent herein / petitioner in WP.No.26806 of 2016 to purchase the said shop and in this regard, legal notices were also exchanged and since the 2nd respondent herein / petitioner in WP.No.26806 of 2016 made unlawful attempts to vacate him from the said property, he filed OS.No.951/2016 against the 2nd respondent herein / petitioner in WP.No.26806 of 2016 as well as against one T.E.Chidambaram Chettiar on the file of the Court of XVI the Assistant City Civil Court, Chennai, for declaration and yet another suit in OS.No.516 of 2016 on the file of the Court of VIth Assistant City Civil Court for permanent injunction not to interfere with the peaceful possession and enjoyment of the shop in question. The petitioner also claims that he was also a member in the Chennai District and Mint leaves Merchant Association and he has been given Identity card by the Labour Department, Government of Tamil Nadu and he has also been given Gate Pass for the purpose of loading and unloading of the goods in the said market. The petitioner would

further aver that to his shock and surprise, he received the impugned Notice dated 12.07.2017 from the 1st respondent stating among other things that the 2nd respondent has given a complaint / representation dated 09.04.2016 against him alleging that he is in occupation of the Shop No.E-22 unauthorizedly and also brought to the knowledge about the filing of the writ petition in WP.No.26086 of 2016 on the file of this Court and having found that the 2nd respondent has been granted license, called upon the petitioner herein to vacate the shop in possession and handover the same to the Market Management Committee and challenging the legality of the same, he came forward to file this writ petition.

4 The learned counsel appearing for the petitioner in WP.No.26086 of 2016 has drawn the attention of this Court to the typedset of documents and would submit that the petitioner had purchased the Shop bearing No.E-22 from the original allottee viz., T.E.Chidambaram and the said purchase has been recognized and he also been issued with the license by the 4th respondent viz., Market Management Committee of Koyambedu wholesale market complex. Despite very many representations having been given to the said authority alleging trespass and sale of vegetables, no action has been taken so far.

5 The learned counsel appearing for the writ petitioner in WP.No.19861 of 2017 / 8th respondent in WP.No.26086 of 2016

has drawn the attention of this Court to the typedset of documents and would submit that the petitioner is in occupation of the shop for more than two decades and the respondent had straightaway ordered to vacate the premises through the impugned notice without giving opportunity to put forth his response and therefore, contended that the impugned notice issued is per se in violation of principles of natural justice and hence prays for interference.

6 Per contra, M.Velmurugan, learned counsel appearing for the 4th respondent has drawn the attention of this Court to the counter affidavit filed in WP.No.26086 of 2017 and would submit that the shop No.E-22 was originally allotted to T.E.Chidambaram S/o. T.N.Elumalai vide CEO Letter No.K4/2345/94 dated 15.03.1994 and he was registered as a Trader on the file of the 4th respondent and lastly, renewed the license from 01.04.2012 to 31.03.2015 and without taking note of the condition specified in Page no.6 para 11(b) of the registered document 1235/2006 dated 24.03.2006, he has illegally sublet the property in favour of the 8th respondent / petitioner in WP.No.19861 of 2017 and he has also filed two suits in OS.No.951 and 516 of 2016 on the file of City Civil Court, Chennai and both suits are pending.

7 In so far as the claim of the petitioner in WP.No.26086/2017 is concerned, attention of this Court was invited to paragraph No.12 of the said counter affidavit wherein it has averred that the petitioner in WP.No.26086 of 2016 who was the power of attorney to Thiru.S.Shanmugham has purchased the shop No.E-19, in the name of his wife M.Anjugamani vide Document No.4225/2004, dated 13.10.2004 on the file of the office of the Sub Registrar, Anna Nagar and got licence and he has also purchased shop No.E-14 from Thiru.S.Ramalakshmi through a registered document No.807/2010 dated 11.03.2010 and obtained the licence in his name and he has sublet the shop bearing No.E-14 in favour of one Thiru.Prabhu and thus, the writ petitioner owns two shops E-14 and E-22 and his wife owned shop No.E-19 and the said material fact has been suppressed by the petitioner and prays for appropriate orders.

8 The 6th respondent in WP.No.26086 of 2016 viz., The Tahsildar, Aminjikarai Taluk, Chennai District has filed the counter affidavit stating that the matter in issue has come within the ambit of 4th respondent/The Chief Administrative Officer, Market Management Committee and they have to take appropriate action.

9 This Court paid its best attention to the rival submissions and also perused the materials placed before it.

10 On perusal of the counter affidavit filed by the 4th respondent namely the Chief Administrative Officer of Market Management Committee, Koyambedu Wholesale Market Complex, Koyambedu, especially Paragraph No.12 would disclose that the petitioner [WP.NO.26086@017] apart from purchasing shop Nos.E-14 and E-22 also purchased the shop No.E-19 in the name of his wife and admittedly, the said material fact has not been disclosed in the affidavit filed in support of this writ petition which indicates that he has deliberately suppressed the said material fact.

11 Insofar as the petitioner in WP.No.19861/2017 is concerned, he is in the line of selling Corriander Leaves in wholesale for quite long years and therefore, he is supposed to be aware of the terms and conditions for taking out the shop bearing No.E-22 on sub-lease from the original owner viz., T.E.Chidambaram. It appears that he has not carried out the exercise in due diligence before taking the said shop on sub-lease from the original allottee namely T.E.Chidambaram.

12 No doubt, the petitioner in WP.No.26086 of 2016 / 2nd respondent in WP.No.19861 of 2017, has been issued with the licence by the 4th respondent in respect of shop No.E-22. It is also pertinent to point out at this juncture that the petitioner in WP.No.26086 of 2016 namely Thiru.A.Murugan claims to have purchased shop No.E-22 through a registered Sale Deed and the said fact has not been disclosed in the affidavit filed in support of this writ petition and the copy of the said Sale Deed has also not been annexed in the typedset of documents. It also appears that even at the time of alleged purchase of the Shop No.E-22 by the petitioner in WP.No.26086 of 2016, the 8th respondent namely P.Kumar / petitioner in WP.No.19861 of 2017, was said to be in possession of the same and the affidavit filed in support of the writ petition would also disclose the same fact that the writ petitioner in WP.No.19861 of 2017 is in possession for the past 21 years ever since from the year 1996 and admittedly, the comprehensive suit filed by the petitioner in WP.No.19861 of 2017 in OS.No.951 of 2016 for declaration declaring that the registered documents bearing No.1/2016 dated 04.01.2016 executed by T.E.Chidambaram in favour of the petitioner in WP.No.26086 of 2016 has to be declared as null and void with the consequential relief of permanent injunction restraining the defendants namely the petitioner in WP.No.26086 of 2016 and Mr.T.E.Chidambaram from interfering with the peaceful possession and enjoyment of the shop in question, though pending without any interim orders. Therefore, this Court is of the considered view that it is open to

the petitioner in WP.No.19861 of 2017/ 8th respondent in WP.No.26086 of 2016 to workout his remedy in the said suits.

13 Insofar as the petitioner in WP.No.26086 of 2016 / 2nd respondent in WP.No.19861 of 2017 is concerned, he has deliberately concealed and suppressed the fact as per the averments in paragraph No.12 of the Chief Administrative Officer, Market Management Committee, Koyambedu Wholesale Market Complex dated 04.08.2017 and also not disclosed the said vital fact even in the affidavit filed in support of the writ petition and also not enclosed the said documents in the typedset of papers. Though he had disclosed that he had purchased Shop No.E22, he has not disclosed the details of the Sale Deed and also not enclosed the documents in the typedset of documents filed in support of the writ petition. Since, the petitioner in WP.No.26086 of 2016 has failed to approach this Court with clean hands and deliberately suppressed the said material fact, he is not entitled to get any indulgence from this Court.

14 In the light of the stand taken by the 4th respondent in WP.No.26086 of 2016, it is also open to the 4th respondent to proceed against the petitioner in WP.No.26086/2017, in the light of the stand taken by them in Paragraph No.12 of the counter affidavit.

15 It is sorry to note that despite the stand taken in paragraph No.12 of the counter affidavit filed by the 4th respondent the said authority, has not taken any action against the petitioner in WP.No.26086/2016 and the 4th respondent is at liberty to take appropriate action against the petitioner in WP.No.26086/2016 in accordance with law.

16 In the result,

[i] WP.No.19861 of 2017 is dismissed. The petitioner is at liberty to workout his remedy in the pending suit in OS.No.951 of 2016 filed by him on the file of XVI th Assitant City Civil Court, Chennai. No costs. Consequently, the connected miscellaneous petition is also dismissed.

[ii] WP.No.26086 of 2016 is dismissed with the cost of Rs.25,000/- (Rupees Twenty Five thousand only) payable to the Tamil Nadu Mediation and Conciliation Centre, High Court, Chennai, for the training programme and the said cost to be payable within a period of four weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are also dismissed.

17 List the matter on 27.12.2017 for compliance.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government
Housing and Urban Development
Department, Fort St George
Chennai-9.
- 2.The Member Secretary
Chennai Metropolitan Development Authority
Egmore, Chennai-8.
- 3.The Chief Vigilance Officer
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Egmore, Chennai-8.
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- 5.The District Collector,
Chennai District.
- 6.The Tahsildar,
Aminjikarai Taluk,
Chennai District.
- 7.The Inspector of Police,
K-10, Koyambedu Police Station,
Koyambedu, Chennai-107.
- 8.The Section Officer,
Writ Section, High Court,
Madras.

(with a direction to list the matter for compliance on
27/12/2017)

+1cc to Mr.T.Sundaravadanam, Advocate SR.No.85276
+1cc to Mr.M.Velmurugan, Advocate SR.No.85003
+1cc to Mr.K.Raja Shrinivas, Advocate SR.No.84954
+1cc to Government Pleader SR.No.85438

W.P.Nos.26086 of 2016 & 19861 of 2017

GMR (CO)
GN (22/12/2017)