

IN THE HIGH COURT OF JUDICATURE AT MADRAS

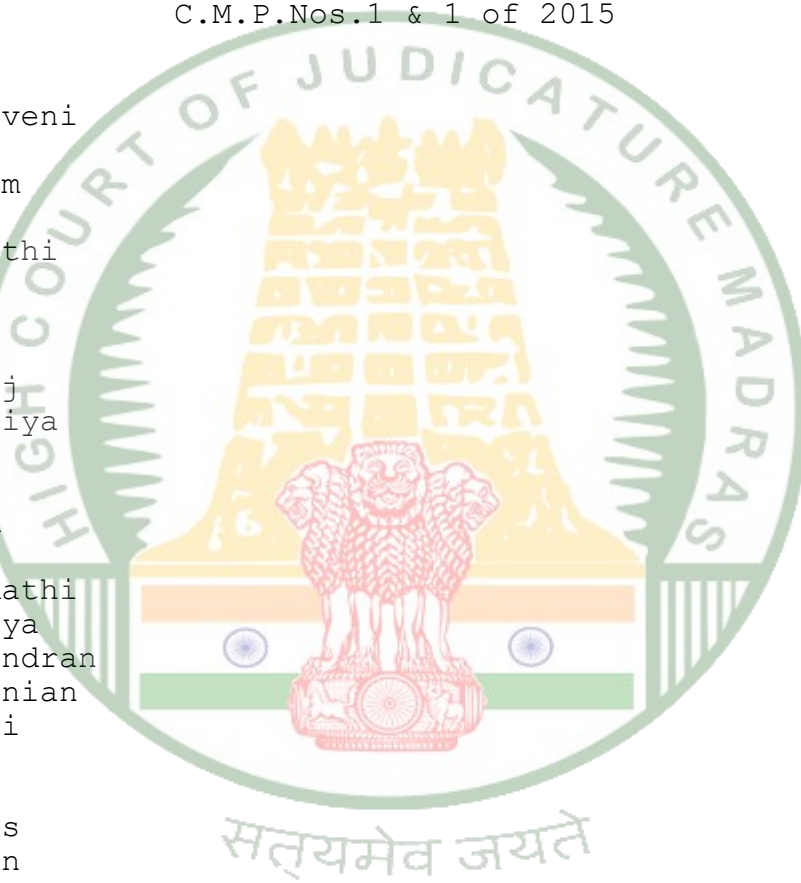
DATED: 03.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.Nos.1736 and 1737 of 2015
and
C.M.P.Nos.1 & 1 of 2015

1. C.Palani
2. M.Krishnaveni
3. N.Mangai
4. P.Arumugam
5. S.Suseela
6. P.Saraswathi
7. Balaji
8. P.Sankar
9. Manobai
10. Govindaraj
11. R.Padmapriya
12. C.Malliga
13. T.Kannan
14. R.Bashyam
15. R.Ganesan
16. K.Gandhimathi
17. A.Chinnaiya
18. N.Ramachandran
19. M.Subramanian
20. Alaiyamani
21. Paulraj
22. R.Kala
23. M.Ramadoss
24. R.Krishnan
25. R.Sundaramoorthy
26. N.Perumal
27. Padmavathi
28. S.Dhayalan
29. B.Seetha
30. Roopavathi Ammal
31. S.Muthu
32. Alaiyammal
33. V.Kumari
34. N.Mohan
35. N.Rajesh
36. C.Kamala
37. L.Prabhu



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38.S.Santhi
39.N.Kasthuri
40.S.Saraswathy
41.K.Yuvaraj
42.Amsa
43.R.Johnson
44.G.Kuppusamy
45.P.Ezhumalai
46.S.Vasu
47.S.Selvasundari
48.Sivagami@ Kala
49.P.Soundarrajan
50.P.Sundara Ganesan
51.V.Anandhi
52.N.Hari Krishnan
53.P.Ravi
54.E.Nalini
55.G.Siva
56.Gaja
57.R.Santhi
58.C.Arumugam
59.N.Raji
60.M.Anandhan
61.K.Sreenivasan
62.Moovendhan @ Muthu
63.S.Easwaran
64.K.Krishnaveni
65.V.Srinivasulu
66.L.Sekar
67.R.Saraswathi
68.S.Kumar
69.R.Shanmugam
70.M.Thiripurasundari
71.R.Devi

... Appellants in W.A.No.1736 of 2015

1. A.R.Murugesan
2. M.Lakshmi
3. M.Sathiyavani
4. R.Sasimumar
5. B.Krishnan
6. L.R.Kumar @ Ramakrishnan
7. A.Durai
8. K.M.Selvam
9. Sivapoosanam
10.E.Shenbagam
11.S.Kannamma
12.K.Veeramani
13.M.Ravichandran
14.Yasodha

... Appellants in W.A.No.1737 of 2015

versus

1.The Chairman,
Implementation Committee,
Corporation of Chennai, Chennai.

2.The Zonal Officer,
Zonal Division No.10,
No.117, N.S.K. Salai,
Kodambakkam,
Chennai - 600 024.

... Respondents in both the Appeals

PRAYER in W.A.No.1736 of 2015: Appeal filed against the order passed by this Court dated 06.11.2015 made in W.P.No.36124 of 2015.

PRAYER in W.A.No.1737 of 2015: Appeal filed against the order passed by this Court dated 06.11.2015 made in W.P.No.36125 of 2015.

W.P.No.36124 & 36125/2015:

Writ Petitions filed under Article 226 of the constitution of India praying for the issuance of a Writ of Certiorari, calling for the records from the file of the 1st Respondents order in proceedings No. H.2.I.C.C. No. 101/2015 dated 27.07.2015 and quash the same.

For Appellants : Mr.Mr.N.R.Rajagopalan
for M/s.B.S.G.Firm
in both the Appeals.

For Respondents : Mrs.Narmadha Sampath,
Additional Advocate General
for Mr.R.Arunmozhi
in both the Appeals.

J U D G M E N T

(Order of the Court made by R.SUBRAMANIAN, J.)

The appellants in these appeals challenge the order of the learned Single Judge made in W.P.Nos.36124 and 36125 of 2015 dated 06.11.2015. In the Writ Petitions the appellants had challenged the order of the Implementation Committee dated 27.07.2015.

The brief background that led to the filing of the Writ Petitions is as follows:-

2. Under the scheme for relocating the hawkers who were carrying on trade in the Platforms in Pondy Bazar (Sir Thiagaraya Road), a new multistoried complex was constructed with 629 shops. The petitioners who were carrying on business in

the market that existed prior to the construction of a new complex were mainly selling vegetables, fruits and flowers. Those vendors who were doing business in the then existing market were treated as a separate category and they were allotted 127 shops in the ground floor, mainly because they were dealing with perishable goods. The remaining 27 shops in the ground floor and other shops in the 1st, 2nd and 3rd floors of the newly constructed complex were allotted to the platform vendors by draw of lots.

3. The allotment was completed the petitioners were all carrying on business in the shops that were allotted to them. It appears that due to change in circumstances, some of the shop owners had changed their business and started dealing in different products. Therefore, show cause notices were attempted to be served on the petitioners individually seeking an explanation as to why the allotments should not be cancelled on the ground of change of business. (It is the contention of the petitioners that there was no attempt to serve show cause notices individually, but a common show cause notice was affixed in the premises of the commercial complex.), claiming that the petitioners/ appellants came to know that the Implementation Committee has passed orders canceling the allotments in their favour solely on the ground that they were dealing in different goods, the petitioners had come forward with the above Writ Petitions challenging the said cancellation orders passed by the Implementation Committee.

4. The Writ Petitions were resisted by the respondents claiming that the petitioners refused to receive the notice and that the original allotment having been made for a particular purpose, the petitioners cannot claim a right to carry on a different trade in the said premises.

5. The learned Single Judge, accepting the findings of the Committee, refused to interfere with the order of the Implementation Committee. But, however, gave an opportunity to the appellants to give an undertaking that they will abide by the terms of the allotment. The Committee was also requested to consider such representation and proceed in accordance with law. While doing so the learned Single Judge observed as follows:

"3. On a perusal of the impugned order and the findings rendered by the Honourable Committee, this Court is not inclined to quash the order. It in the order of allotment, the petitioners have been directed to carry on a particular trade, they are bound by the order of allotment. Therefore, they have to first undertake before the authorities that they will comply with the conditions stated in the order of allotment.

Without that, no indulgence can be granted to the petitioners. That apart, it has been stated by the Corporation of Chennai that some of them even refused to receive the show cause notices. If that is the case, then the conduct of the allottees has to be deprecated. "

6. Aggrieved the appellants are before us by way of these intra-Court appeals.

7. We have heard Mr.N.R.Rajagopalan, learned counsel appearing for M/s.B.S.G.Firm for the appellants and Mrs.Narmadha Sampath, learned Additional Advocate General for Mr.R.Arunmozhi, learned counsel for the respondent Corporation.

8. The entire dispute lies within a very narrow campus. While it is the claim of the petitioners that there were no allotment orders and the allotments were made recognizing the fact that they were carrying a particular trade in the old market complex and they were allotted shops in the ground floor of the new commercial complex that was constructed. The allotment was not for carrying on a particular business. It is also the contention of the appellants that there was no condition prescribed in the allotment orders to the effect that they should carry on only a particular type of business. In the absence of such condition, the Implementation Committee was not justified in canceling the allotments on the ground that they are carrying on a different business.

9. Per contra, the contesting respondent would contend that the petitioners were mainly allotted shops in the ground floor, taking into account the fact that they were dealing in perishable goods and once they cease to do business in perishable goods their allotments are bound to be canceled. We had by our order dated 16.04.2018 required the 2nd respondent to file a counter affidavit, taking into account the contentions made by the appellants in the affidavit filed in support of the Writ Petitions. Our order dated 16.04.2018 reads as follows:

"The allotments given to the individual allottees were cancelled on the ground that a different nature of business was carried on. There is nothing on record to indicate as to whether allotment was in respect of a particular business.

2. We, therefore, direct the second respondent to file a counter affidavit taking into account the contentions taken by the appellants in the affidavit filed in support of the Writ Petitions. The counter

affidavit should indicate as to whether the licence was given for a particular business and the kind of business which was undertaken by the concerned allottees."

10. Pursuant to the said order, the 2nd respondent viz., The Zonal Officer, Zonal Division No.10 has filed a counter affidavit. We must at the outset point out that the said counter affidavit does not comply with our directions made in our order extracted above. The said counter affidavit is silent about the particulars that we had sought for. The counter affidavit deals with the history of the case and the directions issued by this Court for formation of a Committee etc., After extracting the orders passed by the Division Bench in W.P.No.1049 of 2006, the orders of the Chairman of the Implementation Committee that was impugned in the Writ Petitions and the orders of the learned Single Judge, the counter affidavit complains that the allottees have not accepted the rents fixed by the Corporation. The fixation of rent or payment of rent was never an issue in the Writ Petitions or in the Writ Appeals that are now before us.

11. The counter affidavit sets out wholly irrelevant matters leaving out the answers to the main contentions of the appellants before us. A typed set of papers has also been filed by the 2nd respondent, wherein, the proceedings of allotment of shops made by the Implementation Committee has been filed. Certain individual notices that were attempted to have been served on the individual shop owners have also been produced. In an attempt to answer our query as to whether the allotment was for a particular business and as to the existence of any condition to the effect that the allotment is liable to be cancelled if the allottee does a different business in the shops, the learned Additional Advocate General would rely upon a tabular statement that has been produced by the appellants along with the Writ Appeal. The tabular statement contains the following columns Viz., Sl.No., Name, Age, Sex, Residence Address and business that is carried on and the shop numbers.

12. Relying upon the said tabular statement, the learned Additional Advocate General would require us to infer that doing of any other business is prohibited. We don't think that such an inference can be drawn, unless it is shown that the appellants were put on notice that the allotment is made for a particular purpose and a change of business would result in the allotment being rendered liable for cancellation.

13. Despite her best efforts, Mrs.Narmadha Sampath, learned Additional Advocate General is unable to point out from the records that such a condition existed and that such a condition was made known to the allottees/ appellants herein. In the absence of such express condition we are not inclined to infer such a condition and consequence that would follow an assumed

condition.

14. The learned Single Judge had only gone by the order of the Implementation Committee, the order of the Implementation Committee proceeds on the presumption that there was such a condition. Despite several opportunities, the respondents are not able to place before us any material to show the existence of a condition regarding the nature of the business. Therefore, we are of the view that the order of cancellation of allotment on the basis that the allottees were doing business in different goods cannot be sustained and the same is liable to be interfered with.

15. It is the further submission of the learned Additional Advocate General that in respect of some of the shops it is found that no business is being carried on and the shops remain closed. Insofar as the shops where no business is carried on, it is open to the 2nd respondent to issue individual notices to the allottees by the Registered Post Acknowledgment due and take action for cancellation of the allotment.

16. The learned Additional Advocate General would also submit that some of the allottees have not paid the arrears of rent. We make it clear that non-payment of rent is definitely a ground for cancellation of allotment, but, before proceeding to cancel the allotment, the 2nd respondent should give an opportunity to the individual allottees to pay the arrears of rent either in one lumpsum or in installments as the case may be.

17. For the foregoing reasons, these Writ Appeals are allowed, the order of the learned Single Judge is set aside, the order of the Implementation Committee dated 27.07.2015 is set aside insofar as the cancellation of allotment on the ground of carrying on a different business only. We make it clear that this order will not stand in the way of the Authorities taking action for cancellation of allotment of shops which are found to be closed or in which no business has been carried on by the allottee concerned. It is also made clear that it is open to the Corporation to take action for recovery of the rent which according to the Corporation remains unpaid.

18. The Writ Appeal is disposed of with the above directions. No costs. Consequently, the connected Miscellaneous Petitions are also closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

dsa

To

1.The Chairman,
Implementation Committee,
Corporation of Chennai, Chennai.

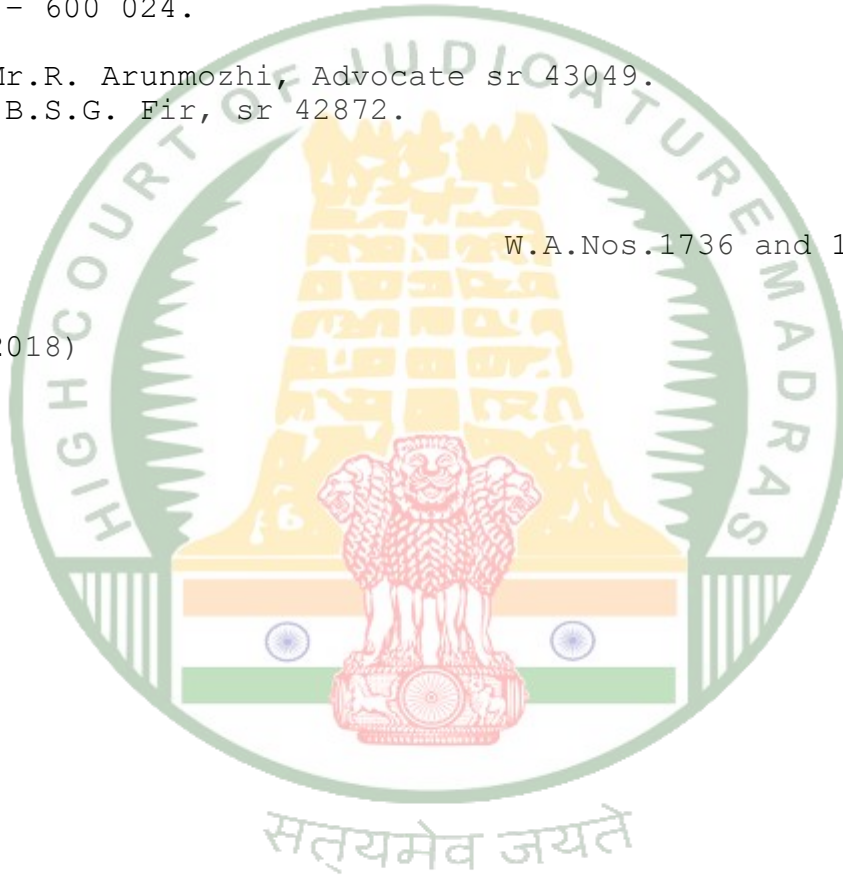
2.The Zonal Officer,
Zonal Division No.10,
No.117, N.S.K. Salai,
Kodambakkam,
Chennai - 600 024.

+1 CC to Mr.R. Arunmozhi, Advocate sr 43049.

+2 Ccs to B.S.G. Fir, sr 42872.

W.A.Nos.1736 and 1737 of 2015

JP(CO)
SP(23/07/2018)



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