IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 3974 of 2018
and W.M.P.NO.4886 of 2018

K.N.Nanda Kumar ... Petitioner

Vs

1. The Member Secretary,
Chennai Metropolitan,
Development Authority,
Thalamuthu Natarajar Maligai,
No.2, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

2. The Chief Executive Officer,
Chennai Metropolitan
Development Authority,
Thalamuthu Natarajar Maligai,
No.2, Gandhi Irwin Road,
Egmore, Chennai - 600 008. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents in allotting any pavement shops next to the petitioner shop vide No.T/C 46, Anna fruit Market, wholesale Koyambedu Market Complex to any third parties and consequently direct the respondents to allot such shops in his favour at the prevailing rate quoted in the tariff fixed by CMDA.

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For Petitioner : Mr.D.Ashok Kumar

For Respondents : Mr.Tamil Mani

O R D E R

The relief sought for in this writ petition is to forbear

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the respondents in allotting any pavement shops next to the petitioner shop vide No.T/C 46, Anna fruit Market, wholesale Koyambedu Market Complex to any third parties and consequently direct the respondents to allot such shops in his favour at the prevailing rate quoted in the tariff fixed by CMDA.

2. The learned counsel appearing on behalf of the writ petitioner states that the petitioner had purchased the shops for running the vegetables/fruits business. However, the respondents 1 and 2 are granting allotment for many other vendors to continue their trade in the pavement area. Such allotments are causing not only inconvenience, it is detrimental to the business interests of the writ petitioner. This apart, the respondents 1 and 2 are bound to ensure that ingress and egress are provided to the petitioner for the peaceful running of the business in that locality. Since, the same has not been provided to the writ petitioner, he is constrained to move the present writ petition. This apart, it is brought to the notice of this Court that the respondents are selling the common areas, which are alloted for common usage of all the Vendors and the public in general.

3. It is brought to the notice of this Court that the Hon'ble Divisional Bench of this Court has passed an order on similar issue in W.P.Nos.28520 and 28521 of 2011 on 28.07.2015. The operative portion of the order is extracted hereunder:

> "23. For the reasons mentioned herein above, we have no hesitation to hold that the allottees/purchasers have merely the right to enjoy the common areas such as roads, pathway, passage, corridors, verandah, parking, drainage, water course, etc., and cannot claim ownership of the same.
>
> 24. However, we make it clear that if the respondent-authority decides to allot platform shops, the terms and conditions of the Act, 1996 have to be strictly adhered to, as the area is declared as a wholesale marked area in respect of congestion in the area.
>
> 25. Before parting with the matter, we would like to place on record that the Court Commissioner has submitted a fair report clearly observing that there is no obstruction to the ingress and egress to the petitioners shops and the also inflow and outflow of air and light to their shops is not affected. However, there is the problem of congestion, which ought to be effectively addressed at first. There is no dispute that on inspection, it was found that there were several encroachments and the common space was also used by the

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allottees for keeping their goods. It is also not in dispute that the allocation of platform on the service road to new shops may add to the congestion in the already heavily choked and clogged wholesale shopping complex. Though the said platforms were not used as service roads, the service road is left intact for loading and unloading of goods by the shop owners and for garbage vans and other such services. Some small kiosks were already found located on the service road. But, service road is not available for being converted into shopping lanes as there are already several encroachers. The other Technical member has submitted the separate report in tune with the official stand of the respondent authority.

26. Noticing the said report and also certain photographs produced before us, it is evident that the area in question is clogged and there is severe congestion in the area. This congestion was on account of the alleged encroachers on the service road also. No doubt, the platform is not a part of service road and also, the ownership and title do not vest with the allottees or the purchasers. However, it is for the authority to ensure that the market complex is neat and clean with clear service road, wherein, the movement of people and vans is easily possible. Even if allotments are made on the platform shops, they should be strictly regulated in such a way that they do not spread their trading activity outside the allotted area. The original allottees/vendors be also directed to conform to the terms and conditions and not to create any congestion in the open space available for the benefit of all, by dumping their goods outside the alloted area".

4. The Hon'ble Division Bench in para 25, clarified that based on the Advocate Commissioner report, no obstruction to the ingress and egress to the petitioners shops and inflow and outflow of air and light to their shops is not affected.

5. This Court is of an opinion that the said observations made by the Hon'ble Division Bench is to be maintained in respect of the shop belongs to the writ petitioner also. When the Advocate Commissioner during the relevant point of time found that the ingress and egress are not affected. The same position should be allowed to be continued even in future by the respondents and any such obstructions will cause prejudice to the interest of the writ petitioner. This being the order passed by the Hon'ble Division Bench, the respondents are bound to follow the same in respect of the premises belongs to the writ petitioner also.

6. With these observations, the writ petition stands

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disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

pns/sk

To

1. The Member Secretary,
   Chennai Metropolitan,
   Development Authority,
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   Development Authority,
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   No.2, Gandhi Irwin Road,
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+1cc to Mr.P.TamilMani, Advocate SR.No.70714

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GMY(29/10/2018)

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