

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.Nos.2393 to 2399/2018 & CMP.Nos.19222, 19224, 19227, 19229,
19231, 19234 & 19237/2018

V.Kanniyappan	..	Appellant in WA.No.2393/2018
C.K.Balaji	...	Appellant in WA.No.2394/2018
A.Varatharaj	..	Appellant in WA.No.2395/2018
R.Gopal	..	Appellant in WA.No.2396/2018
A.Mani	..	Appellant in WA.No.2397/2018
M.Nagamani	..	Appellant in WA.No.2398/2018
S.M.Loganathan	..	Appellant in WA.No.2399/2018

सत्यमेव जयते
Versus

1.The Secretary
Government of Tamil Nadu
Housing and Urban Development
Department, Fort St. George
Chennai 600 009.

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

3.The Chief Executive Officer
Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.

.. Respondents
in all the writ appeals

Prayer:- Appeals filed under Clause 15 of the Letters Patent against the order passed in WP.Nos.6085, 7105, 6213, 3713, 3717, 5243 and 6083/2016 dated 09.10.2018.

Prayer in WP.Nos.6085,7105,6213,5243 and 6083/2016:-

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, Forbearing the Respondents more particularly the 3rd Respondent from initiating any eviction proceedings in respect of premises bearing No.42/39, 14, 6/4-C, 4/30, 25(GF) Badrian Street Chennai-600 001 respectively under the occupation of the petitioner till the disposal of suit.

Prayer in WP.Nos.3713, 3717 of 2016:-

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records letter No.K2/6035/14 dated 06.10.2015 on the file of the 3rd Respondent herein.

For Appellants in
all writ appeals : Mr.K.Shivakumar

For R1 in all the
writ appeals : Mr.P.H.Aravind Pandian, AAG
assisted by Mr.E.Manoharan, AGP

For R2&R3 in all
the writ appeals : Mr.Karthik Rajan

COMMON JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

By consent, all the writ appeals are taken up for final disposal. Mr.P.H.Aravind Pandian, learned Additional Advocate General assisted by Mr.E.Manoharan, learned Additional Government Pleader accepts notice on behalf of the 1st respondent and Mr.Karthik Rajan, learned Standing counsel accepts notice on behalf of the respondents 2 and 3 in all the writ appeals.

2 The writ petitioners are the appellants herein and according to them, they are running retail flower shops in Badrian Street, Chennai-1. The appellants / writ petitioners

along with the other similarly placed persons filed a batch of writ petitions in WP.No.2822/2016 etc., batch, praying for issuance of a writ of mandamus forbearing the respondents herein, more particularly, the 3rd respondent from initiating any eviction proceedings in respect of the premises in which, they are carrying on the retail flower vending business [Prayer in WP.No.2822/2016]. All the writ petitions, after hard contest, came to be dismissed vide common order dated 09.10.2018 and in paragraph 27 of the said common order, which is impugned herein, the learned Single Judge has passed series of directions.

3 Learned counsel for the appellants would submit that when the connected matters were listed before the other Bench, there was an oral direction, directing the appellants to withdraw the suits filed by them, which are pending on the file of the City Civil Court and necessary steps have already been taken to withdraw the said suits and prayed for some accommodation to argue these writ appeals. However, this Court is not inclined to grant time and therefore, asked the learned counsel for the appellants to make his submissions on merits of these writ appeals.

4 The primordial submission made by the learned counsel for the appellants is that the location of the shops would not come within the purview of the Tamil Nadu Specified Commodities Markets [Regulation of Location] Act, 1996 [in short 'the Act'] and even assuming without admitting that the said Act have application to the facts of these cases, the 3rd respondent herein is not the competent authority to order eviction and also invited the attention of this Court to the earlier orders passed by this Court in various litigations pertain to this issue and prays for interference.

5 Per contra, Mr.P.H.Aravind Pandian, learned Additional Advocate General assisted by Mr.E.Manoharan, learned Additional Government Pleader appearing for the 1st respondent and Mr.Karthik Rajan, learned Standing Counsel appearing for the respondents 2 and 3 / CMDA, invited the attention of this Court to the impugned common order passed in the writ petitions and would submit that the endeavour made by the persons who are similarly placed like that of the appellants / writ petitioners had ended in failure and there were some directions to consider their representations and the representations were considered in right earnest and came to be rejected and the appellants have also invoked the jurisdiction of the Civil Court and they would further add that the present endeavour made by the appellants/writ petitioners is purely an abuse of process of Court and prays for dismissal of these writ appeals with exemplary cost.

6 This Court paid its anxious consideration to the rival submissions and also perused the materials available on record.

7 A perusal of the impugned common order passed in the writ petitions, which is the subject matter of these writ appeals would reveal the following facts:-

- ◆ The Chennai Malar Vyabarigal Sangam hda filed WP.No.1272/2002 challenging the proceedings of the 2nd respondent / CMDA dated 18.01.2002, wherein CMDA was directed to pass fresh orders.
- ◆ One Chennai Pushpa Vyabaraigal and Commission Agentugal Sangam, had also filed WP.No.226053/2004 against the 2nd respondent wherein similar order was passed, directing CMDA to consider the representation submitted by the members of the said Association after giving them opportunity.
- ◆ Two other writ petitions in WP.Nos.29809/2004 and 12909/2009 were filed by the Chennai Retail Flower Merchants Association and another Vyabarigal Sangam against the 2nd respondent challenging the restriction of carrying on business at Badrian Street, Chennai-1, wherein orders were passed directing the 2nd respondent/CMDA to issue notice to the Chennai Retail Flower Merchants Association represented by its President within a week and thereafter, conduct an enquiry and pass appropriate orders.
- ◆ A writ appeal was also filed by the Chennai Koyambedu Malar Motha Vyabaraigal Sangam [Chennai Koyambedu Flower Wholesale Merchants Association] in WA.No.693/2011 against the orders passed in WP.Nos.28909/2004 and 12909/2009. The writ appeal was closed after recording in paragraph No.7 of the said order that a detailed order has been passed within a period of eight weeks.
- ◆ The Chennai Pushpa Vyabarigal and Commission Agentugal Sangam, aggrieved by the non-compliance of the said order, filed Cont.P.No.2406/2015 in WP.No.10852/2015, wherein the 2nd respondent / CMDA has filed the Action Taken Report [ATR] giving out the facts as to the eviction drive being carried out by them and thereafter, the unauthorised entry made by the merchants of the said shops by breaking open the lock and taking note of the same, the contempt petition was closed on 21.01.2016.
- ◆ Some of the writ petitioners claiming to be the Retail Flower Vendors, had also filed suits before the City Civil Court, Chennai, praying for decree of declaration that they

are the retail flower vendors doing business in Badrian Street, Chennai-1 and for permanent injunction restraining CMDA from interfering with their peaceful conduct of business and interim applications were also filed praying for appointment of Advocate Commissioner to know about the physical features and accordingly, an Advocate Commissioner was appointed.

- ◆ CRP.Nos.1031 to 1036/2016 were filed by the 2nd respondent/CMDA and all revisions were allowed and as a consequence, ordering all the applications for appointment of Advocate Commissioner came to be set aside.
- ◆ Chennai Pushpa Vyabarigal and Commission Agentugal Sangam also filed yet another writ petition in WP.No.10113/2016 against CMDA wherein the said entity has filed a detailed counter setting out the facts.
- ◆ The attention of the learned Single Judge was also invited to the order dated 25.04.2017 made in WP.No.2259/2016 and the learned Judge had extracted paragraphs No.2.3, 2.4, 4, 7 to 8 of the said order and it is relevant to extract the same:-

"2.3 Thereafter, Chennai Retail Flower Merchants Welfare Association filed a writ petition in WP.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.

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 that 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.

7 Since this Court had already found that the petitioner is a wholesale seller, I do not find any reason to interfere with the impugned order passed by the 2nd respondent.

8 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."

8 A perusal of the said order would indicate that in paragraph No.2.4 of the said order, this Court had observed that the said flower vendors were only wholesale flower vendors and therefore, opined that the said finding arrived at by the authorities of CMDA need not be doubted and further recorded the finding that the 1st respondent therein has also considered the entire aspect in issue and passed the impugned order, which does not require any interference. In the same order, this Court has also recorded the fact that the specific finding has been given that the members of the Association are not doing retail business and they are doing only wholesale business and the said order has become final. Taking note of the said order, the learned Judge had observed that the facts adjudicated and concluded through various orders would point out that the writ petitioners therein are running flower vending business in Badrian Street, Chennai-1, only as Wholesale Vendors.

9 The learned Judge has also dealt with the legal aspect as to the provisions of the Tamil Nadu Specified Commodities Markets [Regulation of Location] Act, 1996, and noted that there is a specific provision available in the said Act for registration of the wholesale traders and admittedly, no such

license has been obtained/provided to the writ petitioners therein for doing wholesale business in Badrian Street and concluded that they are continuing in the said street in violation of the provisions of the said Act. The learned Judge has also frowned upon the fact that in the civil suits filed by some of the writ petitioners therein, the 2nd respondent/CMDA had not entered appearance and also noted that there is an express bar available in the said Act for institution of a civil suit, especially, section 53 of the Act and further noted that section 58 of the Act also stipulates that injunction should not be granted in certain proceedings and recorded a finding that no suit or other proceedings shall lie against the Market Committee for any act done or purported to be done under the Act.

10 It is the submission of the learned counsel for the appellants / writ petitioners that pursuant to the oral direction, steps have already been taken to withdraw the civil suits.

11 In the light of the said finding recorded by the learned Judge in paragraph No.17 of the impugned order, de hors the appellants/writ petitioners withdrawing the civil suits or not, in the considered opinion of the Court, such kind of suits are not maintainable before the Civil Court in the light of the express bar provided under the Statute. The learned Judge in paragraph No.21 of the impugned order, has also taken note of the judgment dated 07.07.2011 made in WA.No.693/2011 filed by the Chennai Koyambedu Malar Motha Vyabarigal Sangam and also extracted paragraphs No.5 to 7 of the said judgment and in paragraph No.6, observed that, "it is also noted in the Status Report that the contentions of the traders have been examined and it has been concluded that the traders are doing wholesale business in the Badrian Street. Further, it is observed that the individual is not purchasing flower from Koyambedu Wholesale Market Complex, in stead they are procuring from other places and transporting the flowers by train, bus, mini van to Badrian Street, George Town, Chennai". The learned Judge in paragraph No.7 of the said judgment, also observed that "a detailed order was also passed on 06.11.2011 after issuing individual notices and having noted the fact that individual order passed by the respondents is in consonance with the directions given by the learned Judge, made an observation that the respondents therein, will strictly follow the order in the interest of the public and also noted that the respondents have totally complied with the directions given by the learned Single Judge, while quashing the order passed by the respondents impugned in the writ petitions".

12 The learned Judge in paragraph No.22 of the said order, has also noted the directions given under clause xxii of the order passed by the Division Bench and in paragraph No.8, it is

observed that, ''the Government instruct the Member Secretary, Chennai Metropolitan Development Authority [CMDA] to take further action along with Chennai Corporation and Police Department for eviction of wholesale flower traders at Badrian Street, George Town, Chennai-1.''

13 One more endeavour was made by the Chennai Retail Flower Merchants Association by filing WP.No.1589/2012 and it was also dismissed on 23.04.2012 by taking into consideration that the 1st respondent therein had considered the entire aspect in issue and passed the impugned order, which does not require any interference by this Court in the said writ petition. The learned Judge, after taking note of the above cited orders, has recorded the finding that this Court, through the said orders, has consistently held that all these vendors in Badrian Street, Chennai-1, are doing wholesale flower business and the Inspection Report of the officials of the 2nd respondent/CMDA would also disclose the said fact and despite repeated directions passed by this Court for eviction of wholesale traders and though it was carried out by locking and sealing, the traders had the audacity to break open the lock and seal and criminal cases also came to be registered and noted that FIRs also came to be filed.

14 The learned Judge having taken note of all the earlier orders, factual aspects and legal position, has passed series of directions in paragraph No.27 of the impugned common order and it is relevant to extract the same:-

''[i] The relief as such sought for in all these writ petitions stand rejected.

[ii] The respondents are directed to lock and seal the premises of the wholesale traders including the premises of the writ petitioners in Badrian Street, George Town, Chennai-1, within a period of 48 hours from the date and time of the receipt of the copy of this order through the official website of the Honourable High Court of Madras.

[iii] The respondents are directed to take videograph of the implementation of the above directions.

[iv] The Commissioner of Police, Greater Chennai Corporation is directed to provide adequate police protection for the competent officials for lock and seal the premises of the wholesale traders in Badrian Street, George Town, Chennai-1.

[v] The Commissioner of Police, Greater Chennai Police, Chennai-7, is directed to

install a police booth in the vicinity of Badrian Street, to ensure that no further wholesale trade business is allowed either by the writ petitioners or by any other vendors.

[vi] The Commissioner of Police, Greater Chennai Police, Chennai-7, is directed to intensify the police patrolling in that locality till the normalcy arrived in that locality.

[vii] The Inspector of Police, C-1, Flower Bazaar Police Station, Chennai, is directed to continue the investigation in respect of the FIR registered and proceed with the prosecution by following the procedures as contemplated.

[viii] In the event of any such further continuance of wholesale business by breaking open the official lock and seal in that locality, the Inspector of Police, shall register complaints and prosecute the offenders by following the procedures as contemplated under law."

15 The flower vendors of Badrian Street, though claim that they are only retail vendors, in the light of the various orders passed by this Court which have been extracted and relied upon by the learned Single Judge, it has become crystal clear that they are doing only wholesale business and though action has been taken to put lock and seal on the premises, they broke open the lock and once again, started doing the business. As already pointed out, in the light of the specific legal bar contained under the Tamil Nadu Specified Commodities Markets [Regulation of Location] Act, 1996, civil suits are not maintainable.

16 The learned Judge has thoroughly considered the factual aspects and legal positions and came to a right conclusion and dismissed all the writ petitions.

17 This Court, on an independent application of mind to the entire materials placed before it, is of the considered view that there is no error apparent on the face of the record or infirmity or jurisdictional error in the impugned common order passed by the learned Single Judge and finds no merit in these writ appeals.

18 In the result, the writ appeals fail and the same are dismissed, confirming the common order passed by the learned Single Judge dated 09.10.2018 in WP.Nos.6085, 7105, 6213, 3713, 3717, 5243 and 6083/2016. No costs. Consequently, all the

connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1.The Secretary

Government of Tamil Nadu
Housing and Urban Development
Department, Fort St. George
Chennai 600 009.

2.The Member Secretary

Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.

3.The Chief Executive Officer

Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.

+1cc to Mr.Karthik Rajan, Advocate in sr.no.76890

+7cc to Mr.K.Shivakumar, Advocate in sr.no.76719 to 76725

WA.Nos.2393 to 2399/2018

JP(CO)
CS/11/12/2018

सत्यमेव जयते

WEB COPY