



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE V. PARTHIBAN

W.P. (MD) No.23381 of 2015

and

M.P. (MD) Nos.1 & 2 of 2015

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K.Balaji
S/o.S.K.Krishnamoorthy
Proprietor
BR Fruits (Fruit Commission Mandi)
Door No.167/427
North Masi Street
Madurai-625 001

... Petitioner

vs.

- 1.The Commissioner
Madurai Corporation
Aringgar Anna Maligai
Algarkovil Main Road
Madurai
- 2.The Assistant Commissioner (Revenue) (Po)
Southern Zone
Madurai Corporation
Aringgar Anna Maligai
Algarkovil Main Road, Madurai
- 3.The Chief Planning Officer
Town Planning Section
Madurai Corporation
Aringgar Anna Maligai
Algarkovil Main Road
Madurai
- 4.Simmakkal Pazhakkadai Motha
Viyabarigal Sangam
No.175, North Masi Street
Near Yannaikkal
Madurai-1

5.Madurai Pazhacommission

Vaingarigal Sangam

No.131, North Marrat Street Near Simmakal
Madurai-1

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the impugned order of the 2nd respondent in Proceedings Mava3/034209/15 dated 27.10.2015 and quash the same as illegal and directing the Respondents 1 to 3 to allot one shop in the proposed newly constructed wholesale fruit market near Mattuthavani, Madurai.

For Petitioner : Mr.M.Kannan

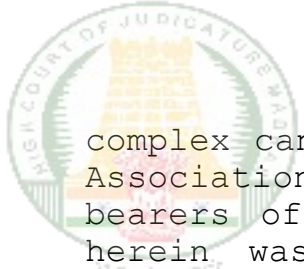
For Respondents : Mr.R.Murali for R1 to R3
Mr.N.Tamilmani for R4 & R5

ORDER

The petitioner has approached this Court seeking to quash the order, dated 27.10.2015, passed by the second respondent and to direct the respondents 1 to 3 to allot a shop in the proposed shopping complex i.e. Wholesale Fruits Market, near Vegetable Market at Mattuthavani, Madurai.

2. According to the petitioner, he is a wholesale trader selling fruits in the name and style of M/s.BR Fruits, doing business in his own premises situated at No.167/427, North Masi Street, Madurai Town-625 001. He is having a valid licence issued by Madurai Corporation for doing the said business. According to the petitioner, more than 100 wholesale fruit shops / Mandis are located in Masi Streets in and around Yanaikkal Area at Madurai Town. Since the area, in which all the fruit shops are located, has become congested, the respondent - Corporation has taken a policy decision to decongest the area and shift all the fruit shops by proposing to construct a new shopping complex near the Vegetable Market at Mattuthavani. In view of the said proposal, all the existing traders were assured of allocation of new shops for shifting of their business to the new shopping complex at Mattuthavani by providing alternative accommodation to them. In this regard, on 24.04.2015, the respondent - Corporation has also passed a resolution for constructing a new shopping complex, consisting of 240 shops, for selling of fruits and onion near the Vegetable Market at Mattuthavani.

3. In the above circumstances, on 08.10.2015, the petitioner <https://hcservices.apprts.gov.in/hcservices/> have applied for allotment of shop to him in the new shopping complex and in response to his application, the second respondent passed an order, dated 27.10.2015, stating that shops in the proposed shopping



complex can be allotted only to the members of the Fruit Commission Associations, whose names have been recommended by the office bearers of the Associations and since the name of the petitioner herein was not recommended by the office bearers of the said Associations, he cannot be allotted any shop in the proposed shopping complex. The said order, dated 27.10.2015, passed by the second respondent is put to challenge in this writ petition.

4. The learned counsel appearing for the petitioner would vehemently contend that the respondent - Corporation was allotting shops only to the members of the respondents 4 and 5 - Associations and not to the individual traders, like the petitioner herein, who were not members of either the fourth respondent or the fifth respondent - Associations. Such an exclusive allotment of shops only to the members of the Associations is *per se* discriminatory and therefore, the rejection of the petitioner's claim by the second respondent cannot be sustainable in law. When the entire wholesale fruit vending activities is shifted to a new place and in which event, the petitioner, who is an existing trader, has not been allotted any shop to carry on business in the new shopping complex, his right to livelihood is affected in the bargain and therefore, he is entitled to be considered for allotment of shop in the new shopping complex. But, unfortunately, the second respondent has passed an order stating that the petitioner's name was not recommended by the either fourth respondent or fifth respondent - Associations. Confining allotment of shops to the members of the Association is akin to monopolizing the allotment to the members of the Association alone leaving out the non-members of the Associations, which would be contrary to the public policy.

5. Per contra, the learned counsel appearing for the respondent - Corporation would submit that the writ petition filed by the petitioner is misconceived and it does not have merit and substance for the simple reason that the respondent - Corporation has entered into an agreement with the respondents 4 and 5 - Associations for construction of a new shopping complex near Vegetable Market at Mattuthavani, after protracting negotiation with all the members of the Associations and on the basis of the agreement, the Associations agreed to pay a sum of Rs.11,84,00,000/-, out of the total cost of Rs.16,00,00,000/-, to the respondent - Corporation towards their contribution for construction of a new shopping complex at Mattuthavani. The members of the respondents 4 and 5 - Associations have contributed substantially the payment of the above said amount and therefore, new shopping complex has been constructed and allotment was made only to the members of the respondents 4 and 5 - Associations. The learned counsel for the respondent - Corporation would draw the attention of this Court to Paragraph No.4 of the counter affidavit, which is the sum and substance of resistance put up by the respondent - Corporation to the relief claimed by the petitioner. Paragraph No.4 of the counter affidavit is extracted hereunder:

"4. I respectfully submit that when the



corporation initiated proposal for wholesale fruit shop, the respondents 4 and 5 herein made their objections on the ground that they are doing their business in their own premises. After negotiations, the council of Madurai Corporation has passed a Resolution No.378, dated 17.05.2013 for approving the construction of wholesale fruit market shop nearby to Central Vegetable Market Mattuthavani. Thereafter, an estimate was prepared by the corporation for construction of shops at Mattuthavani and the cost was arrived as Rs.16 crores. Considering the financial position of Madurai Corporation, a Memorandum of understanding was entered between the corporation and the association on 17.04.2015 and thereby it was agreed by the association to pay Rs.11,84,00,000/- to Madurai Corporation (Rs.1,000/- per sq.ft.,) towards their contribution for construction of shops at Mattuthavani. Further the corporation is also entitled to collect monthly rent from the shop owners based on the size of the shop. Further it was agreed to construct 240 shops for wholesale fruit merchants. The above procedure was approved by the council of Madurai Corporation through its Resolution No.891 dated 24.04.2015."

6. The learned counsel for the respondent - Corporation would further submit that the issue of allotment of shops in the proposed shopping complex at Mattuthavani to the non-members of the Associations came up for consideration before the Honourable Division Bench of this Court in W.P.(MD) Nos.16217, 22960 and 24461 of 2016 and the Honourable Division Bench of this Court, by its order dated 02.02.2017, negatived the claim of the petitioners therein, who were not members of any Association. The learned counsel would draw the attention of this Court to Paragraph Nos.18 and 19 of the order of the Honourable Division Bench, which are extracted hereunder:

"18. Another contention of the petitioners that allotment of 240 shops to the members of third and fourth respondent will monopolize the fruit trade in Madurai is also not acceptable for the simple reason that the members of third and fourth respondents, who are allotted of the shops have been treading fruits for decades together in Simmakal and Yanaikkal area and thus almost all the license holders are shifted to another place to ease the traffic congestion and for the convenience of the public. Thus, the second respondent Corporation, as a statutory body, took a rational decision and the same does not warrant any interference.

19. For the aforesaid reasons, all the three



writ petitions fail. Accordingly, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed. However, considering the fact that lease in perpetuity is not permissible in law and in terms of the statutory provisions, the second respondent is directed to adjust a portion of the quarterly rent towards the contribution made by the allottees for construction of the shops within a time frame as fixed by the Corporation. After making full adjustment of contributions alleged to have been given by the present lessees, the Corporation is directed to conduct public auction in respect of the shops in question."

Therefore, the learned counsel would submit that the issue is no more *res integra* and the same is covered by the decision of the Honourable Division Bench this Court, which is binding on this Court.

7. This Court is certainly in agreement with the submissions made by the learned counsel appearing for the respondent - Corporation for more than one reason. First of all, as could be seen from the averments of the counter affidavit, particularly from Paragraph No.4, which is extracted supra, the members of the respondents 4 and 5 - Associations have contributed substantially for the construction of new shopping complex at Mattuthavani and therefore, they were rightly granted allotment of shops in the new shopping complex. An agreement was reached between the respondent - Corporation and the Traders' Associations and on the basis of such agreement, the allotment of shops was made. This Court does not see anything wrong in such arrangement. Obviously and admittedly, the petitioner herein has not made any payment or contribution towards construction of new shopping complex on his part and therefore, he cannot claim any parity with that of the members of the respondents 4 and 5 - Associations. Therefore, the claim of equity in allotment of shops by the petitioner is rather misconceived and cannot be countenanced both in law and on facts. Even otherwise, the Honourable Division Bench of this Court, as aforementioned, has negatived such a contention put forth by the non-members of the Association and the conclusion reached by the Honourable Division Bench of this Court is binding on this Court as well and therefore, the petitioner herein cannot expect this Court to treat him differently in the matter of allotment of shops.



8. For all the above said reasons, this Court finds no merits in the claim of the petitioner and hence, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(AD I)

/True Copy/

Sub Assistant Registrar(CS IV)

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1CC TO MR. N. TAMILMANI, ADVOCATE SR 92003

1CC TO MR. R. MURALI, ADVOCATE SR 91705

1CC TO MR. M. KANNAN, ADVOCATE SR 91499

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