



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

WEB COPY

W.P. (MD) No.24764 of 2016

and

W.M.P. (MD) No.17904 of 2016

K.Sivaji

... Petitioner

vs.

1.The Commissioner

Madurai City Municipal Corporation

Madurai

2.Simmakkal Pazhakkadai Motha

Viyabarigal Sangam

rep.by its President

175, North Masi Street, Madurai-1

3.Madurai Pazha Commission

Vanigargal Sangam

rep.by its President

No.131, North Marret Street

Madurai-1

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus by calling for the records relating to the order of the 1st respondent in his Ma Va 3/033069/16 dated Nil 10.16, quash the same and direct him to allot a shop to the petitioner in the Fruit Market, Mattuthavani, Madurai.

For Petitioner : Mr.D.Malaichamy

For Respondents : Mr.R.Murali for R1

Mr.N.Tamilmani for R2 & R3

ORDER

According to the petitioner, he has been running a wholesale business of selling fruits and agricultural produces for the last ten years in Yanaikkal. According to the petitioner, he is a member of Madurai Managar Anaithu Vanigargal Nala Sangam, which is a registered body. The first respondent passed a resolution No.378, dated 17.05.2013, to move all the fruit shops, which were located in and around Yanaikkal to Mattuthavani, by constructing around 240 shops to ease the congestion in Yanaikkal area. In view of the resolution passed by the first respondent - Corporation, it is no more open to the petitioner to run his business at Yanaikkal.



2. In the above circumstances, on 07.10.2015, the petitioner submitted a representation to the first respondent, seeking to allot a shop in the shopping complex proposed to be constructed in Mattuthavani, on the basis of the resolution of the first respondent - Corporation. Since there was no response to the representation, the petitioner was constrained to approach this Court by filing a writ petition in W.P.(MD) No.13819 of 2016 seeking issuance of a writ of mandamus. On 03.08.2016, this Court passed an order directing the first respondent to pass appropriate orders on the representation submitted by the petitioner. In pursuance of the direction issued by this Court, the first respondent, vide proceedings dated Nil.10.2016, rejected the request of the petitioner on the ground that he was not a member of either of the two Associations, who are arrayed as respondents 2 and 3 herein. The said proceedings of the first respondent are put to challenge in this writ petition.

3. When the matter was taken up for hearing, the learned counsel appearing for the first respondent submitted that the issue is directly covered against the petitioner by the decision of the Honourable Division Bench of this Court rendered in W.P.(MD) Nos.16217, 22960 and 24461 of 2016, dated 02.02.2017. 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

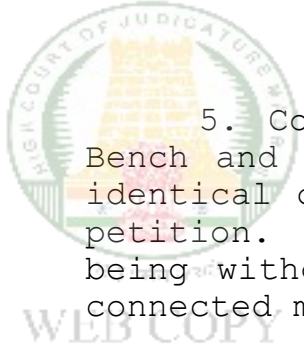


adjustment of contributions alleged to have been given by the present lessees, the Corporation is directed to conduct public auction in respect of the shops in question."

4. The learned counsel for the first respondent further submitted that on the basis of the above cited decision of the Honourable Division Bench, this Court has passed an order, dated 24.10.2018, in respect of the similar claim and dismissed the writ petition in W.P.(MD) No.23381 of 2015, filed by the petitioner therein. The operative portion of the order passed by this Court in the said writ petition is also extracted hereunder:

"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 negated 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."



5. Considering the above decision of the Honourable Division Bench and also the decision taken by this Court in respect of the identical claim, this Court is unable to entertain the present writ petition. Therefore, the present writ petition is dismissed as being without any merits and substance. No costs. Consequently, connected miscellaneous petition is closed.

/True Copy/

Sd/-
Assistant Registrar(Crl.side)

Sub Assistant Registrar(CS-II)

+1CC to Mr.D.Malaichamy, Advocate, SR.No.93309
+1CC to Mr.R.Murali , Advocate, SR.No.93049
+1CC to Mr.N.Tamilmani, Advocate, SR.No.92763

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