

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.08.2019
CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.12405 of 2010

K.Ramaraj

...Petitioner

Versus

1.The Chairman,
Chennai Metropolitan Development Authority,
Rep. by its Chairman,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

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

3.Chief Executive Officer,
Chennai Metropolitan Development Authority,
Represented by its Chairman,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

4.Tmt.S.Latha,

5.Tmt.N.Datchayani, ...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in his proceedings No.K5/5455/2009 dated 15.07.2009 and the consequential order dated 14.05.2010 issued in favour of 4th and 5th respondent to quash the same and further direct the 3rd respondent to allot the shop No.B-90, in the vegetable market, Koyembedu wholesale market complex, Koyambedu, Chennai to the petitioner.

For Petitioner : Mr.M.Rajasekhar

For Respondents : Mr.P.Tamilmani for RR1 to 3.
No appearance for RR4 and 5.

O R D E R

This writ petition has been filed seeking to quash the proceedings of the 2nd respondent in No.K5/5455/2009 dated 15.07.2009 and the consequential order dated 14.05.2010 issued in favour of 4th and 5th respondents and further direct the 3rd respondent to allot the shop No.B-90, in the vegetable market, Koyembedu wholesale market complex, Koyambedu, Chennai to the petitioner.

2.The petitioner was doing vegetable selling business at No.163, E-Division, Kothawalchavady Wholesale Market, from 1985 onwards and subsequently the entire market was shifted to Koyembedu wholesale market complex. The respondents viz., CMDA have asked the prospective traders who wish to shift their business at the newly constructed Koyambedu Market under a scheme introduced only for the benefit of the Kothawalchavadi Traders to purchase a shop for running their business in the Koyambedu Market Complex. The petitioner also paid initial deposit in self finance scheme for the A-5 type shop to an extent of 200 sq.ft for G.T.Traders in the Year 1989. In the year 1996, the petitioner was allotted a shop in No.62, N-Block, in the A-5 type and the petitioner was also carrying out his business in the said shop. The said complex was constructed on the basis of self finance scheme introduced by the respondents only for the benefit of the G.T.Traders. The respondents have collected money from the similarly placed G.T.Traders and constructed shops in the market complex. An extent of 5 acre of vacant land belonging to the original owner of the property is situated between L and N Blocks. Since the original owner challenged the acquisition proceedings and the same is pending, the traders who have been allotted shops in L.M.N. blocks have suffered huge loss and this was brought to the knowledge of the respondents 1 to 3. However, in view of the pending appeal they were unable to do anything. In the meantime, the traders in L.M.N.Blocks have started sangam in the name of Koyambedu L.M.N.Pagudhi Vyabarigal Nala Sangam, registered under Societies Registration Act and the petitioner is one among the members of the said Sangam. The Sangam gave representation dated 16.02.2000 to consider them for conversion. Thereafter, the Sangam represented by its Secretary has filed W.P.No.4004 of 2000 seeking direction to the respondents to consider the representation dated 16.02.2000 and this Court by an order dated 16.02.2000 directed the respondents to consider the petitioner's representation and also observed that in future, if any shops fall vacant in any of the categories, the respondent would consider the request of the petitioners

on preferential basis for allotment if they otherwise satisfy the requirements and pass orders according to law.

3.It is the further case of the petitioner that on 22.10.2008 in A.R.No.175/2008, it was resolved to reserve 15% of the available vacancies in all categories shall be allotted by the 1st respondent under his discretionary quota. Accordingly that 15% of discretionary reservation has been extended in all categories and the remaining 85% of available plots/shops/houses etc has to be allotted through drawl of lots by the respondents. While so, on 04.01.2009, the respondents have advertised for allotment of shops through drawl scheduled to be held on 02.06.2009 as per paper publication and 1556 applications were sold, out of which 879 applications were registered with registration fee of Rs.1000/- alongwith 80% of shop cost as initial deposit indicating the specific number of shops. The petitioner further averred that 879 applications were registered for 129 shops out of 199 shops available for the allotment through drawl. For the remaining 70 shops, not a single application was received. Thereafter, the drawl scheduled to be held on 02.06.2009 was postponed and the same was communicated to all through paper publication and a communication was sent to all the applicants with regard to the cancellation of drawl citing administrative reasons. However, the 2nd respondent passed an impugned order in his proceedings in No.K5/5455/2009 dated 15.07.2009 for the discretionary quota. Thereafter on 22.09.2009, new policy of the respondents was unveiled and as per the new policy, the applicants were directed to mention only the extent of shop and not the number of shops in order to avoid more number of applicants choosing a specific number of shop which is situated in the ideal place for generating the business. However, in the new policy, the respondent have not mentioned about the discretionary quota. In the meanwhile, the petitioner filed a writ petition in W.P.No.28120 of 2008 seeking Mandamus to consider his request for a conversion and the same was dismissed as against an writ appeal was filed in W.A.No.170 of 2009, which was also dismissed. Thereafter, a review application was filed in Rev.App.No.39 of 2009, wherein liberty was given to the petitioner to approach the respondents as and when vacancy of shop arise. Accordingly, when shop No.B-90 fall vacant, the petitioner applied for conversion by representation dated 27.11.2009. Since, it was not considered, the petitioner filed W.P.No.26331 of 2009 seeking direction to the respondents to consider his representation dated 27.11.2009, which was allowed. However, on 11.02.2010, the respondent rejected the

petitioner's request. On enquiry, it was found that pursuant to the discretionary quota of the 1st respondent, the said shop was allotted to the 4th and 5th respondents on 14.05.2010. As against the same, the petitioner has filed the present writ petition with the aforesaid prayer.

4. Heard Mr.M.Rajasekhar, learned counsel appearing for the petitioner and Mr.P.Tamilmani, standing counsel for CMDA.

5. The learned counsel for the petitioner submitted that the impugned order relating to the discretionary quota in favour of the 4th and 5th respondent is unsustainable in view of the decision of this Court in W.P.No.1779 of 2013, wherein the Hon'ble First Bench of this Court has quashed the discretionary quota allotment and allowed similar type of prayer in various writ petitions. Accordingly, he prays for allowing this petition.

6. The learned counsel for the 2nd respondent viz., Chief Metropolitan Development Authority, would submit that the petitioner's representation dated 27.11.2009 for allotment cannot be entertained and there is no provision available for conversion. He further submitted that this Court by an order dated 19.12.2009, in W.P.No.26331 of 2009 has directed the CMDA to consider the petitioner's representation dated 27.11.2009 and the petitioner was also informed by the 2nd respondent in his letter dated 11.02.2010, that it is not possible to consider his request for conversion to shop No., B-90 and his representation is rejected. However, challenging the revision order, filing this writ petition is unsustainable one. He further submitted that the Hon'ble First Bench of this Court directed the CMDA to adopt a transparent method of allotment by way of auction. Hence, at the time of allotment, the Chairman has the power to allot the shop exercising his discretionary power. Accordingly, the Chairman allotted the said shop No.B-90 to the 5th respondent.

7. The learned counsel for the respondents 4 and 5 were not present. However, they have filed a counter, wherein it is stated that the respondents 4 and 5 have applied for allotment of shop as early as on 25.09.2009 prior to the representation of the petitioner dated 27.11.2009 and the same was admitted in the office of the respondents on 02.12.2009 and the then Chief Executive Officer has also decided to allot the shop to respondents 4 and 5. They have further stated that the order of this Court in W.P.No.26331 of 2009 is only a direction to the

respondents 1 to 3 to consider the petitioner's representation and pass orders. In this case, the 1st respondent has used his discretionary power in a proper manner and allotted the shop No.B-90 to the respondents 4 and 5 is legally sustainable one.

8. On perusal of the impugned order dated 14.05.2010 passed by the 3rd respondent, the order discloses that the Chairman, CMDA received the application from the respondents 4 and 5 on 25.09.2009 and assigned Application No.K-3650 by 2nd reference cited in the impugned order. Thereafter, the office of the Chairman, CMDA has sent a letter dated 14.05.2010 informing the allotment of Shop No.B-90 in Vegetable Market at KWMC in favour of respondents 4 and 5. Except this, no correspondence is available in the impugned order. In this regard, it is relevant to extract the order dated 15.12.2014 of the Hon'ble First Bench of this Court, wherein similar type of allotment was challenged in W.A.No.1779 of 2013 and this court passed the following order:

"It is not in dispute that no methodology is followed for making allotment of the shops in question, except the so-called discretion of the Hon'ble Minister as Chairman. The legal position is quite clear and thus, it is agreed that to resolve this issue, the only appropriate course would be to have a proper advertisement, which would facilitate an advance notice to all concerned, that the shops would be put to auction and thereafter, the bids are opened and allotment is made.

2. We, thus, dispose of the appeal and the writ petitions with a direction to carry out the fresh exercise of auction of the shops, as per the norms to be circulated and the needful should be done on or before 31st March 2015. No costs. Consequently, connected miscellaneous petitions are closed."

9. In the light of the above decision cited supra, the proceedings dated 15.07.2009 in No.K5/5455/2009, passed by the 2nd respondent and the consequential order dated 14.05.2010 issued in favour of the 4th and 5th respondent is hereby quashed. The respondents 1 to 3 are directed to comply with the order of this Court dated 15.12.2014 passed in W.P.No.1779 of 2013. Accordingly, the Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.P.Tamilmani , Advocate SR.No. 73863
+1cc to Mr.M.Rajasekhar , Advocate SR.No. 72826

W.P.No.12405 of 2010

A.SK(25/09/2019)



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