

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2019

PRONOUNCED ON : 16.08.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.29161 of 2018 and
W.M.P.Nos.34106 & 34098 of 2018

1.P.M.Sebastin
2.Mathew Sebastian
3.Selma Binoy
4.Celine Sebastian
5.Smruthy Sebastian
6.Kochurani Sebastian

... Petitioners

Vs

1.The Market Management Committee of
Koyambedu Market,
Represented by its
Chief Administrative Officer,
Koyambedu Market Complex,
Chennai - 600 092.

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

3.S.Rajendran

4.Balakrishna Reddy, Partner
M/s.B.Linga Reddy & Co,
J-91, Periyar Vegetable Market Complex,
Koyambedu, Chennai - 600 092.

(R.4 Impleaded as per order made in
W.M.P.No.2689 of 2019 in
W.P.No.29161 of 2018
dated 06.08.2019)

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus forbearing the first respondent from in any way interfering with or hindering the petitioner's use of the Truck Bay and Unloading Platforms in front of shop No.H/88, Koyambedu Wholesale Market Complex or in any other way interfere with the petitioners' peaceful business in the said shop except in accordance with law.

For Petitioner :Mr.Richardson Wilson

For Respondents 1 & 3 :Mr.M.Velmurugan, Standing Counsel

For 2nd Respondent :Mr.P.S.Ganesh, Standing Counsel

For 4th Respondent :Mr.Su.Srinivasan

ORDER

The petitioners herein are claiming ownership over the Godown No.H/88 in Koyambedu Vegetable Market complex. Their allegation against the 3rd respondent is that, he continuously harassing them since, they got the shop license through Court order without acceding his extraneous requests. Though, they have right to bring their lorries and trucks carrying fruits and vegetables to the truck bay for unloading, the first respondent through the 3rd respondent, prevents the petitioner in parking the vehicle in front of their shop to load and unload.

2.On 05/09/2018 at about 5.00 am, the third respondent demanded gratification to permit them to park the truck in the truck bay for unloading. When the petitioner refused to give gratification, the 3rd respondent locked the truck. He unlocked it only after lot of commotion happened due to disruption of traffic. Hence, the petitioners seek mandamus to restrain the 4th respondent from anyway interfering or hindering the petitioner use of the truck bay and unloading platforms in front of their shop No.H/88, Koyembedu wholesale market complet.

3.One Mr.Balakrishna Reddy, the 4th respondent got himself impleaded and has stated that, as per the master plan of the Koyembedu Wholesale Market Complex, godowns were constructed and allotted for the wholesale vegetable vendors for the purpose of storing vegetables. The vegetables will come in heavy vehicles and get unloaded. From the godown, the vegetables will be taken

in small vehicles to the shops as and when required. Godown No. H/88 was initially given to the Trader's Association for storing vegetables for rent. Later, sold to the first petitioner Mr.P.M.Sabastin. The first respondent instead of using it as a godown to store vegetables had converted it into several small shops and let out to rent. Those persons are using the open space in front of H-88 for retail business, which is not authorised. Without license, the persons are carrying on business inside and outside the godown No. H/88, which is contrary to section 20 and 21 of the Tamil Nadu Specified Commodities (Regulation of Location) Act, 1996.

4.The space sold as godown to the first petitioner has been illegally converted into several shops and allowed to trade inside and outside the godown. The vendors who have taken rent of these shops bring their lorries and vans and carrying on trade in the front of the open space of the H-88 godown. This affects the 4th respondent right of free passage to bring the trucks and lorries to unload goods into his godown which is on the rear of the H-88 godown. The first respondent is duty bound to maintain the open spaces in the Koyambedu Wholesale Market Complex from encroachments and illegal vending. Pursuant to the Court direction, once CMDA sealed the godown H-88 for violation of the undertaking. Despite that, the Chennai Metropolitan Development Authority has passed a resolution to permit the petitioners to convert the Godown into small shops which is contrary to the purpose for which the complex was designed and against the master plan. Based on the resolution, the petitioners herein are trying to get 6 licenses. There cannot be several licenses to one Godown. Hence, the 4th respondent has challenged the resolution in W.P.No.2293 of 2014 and the same is pending. While fact being so, the petitioners herein are seeking exclusive truck parking facility in front of the Godown which is totally against the terms of allotment and illegal.

5. In a previous Writ Petition division Bench of this Court appointed an Advocate Commissioner to inspect the market and file a report with regard to various issues affecting the daily routine and administration of Koyambedu Wholesale Market Complex. Based on the Advocate Commissioner's report and suggestions, several measures were carried out by the Management of the market area to improve the standard and better utilisation of the market area. One such measure was to regulate the market.

6. The learned Standing Counsel appearing for the respondents 1 to 3 while opposing the writ petitions, states that, the Koyembedu Wholesale Market Complex was at one point of time infested with unauthorised vendors and illegal occupants. Pursuant to the directions given by a Division Bench of this Court, the Market Committee has taken measures to regulate the trading activities and the right of shop keepers to bring goods through trucks and lorries are restricted to two per licensees. The petitioners though 6 in numbers for Godown No. H-88, only two token is given. They are entitled to bring their vehicles upto the truck bay earmarked. Parking of the vehicle is permitted only for the purpose of unloading. Thereafter, the vehicle has to leave the market complex. Vehicles are not permitted to park at truck bay or the unloading area permanently. This restriction is brought to ensure free flow of traffic and to prevent using the truck and lorries as trading place. The prayer in the writ petition cannot be acceded since, neither the truck bay nor the unloading area can be given exclusive usage of any one permit holder. It is common area to be used for specific purpose namely loading and unloading goods alone. Once the purpose of loading or unloading is completed, the vehicle is bound to leave the complex. To ensure this purpose, the permit holders are instructed to adhere the regulations. There is no motive or demand of extraneous consideration as alleged by the petitioners. In fact, the petitioners request for issuing two token each, for vehicle entry was denied by the 4th respondent, on the ground that, one license one permit. Disgruntled by it, the present writ petition is filed making false allegations for a relief untenable.

7. Whether the permission granted by the first respondent to convert the Godown as multiple shops is subject matter of other writ petition pending before this Court. Therefore, that issue is not taken up for consideration in this writ petition.

8. In so far as the relief sought in this writ petition, the respondents have made it clear that there is no interference to the right of the petitioners to use the two tokens given to them for entry of truck and lorry to unload their goods. They are entitled to use the truck bay and unloading platform for that purpose. They cannot claim any exclusive right of parking vehicle permanently in front of their shop H-88. The restriction imposed on utilization and use of the truck bay and unloading platform is to ensure free flow of traffic and to avoid retail trading under the guise of loading and unloading. There can be no ulterior motive or design in such a restriction in view to regulate and ensure orderly administration of the market area. At last, the respondents have taken measures to regulate the

activities inside the market area in order to bring it more user friendly for all the stakeholders. This action is taken after the directions given by this court in W.P.No.26149 of 2009 dated 23/09/2016. The petitioners whose right to claim multiple licenses is under challenge. However, through this writ petition they try to subvert the attempt of the respondents to regulate the market utilisation in a orderly manner.

9.In this regard, it is relevant to extract the directions given by the Division Bench of this court in W.P.No.26149 of 2009 dated 23/09/2016 which speaks volumes :-

"It appears that there is some element of wake up call now for taking action, but some of the aspects which require urgent attention apart from the upgradation process stated to be on are as under:

i.As suggested by the learned counsel for the petitioner, the market being spread over a large area of 64 Acres, there has to be decentralization of management which is stated to be possible as per Section 7 of the Tamil Nadu Specified Commodities Markets (Regulation of Location) Act, 1996, providing for division of any market area into two or more separate market areas.

ii.If the aforesaid is carried out, each area can be administered better and an administrative incharge can be appointed by each of the areas, which would then report to the separate committees. The committees, in turn, should not be jumbo committees which hardly meet or do any work.

iii.There appears to be no time regulations for operation of the market. The time period should be specified for the different activities so that the market can be maintained at other times. The time periods may vary depending on the nature of the activity permitted.

iv.A system to be put in place for entry and exist of vehicles into the market to ensure that the schedule of timing is adhered to.

v.It is pointed out by the Local Commissioners that, in fact, trucks loaded with vegetables and fruits, which come there, park inside the market and carry out sale from the same, something not permissible. Such activity must stop.

vi.The operation should be restricted to the shop owners or other managed areas and discipline in the market should be strictly enforced. It should be specified as to which shop or which area is carrying on what nature of activity and the traders be required to display boards in that behalf specifying the trader who is carrying on the activity. The aforesaid is also necessary as the Local Commissioners pointed out that small areas have been sub-divided for different activities and, thus, there is spill over from the space.

vii.The bio-methanation plant stated to be now modernized should be brought into operation at the earliest.

viii.The persons who dump garbage in non-specified areas must be fined and for repeated offenders, their business activity should be stopped.

ix.Upgradation of medical facility and water facility must take place. In this context, we fail to understand as to how a situation came to pass where the arrears for water supply by CMWSSB reached Rs.6 Crores resulting in disconnection of supply. These arrears should be cleared and the normal supply restored and the business activity of traders who do not contribute should be stopped. We make it clear that there can be no question of free water, as it is a scarce commodity."

10.Pursuant to these directions and strong observations, the respondents after several deliberations with the stakeholders on 11/10/2018 have resolved to regulate the entry and exit of trucks, lorries inside the market area, in a particular manner. Timing, entry and exit gates and number of trucks to be allowed for each licensee during peak hours are all decided and accepted

by majority of the licensees. Therefore, the petitioners cannot have exclusive right to use the area in front of their Godown No. H-88. If the petitioners are allowed to have exclusive right to park vehicle in front of their godown, this will cause hindrance to other vehicles to pass through their godown freely. This will enable the petitioners to park truck permanently in front of their shop and prevent other godown owners from using the truck bay and unloading platform which is common to all. Therefore, this Court finds no merit in this writ petition and accordingly, the same is liable to be dismissed.

11. In other writ petitions viz., W.P.Nos.30640 of 2014 and 31047 of 2018, this Court has expressed its view that, the regulations imposed on the vehicular movements inside the market area and use of the truck bay and unloading platform is unavoidable. The restrictions have to be enforced scrupulously. To ensure the same, this Court in these writ petitions viz., W.P.Nos.30640 of 2014 and 31047 of 2018 filed in connection with vehicle entry into the market complex, has observed as follows:-

"The heavy vehicles permitted to enter into the market area through Gate Nos.14 and 18 have to be parked in the truck bay for unloading without causing any hindrance to the vehicular traffic flow. The vehicles have to be unloaded immediately and leave the market area through Gate Nos.7 and 3 respectively, within a reasonable time prescribed. The time of entry and exit of the vehicle has to be monitored by the time keeper and recorded in CCTV camera. Any shop owner park the vehicle beyond the time prescribed or cause hindrance to traffic flow, stringent action has to be taken which shall include cancellation of token'.

The said direction equally applies to the petitioners and others.

13.In the result, reiterating the above said directions, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Market Management Committee of
Koyambedu Market,
Represented by its
Chief Administrative Officer,
Koyambedu Market Complex,
Chennai - 600 092.

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

+1cc to Mr.RichardSon Wilson, Advocate Sr.70003
+1cc to Mr.M.Velmurugan, Advocate Sr.70013
+1cc to Mr.P.S.Ganesh, Advocate Sr.69908
+1cc to Mr.Su Srinivasan, Advocate Sr.69866

W.P.Nos. No.29161 of 2018

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