



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.921 of 2022
and
C.M.P.No.6038 of 2022

Thanthai Periyar Tomato Traders
Association (Regd. No.225/2004)
Rep. by its President, A.K.Swaminathan,
L-1, Periyar Vegetable Market Complex,
Koyambedu, Chennai 600 092. ...Petitioner / Appellant

Vs

- 1.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Gandhi Irwin Road, Egmore,
Chennai 600 008.
- 2.The Chief Executive Officer,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Gandhi Irwin Road, Egmore,
Chennai 600 008.
- 3.The Chief Administrative Officer,
Chennai Metropolitan Development Authority,
Market Management Committee,
Koyambedu Wholesale Market Complex,
Koyambedu, Chennai 600 092.
- 4.The District Revenue Officer,
Market Managing Committee,
Koyambedu Wholesale Market Complex,
Koyambedu, Chennai 600 092.
- 5.KWMC Periyar Kaaigari Angadi Anaithu
Sangangalin Kootamaippu,
Rep. by its General Secretary,
No.E-114, Vegetable Market,
Koyambedu Wholesale Market,
Chennai 600 107. ...Respondents / Respondents



Prayer : Appeal filed under Clause 15 of the Letters Patent against the order dated 02.02.2022 passed in W.P.No.17503 of 2021 on the file of this Court.

Prayer in W.P.No.17503 of 2021 : Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorariied Mandamus calling for the records in Letter No.MMC/A1/984/2020 dated 14.10.2020 on the file of the 3rd respondent and quash the same and direct the Respondents to permit the members of the petitioner Association to do wholesale trade at Koyambedu Wholesale Vegetable Market by continuing to use the open ground available in front of N-124 Godown for unloading and loading of tomatoes pursuant to the representation of the petitioner dated 15.09.2020 given to the respondents.

For the Petitioner : Mr.Sadakshram
for K.Shivakumar

For the Respondents : Mr.Sesubalan Raja
for M/s.Siva & Sesu Assts.
for RR 1 and 2

: Mr.T.R.Rajagopalan, Sr. Counsel,
for Mr.M.Rajasekar for R-5

: Mr.Velmurugan for R-3

JUDGMENT

(Judgment of the Court was delivered by
the Hon'ble Chief Justice)

By this writ appeal, challenge is made to the judgment dated 02.02.2022 whereby the writ petition preferred by the writ appellant association challenging the order dated 14.10.2020 was dismissed. The writ appellant actually made a representation to allot the land in the open space for the purpose of trading of tomatoes. The representation aforesaid was rejected by the order dated 14.10.2020 after giving elaborate reasons for denial of the prayer.

2. The learned counsel for the writ appellant submits that the open space was used by the members of the association from the year 2004 and therefore, they should have been allowed to continue the use of land in the same manner as were permitted in 2004. By the impugned order dated 14.10.2020, it has been denied using the open space for the purpose of trading of tomatoes. The impugned order dated 14.10.2020 was passed undoing the right of the writ appellant association and otherwise the authority was not competent to pass the order as per Section 25 of the Tamil Nadu Specified Commodities Marekts



(Regulation of Location) Act, 1996. Accordingly, the order should have been interfered by the learned Single Judge, however, the writ petition was dismissed. It is further argued that while dismissing the writ petition, a further direction has been given against the members of the petitioner association not to use the open space for the purpose of loading and unloading or trading of tomatoes, though no such prayer was made in the writ petition. Thus, the order aforesaid was beyond the scope of the prayer made in the writ petition and hence it may be set aside. The prayer is, accordingly, to set aside the order in the writ petition so also the order dated 14.10.2020 with a direction to the respondents to allot the land in the open space to the members of the writ appellant association for the purpose of carrying out the trading of tomatoes.

3. We have considered the submissions of the learned counsel for the writ appellant and perused the records.

4. The facts on record and that have been taken into consideration by the learned Single Judge show that the members of the petitioner association were using the area in front of N-124 Godown for loading and unloading of tomatoes. The land in the open space is said to have been allotted to few traders, as stated by the writ appellant, though no order for allotment has been produced on record and otherwise, the learned counsel for the writ appellant failed to show their right to seek allotment of the land kept open for the purpose of loading and unloading of the goods. The learned Single Judge has taken note of the use of the open space by referring to the number of trucks required to be parked and otherwise, the space is required for loading and unloading and accordingly, the respondents passed a detailed order giving out that during the course of Covid-19 pandemic, the usage of the land was restricted, but after the permission granted to use the area, a decision was taken to allow the use of open space for the purpose of loading and unloading.

5. Apart from the facts aforesaid, it has been noted that the members of the petitioner association were given licence by allotment of the shop. In view of the above, the prayer made for allotment of the land in the open space was not tenable because the traders were required to conduct their business in the allotted space. Further, the fact remains that no right could be shown by the writ appellant to seek allotment of the land in the open space kept for loading and unloading purpose. It is looking to the number of trucks which has been noted in para 5 of the impugned judgment and looking to the volume of those trucks, if the open space is not kept, it will make a total mess in the area which may even restrict the movement of the traffic.



6. In the writ appeal, the learned counsel for the appellant has referred to Section 25 of the the Tamil Nadu Specified Commodities Markets (Regulation of Location) Act, 1996, which is quoted thus:

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"25. Provisions regarding transfer of immovable property of market committee. - (1) Notwithstanding anything contained in clause (2) of section 5, a market committee shall not, except with the concurrence of the local authority and the previous sanction of the Government, transfer by sale, lease, exchange, mortgage or otherwise any land or building vested in it or acquired by it and situated in the market area.

(2) Subject to the provisions of sub-section (I), the market committee may dispose of by sale, lease, exchange, mortgage or otherwise any building, stall, shop, stand, enclosure or things attached to the land or permanently fastened to anything attached to the land, subject to such conditions and such limitations as may be determined by by-laws made in that behalf."

7. The provision aforesaid was referred to challenge the order in reference to competence of the authority to pass the order. We do not find that Section 25 of the Act of 1996 has any application to the present matter. Section 25 of the Act of 1996 would apply only when there is a transfer of immovable property of the market committee. In the instant case, there is no decision or order to transfer the immovable property of the market committee rather the direction is to maintain the open space for the purpose for which it has been kept. Thus, no element of transfer, as envisaged or in the manner given under Section 25, is involved in the present matter. The order has been passed by the authority on the representation made by the petitioner after elaborate consideration of the issue. The learned Single Judge did not find any material in favour of the petitioner to establish the claim and even to assail the order dated 14.10.2020.

8. The learned Single Judge even examined the matter in reference to the power of judicial review of the High Court. The judicial review under Article 226 of the Constitution of India is available to the Court, but it cannot be exercised to interfere in the policy decision unless it is shown to be in violation of the constitutional or statutory provision or suffers from malafides, thus to be considered as arbitrary. How to use open area falls within the domain of the Government and judicial review of the policy decision would not be permissible. In this case, the decision has not been challenged on the ground of violation of constitutional or statutory provision or



suffering from malafides, thus, looking to the facts aforesaid and considering the issues elaborately and finding no right in favour of the petitioner, the writ petition was dismissed.

9. It is true that while dismissing the writ petition, an observation was made against the members of the writ appellant association restraining them not to use the open space for the purpose of loading and unloading or trading of tomatoes. The direction aforesaid needs to be modified in regard to restriction on loading and unloading.

Accordingly, while dismissing the writ petition and now the writ appeal, for challenge to the order dated 14.10.2020 and the prayer of the writ appellant to allow use of the open space for trading of tomatoes, the open area can be used for loading and unloading as given in the order dated 14.10.2020. But, the area would not be used for the purpose of trading of any goods. With the aforesaid observation, para 20 of the judgment is modified and the appeal stands disposed of. No costs. Consequently, C.M.P.No.6038 of 2022 is closed.

Sd/-
Deputy Registrar (CS)

// True Copy //

Sub Assistant Registrar

sra

To:

- 1.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
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Egmore, Chennai 600 008.
- 2.The Chief Executive Officer,
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Koyambedu, Chennai 600 092.



4.The District Revenue Officer,
Market Managing Committee,
Koyambedu Wholesale Market Complex,
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+2ccs to Mr.K.Shivakumar, Advocate Sr.No.27038

+1cc to Mr.M.Rajasekar, Advocate Sr.No.27120

+1cc to Mr.M.Velmurugan, Advocate Sr.No.27237

+1cc to the Government Pleader Sr.No.27700

W.A.No.921 of 2022

VBM(CO)
PR(04/05/2022)