



W.P.No.2293 of 2014 & M.P.No.2 and 3 of 2014 and
W.P.No.27905 of 2015 & M.P.No.1 and 2 of 2015

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
10~02~2023	28~02~2023

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.2293 of 2014 & M.P.Nos.2 and 3 of 2014
and
W.P.No.27905 of 2015 & M.P.Nos.1 and 2 of 2015

W.P.No.2293 of 2014

Balakrishna Reddy

... Petitioner

VS

1. The Chief Executive Officer
Chennai Metropolitan Development Authority
Gandhi Irwin Road, Egmore, Chennai-600 008.
2. The Chief Administrative Officer
Market Management Committee
Koyambedu Wholesale Market Complex
Koyambedu, Chennai.

3. Mr. Sebastian

...Respondents

Prayer: Writ Petition filed under Section 226 of the Constitution of India to issue
a Writ of Certiorarified Mandamus or any other appropriate writ, order or direction



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in the nature of writ to call for the records made in C.No.K5/92 89/2003, AR No.13 of 2013 dated 13.03.2013 and consequential communication of the 1st Respondent and quash the same and further direct the 1st and 2nd Respondents to cancel the sale deed given to the 3rd Respondent and to go for auction of H-88 Godown located in Periyar Vegetable Market, KWMC, Koyambedu, Chennai 600092 with the condition that the said godown shall be used only for storage purpose.

W.P.No.27905 of 2015

Mr. Jothi Raj

... Petitioner

VS

1. The Member Secretary
Chennai Metropolitan Development Authority (CMDA)
Egmore, Chennai-600 008.

2. The Chief Executive Officer
Chennai Metropolitan Development Authority (CMDA)
Egmore, Chennai-600 008.

3. Mr.P.M. Sebastian

...Respondents

Prayer: Writ Petition filed under Section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate writ, order or direction in the nature of writ to call for the records of the 1st Respondent's letter in C.No.K5/92 89/2003, dated 07.05.2013 and quash the same and consequently direct the 1st and 2nd Respondents to restore the Godown H-88 for public use.



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W.P.No.2293 of 2014

For Petitioner : Mr. Su. Srinivasan

For Respondents : Mr. P. Kumaresan
Additional Advocate General
Assisted by Mrs.P. Veena Suresh
for CMDA[for R1]

Mr.C.N.Vinobha [for R2]

Mr.T.V. Ramanujam
Senior Counsel for
Mr.C. Rajan [for R3]

W.P.No.27905 of 2015

For Petitioner : Mr. E. Kotteswaran

For Respondents : Mr. P. Kumaresan
Additional Advocate General
Assisted by Mrs.P. Veena Suresh
for CMDA[for R1 & R2]

Mr.T.V. Ramanujam
Senior Counsel for
Mr.C. Rajan [for R3]

COMMON ORDER

1.a Writ Petition No.2293 of 2014 has been filed to call for the records
made in C.No.K5/92 89/2003, AR No.13 of 2013 dated 13.03.2013 and



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consequential communication of the 1st Respondent, quash the same and further direct the 1st and 2nd Respondents to cancel the sale deed given to the 3rd Respondent and to go for auction of H-88 Godown located in Periyar Vegetable Market, KWMC, Koyambedu, Chennai 600092 with the condition that the said godown shall be used only for storage purpose.

1.b. Writ Petition No.27905 of 2015 has been filed to call for the records of the 1st Respondent's letter in C.No.K5/92 89/2003 dated 07.05.2013, quash the same and consequently direct the 1st and 2nd Respondents to restore the Godown H-88 for public use.

2.a. It is the case of the writ petitioner in W.P.No.2293 of 2016 that he is having wholesale trade in onion in J-91, Periyar Vegetable Market Complex Koyambedu Wholesale Market Complex (KWMC). Prior to that the petitioner was doing the same trade in Kothavalchavadi area. The Koyambedu marked market is founded for wholesale trading by virtue of the Tamil Nadu Specified Commodities Markets (Regulation and Location) Act, 1996. The godown were constructed in the market for making provision for unloading and storing the perishable



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commodities at a particular place (godowns) enabling the trader to take the same to the small size shops which does not have any provision or facility for storing/unloading the commodities. However, for the last few years, the respondents without applying their mind on the excellent plan of Koyambedu Market Complex, have deviated their own master plan. The godown bearing No.H-88, which was initially given on rent to the trader's association for storing purpose, was subsequently sold to 3rd respondent. The 3rd respondent converted the same into several small shops and such shops are given on rent. The tenants were not using the godown for trading purpose but also using the open spaces in front of the H-88 godown for retail trading, which is absolutely unauthorised. Besides they are not holding any licence to carry on their trading activities in the market area.

2.b. After the godown was sold to the 3rd respondent he has allowed to do retail trading in the Godown and in front of the Godown and also blocking the open places. The Petitioner had earlier filed a writ petition in W.P.No. 8180 of 2008, wherein, this Court given a direction to the respondents to take action against the unauthorised trading in H-88 Godown and in the open space.



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Subsequently, contempt application was filed by the petitioner in Contempt Petition No.134 of 2012. During the contempt proceedings, the counsel representing CMDA, had stated that "all the shops (H-88 Godown) had been closed, sealed and electricity service is disconnected". Recording the above statement, the contempt was closed. Besides, the 3 respondent had given an affidavit of undertaking in W.P.No.36689 of 2006 dated 21.03.2007 to the effect that "the Godown shall be put into use of storage of perishables and ensure that there cannot be any trade activity in these compartments (Godown) either by himself or by any third parties. Thereafter also there were retail trading was actively carried out in the Godown by the tenants of the 3rd respondent. Again writ petition was filed in W.P.No.8180 of 2008 and by order dated 27.01.2009 direction was given to the effect that "the respondents 1 and 2 are at liberty to issue the show cause notice to the 3rd respondent if they are satisfied that the 3rd respondent is violating the undertaking given before this court and the terms of conditions of allotment order/agreement and to pass appropriate final orders. In spite of that order all trading was going on by the 3rd respondent.

2.c. Thereafter the respondent given a representation to the authorities on



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30.01.2013 requesting to convert the Godown as regular shop to carry wholesale trade of vegetables. 1st Respondent vide letter dated 07.05.2013 permitted the 3rd Respondent to carry on wholesale trade of vegetables and also permitted for conversion. Hence challenging the order of the 3rd Respondent for granting permission to conversion, the writ petition has been filed.

3.a. It is the case of the Writ Petitioner in W.P.No.27905 of 2015 that he is a Vegetable Trador dealing in whole sale of trading Vegetable at CMDA Koyambedu Vegetable Market, having a Platform Shop No. I/P 25, in I Block behind the erstwhile Godown -H-88. He cannot afford a big shop and many a times I got to store my unsold or excess vegetables in the Godown. In H and I Blocks, one Godown H-88 is allotted to the 3rd Respondent and the same was misused and let out as retail outlets for retail business, and for long was not used as a Godown. This had been causing lots of inconvenience to the petitioner's business, as the petitioner needs a Godown facility store his excess or unsold Vegetables but H-88 was allotted to the shops. Whenever he enquired the respondent CMDA officers available in the market office, he was told that all the illegal tenants in H-88 will be evicted and the same will be available for storing



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goods at the earliest. Thereafter the godown is always locked and upon enquiry the petitioner was told that the godown H-88 is converted into 10 shops.

3.b. In a marked market place, particularly dealing in perishable and essential goods like vegetables, godowns are must and without Godown facilities a business cannot be done purposefully and profitably w t be dese purposefully profitably, all unsold and excess got to be stocked in a Godown; moreover at the time of allotting the shop I/P-25 in I Block, it was sold with the godown facilities and Godown H-88 is marked for H & I Block.

3.c. First of all the Godown should not have been sold to a private person for whatever reason it may be, should not be closed and converted into shops and that too 10 independent shops to one person. The Petitioner came to know that the person owing 10 shops in H-88 godown does not have licence to do wholesale trading, when several vegetable wholesale vendors are not having a shop to do business. The respondent CMDA allowing the godown into shops is wrongful act. Therefore the Petitioner represented to the Member Secretary and Market Management Committee to immediately recall the order of conversion of Godown



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H-88 into retail shop and restore the basic amenity of a Godown facility to him and other traders.

3.d. It is further stated that upon repeated follow up, the petitioner had gathered some information and papers from some persons in the market and the respondents CMDA and came to know that the person who bought the Godown had represented to the respondents that he is not able to do a godown business and the respondents based upon the representation had converted the Godown H-88 into retail units vide the respondents letter dated 07.05.2013 in pursuance to the respondent's Authority Resolution No.13/2013.

3.e. A Godown is not for private use and it is a public utility and a basic common amenity, facility in a market place, it must be restored for the benefit of the small traders and vendors like the petitioner, who are very badly affected due to lack of Godown facilities, that they are not able to develop their business. In spite of their repeated requests and representation dated 17.08.2015 no action was taken, hence the petitioner filed this Writ Petition.



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4.a. In the counter filed by the 1st Respondent/Member Secretary, CMDA, it is stated that the Godown H-88 earlier let out on monthly rental basis to one Thiru Muthalagu, President, Traders Association. The lessee have converted the godown into 9 shops and doing trading activity instead of storing of vegetables and having heavy rental arrears to the tune of 24 lakhs. Due to the reason the godown was locked and sealed by CMDA. Thereafter, the godown H-88 was allotted to the 3rd Respondent/P.M.Sebastian on outright purchase in “as is where is condition” vide CMDA Lr.No.K5/12543/02, dated 08.04.2002 for storing vegetables by the wholesale traders and the sale deed was executed to him on 31.08.2009 after payment of full consideration.

4.b. Thereafter, based on the direction of this Court in W.P.No.8180 of 2008 dated 27.01.2009 the godown was locked and sealed by CMDA on 09.03.2012, as it was used for wholesale trade and not as godown. Any changes in Master Plan of KWMC are placed before the Authority and the Authority in A.r.No.13/2013, dated 03.03.2013 has approved the proposal for conversion of Godown H-88 into shops. Issue of licence to traders of KWMC is dealt with Market Management



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Committee (MMC). MMC has issued licence to godown H-88. Hence, the petitioner shall approach the CAO, MMC for remedy.

4.c. Again the Godown H-88 was de-sealed based on the orders of this Court in WP No.29583 of 2013 and connected W.P.No.28262 of 2013 in which the resolution of 1st respondent was the subject matter and the sale of the shop H-88 in favour of the 3rd Respondent was sought to set aside. In AR.No.13 of 2013 dtd 03.03.2003 the authority has resolved to permit for conversion of godown H-88 into regular shops based on the request of Thiru P.M.Sebastian/3rd Respondent for carrying wholesale trade of vegetables and on condition that the shop shall not be sublet or assign and if any violation is noticed action will be taken as per Lr.No.K5/9289/2003 dated 07.05.2013 and hence the godown was de-sealed based on the orders of this court in W.P.No.29583 of 2013. For any violation noticed on the part of maintenance by market, the petitioner may approach the CAO, MMC for remedy. Hence prayed for dismissal of the writ petitions.

5.a. In the counter filed by the 3rd Respondent it is stated that the 1st respondent had purchased the godown on out right basis on an auction held on



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08.04.2003 by the first respondent herein and on 08.04.2003 the allotment order was issued by the first respondent herein. The godown H-88 was sold to him in "as is where is condition" The said godown was already divided into nine portions and already eight persons were in occupation of the said H-88 Godown at the time of handing over and this respondent was in possession of one portion of the godown.

5.b. The godown was allotted "as is where is condition" and one portion was in occupation by this respondent. The persons who were occupying the other eight portions had kept the vegetables in their occupied portions and started selling the same in front of the platform of godown. This led to dispute between the neighbouring shop owners and other members of the traders in the said vicinity. This Respondent could not take action against 8 persons due to the fact that W.P.Nos.36834 of 2006, 7442 of 2006 and 8180 of 2008 was filed by the present writ petitioner in which this respondent had given an undertaking that the godown will be used as a godown only and not as a shop for selling vegetables. W.P.8180/2008 is filed for a prayer not to issue the sale deed to this respondent. This Respondent had finally filed W.P.No.36689 of 2006 and by order dated 21.03.2007 the this Court directed the first respondent to issue necessary license



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and registration certificate to the 3rd Respondent and also to execute necessary sale deed in favour of this respondent. Thereafter the sale deed had been executed in favour of the 3rd Respondent. This Respondent also had filed civil suit in O.S.No.13390 of 2009 to O.S.No.13397 of 2009 to declare all the illegal occupants who were in possession of the godown premises as illegal occupants and the suit was decreed in favour of 3rd Respondent. The 3rd Respondent had filed execution proceedings before the City Civil Court and the possession was handed over to him.

5.c. It is stated that one B.Gnanasekaran had occupied the said shop who was the defendant in O.S.No.13396 of 2009. The said O.S.was dismissed and in fact the order in W.P.No.29583 of 2013 in favour of the 3rd respondent and the registered sale deed in favour of the 3rd respondent in respect of Shop H-88 has been upheld. The said Gnanasekaran had filed W.P.No.28262 of 2013 challenging the allotment and sale deed in favour of the 3rd respondent and prayed to quash the same and consequently direct the 1st and 2nd respondents to call for fresh actuaion/allotment to sell the godown H-88 as retail outlets. Above writ petition was disposed on 29.01.2015 wherein this Court has held that this



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Respondent has been put in possession, as is where is condition and subsequently in the year 2013, on a representation made by P.M.Sebastian, the 3rd Respondent, the authority has permitted conversion of the godown into shops for the purpose of wholesale trade of vegetables. Hence dismissed the writ petition.

5.d. Similarly one Mr.Senthil Kumar also claimed himself to be the occupant of one of the portions and had filed a suit in O.S.No.2473 of 2015 seeking injunction against him However, injunction has not been ordered and he has also filed Crl.O.P.11559 of 2015 with the prayer to direct the respondent police to provide police protection to his shop which was under his (illegal) occupation. He has also filed Crl.OP.No.11560 of 2015 sought direction to the police to register an FIR against the 3rd Respondent on the basis of the complaint dated 21.04.2015 given by the petitioner and another Crl.O.P.No.11761 of 2015 seeking direction not to harass him. This Court by order dated 09.06.2015 dismissed the petition and observed that "This Court cannot be a mute spectator and throw its hands up in despair, when possession of a legitimate owner is being nakedly threatened by anti-social elements. Turning a blind eye to such rank aggression would make the judicial process inept and the power of this Court



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under Section 482 Cr.P.C and Article 226 of Constitution of India to issue.” and finally dismissed those Crl.O.Ps. with a cost of Rs.25000/- and this Court also directed the respondent police to give police protection to the 3rd Respondent.

5.e. Hence it is his contention is that he is the absolute owner of the property and writ petition is nothing but abuse of process of law. The CMDA had permitted conversion of the godown into shops in the Koyambedu market. Such permission was granted taking note of the facts and circumstances of the case. Hence opposed the writ petition.

6.a. Mr.Su. Srinivasan, the learned counsel appearing for the writ petitioner submitted that what was allotted to the 3rd Respondent was only a godown and it is only meant for storing the vegetables in the market. There cannot be any trading activities in the godown. The allotment order dated 08.04.2003 clearly stipulate that the building was allotted only for godown purpose and not for trading of vegetables. The conditions also stipulate that the allottee shall not part with possession, alienate, assign or otherwise encumber the rights. Allotment order shall be deemed to be a part and parcel of the Lease cum Sale Agreement. It is his



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further contention that though the property has been allotted as godown, same has been converted in to nine shops which contradicts to the allotment order and as against the very allotment itself. The purpose of which the godown was built in the market is to store the vegetables. There cannot be any trading activities. However, the godown after allotment has been converted into 9 shops.

6.b. It is his further contention the writ petition filed in this regard in W.P.No.7442 of 2006 by the Petitioner this Court has categorically held that the godown shall be utilised for the godown purpose and not for any trading purposes. In case of any violation, certainly, the respondents 1 and 2 can take appropriate action. In fact, the learned counsel appearing for the respondents 1 and 2 has brought to the notice of this court as to the violations and for consequential action. Similarly, in W.P.No.8180 of 2008 this Court has directed the respondents 1 and 2 to issue a show cause notice to the 3rd Respondent if they are satisfied that the third respondent is violating the undertaking given before the Court. According to the learned counsel, the 3rd Respondent also given undertaking before this Court that he will not use the godown for any other trade purpose and contempt



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application also filed thereafter. The Contempt Petition has been closed since the CMDA authorities closed and sealed the premises.

6.c. Such being the position the godown is meant for storing the vegetables and the allotment order also clearly stipulate that there cannot be any trading activities, the respondents now allowed conversion of the godown into shops. Such thing is not permissible under law and submitted that once the property is in the public place that cannot be permitted to use for any other purpose. Learned counsel also placed much reliance on the following judgments:

1. *Venkattamma vs. City improvement of Trust Board* [(1973) 1 SCC 188]
2. *GN Khajuria vs. Delhi Development authority* [(1995) 5 SCC 762]
3. *Tarak Singh vs. Jyoti Basu* [(2005) 1 SCC 201]
4. *Humanity vs. State of West Bengal* [(2011) 6 SCC 125.]



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5. *SIDCO Nagar Welfare Association vs. CMDA [2018
(5) CTC 857]*

6. *Akhil Bhartia Upbhokta Congress vs. State of Madhya
Pradesh and others [2011 (5) SCC 29]*

7.a. Learned Senior Counsel Mr.T.V. Ramanujam appearing for the 3rd Respondent submitted that the writ petition is nothing but abuse of process of law. In fact this Respondent purchased the property in the public auction and originally the godown was in the occupation of 9 persons. Entire godown was converted as nine portions and the godown was sold in “as is where is” condition. There are various proceedings initiated against them for eviction and several writ petitions also filed by the persons who are evicted. Ultimately possession has been taken pursuant to the execution of the decree by the Court. Only at the intervention of the court under Section 482 of Cr.P.C. protection has been given to this respondent. And the present petitioner is also one of the occupier of the godown at the time of the sale.



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7.b. It is also his contention that in one of the writ petitions filed by the one of occupant Mr.B.Gnanasekaran, this Court has clearly held that since the 3rd Respondent has purchased the property out right, the conversion is also done by the respondent and dismissed the writ petition. It is his further contention that absolute sale has been executed in favour of the 3rd Respondent. Even if there is any restriction the same is void as per Section 10 of the Transfer of Property Act. Hence opposed the writ petition.

8. Learned Counsel Mr.E.Kotteswaran appearing for the Petitioner in W.P.No.27905 of 2015 adopting the submissions of the learned Counsel Mr. Su. Srinivasan and further submitted that there is no provision for closure and conversion of the Godown in the Specified Commodities Markets (Regulation of Location) Act, 1996. The closure and conversion of godown into retails shops will damage the livelihood of many small and medium traders. Hence submitted that conversion and closure of godown in the market is against the law. He further submitted that godown is a basic amenity in a classified market place and conversion of the godown in to a retail outlets is depriving the basic amenities like access to all common toilets, parking, pathway area, common pathway etc., Hence



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prayed to quash the 1st respondent's letter dated 07.05.2013 and to restore the godown H-88 for public use.

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9. I have perused the entire materials. These Writ Petitioners are mainly challenged the order of the Respondent permitting the 3rd Respondent to convert the godown into shops and to set aside the sale executed in favour of the 3rd Respondent. It is relevant to note that public auction notification was issued for sale of the H-88 Godown in the Koyambedu Market. The 3rd Respondent had become successful bidder and the allotment order was issued to the 3rd Respondent on 08.04.2003. At the relevant point of time no sale deed was executed. One of the conditions in the Allotment Order is to the effect that the allottee should commence business within 45 days from the date of handing over the shop. It is allotted only for godown purpose and not for trading of vegetables. Besides there is also a condition that the allottee shall not part with possession, alienate, assign or otherwise encumber the rights of the shop with any third parties without the written prior approval of CMDA. The storage of commodities should be done within the godown areas earmarked in the sketch and not in the common areas such as shopping street, etc., Prior to that, 11 persons had challenged the tender



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notification. This court did not interfere with the tender notification. After the 3rd Respondent become a successful bidder the writ petition has been filed by the present petitioner.

10. In the W.P.No.7442 of 2006 this Court vide order dated 16.03.2005 directed the 2nd Respondent to execute the sale deed in favour of the 3rd Respondent. In the above writ petition, in the admission stage itself this court passed the following order:

“4. In my opinion, the relief sought for in this Writ Petition cannot be ordered, as admittedly, the 3rd respondent has purchased the go-down in question, he is entitled for execution of the sale deed and this Court cannot prevent the CMDA from executing such sale deed. However, as rightly pointed out by the learned counsel for the petitioner that when a particular premises is sold for go-down purpose, the same shall be utilised for the said purpose only and not for any other trading purpose. In case of any violation, certainly, the respondents 1 and 2 can take appropriate action. In fact, the petitioner has also made a representation on 29.12.2005, bringing to the notice of



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CMDA as to the violations committed by the 3rd respondent and other traders/allottees. In view of the said representation, it is needless to mention that the same shall be considered and take action if the premises allotted/sold is not used for the specific purpose for which it was sold. In fact, the learned counsel appearing for the respondents 1 and 2, has brought to the notice of this Court, the proceedings which has been annexed at page No.11 of the typed-set of papers dated 16.01.2006 addressed to the 3rd respondent so to the violations and for consequential action. With the above observation, the Writ Petition is disposed of. No costs. Consequently, W.P.M.P.nos.8183 and 8184 of 2006 are closed”

11. Thereafter another writ petition came to be filed by the one of the writ petitioners in W.P.No.2293 of 2014, in W.P.No.8180 of 2008 seeking direction to the 1st and 2nd Respondents to take action against the 3rd Respondent who misused the H-88 godown in Periyar Market Koyambedu. In the meanwhile the 3rd Respondent filed W.P.No.36689 of 2006 to direct the 1st and 2nd respondent to execute and register the sale deed. This Court directed the 1st Respondent to issue licence and registration certificate to the 3rd Respondent. At the relevant point of



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time the 3rd Respondent has also appears to have given undertaking that he will abide by the terms and conditions of the allotment order and will not violate the terms. Pursuant to the same, the order came to be passed. Taking note of the disposal of the writ petition No.36689 of 2006 a writ petition No.8180 of 2008 was disposed as follows:

“(i) The respondents 1 and 2 are at liberty to issue the show cause notice to the 3rd respondent if they are satisfied that the 3rd respondent is violating the undertaking given before this court and the terms of conditions of allotment order/agreement

(ii) If any such show cause notice is given by respondents 1 and 2, the third respondent is at liberty to submit his explanation.”

12. Thereafter, it appears that the petitioner has filed contempt Petition No.134 of 2012 and the same has been closed on the basis of the submissions made by the 1st Respondent that shops have been closed and sealed and electricity



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service connection also disconnected. Recording the above statement, the Contempt Petition has been closed.

13. It is to be noted that above orders came to be passed on the basis of Allotment order alone. Thereafter, the same came to be passed and executed in favour of the 3rd respondent. The respondent typed set clearly shows that the godown was sold in “as is where is condition.” The allotment order dated 22.07.2014 clearly shows that the godown was converted into 9 shops and the same was handed over to the allottee. Though originally it was auctioned for godown, at the time of allotment godown was convert into 9 shops. Several writ petitions have been filed by the person who were either failed in public auction and who have been evicted from the premises by way of various civil suits. It is relevant to note that the order of undertaking given by the petitioner and directions given by this court in the writ petitions referred above or only on the basis of the allotment order. Thereafter, it appears that absolute sale deed has been executed by the C.M.D.A. on 31 August 2009 in favour of the 3rd Respondent. Total extent of the godown H-88 has been absolutely transferred in favour of the 3rd Respondent on the following conditions:



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“The purchaser covenants with the market management committee is follows:

- 1. The Purchaser shall co-operate for the maintenance of all common areas/buildings, roads and spaces.*
- 2. The Purchaser shall pay the maintenance charges to the Market Management Committee*
- 3. The purchaser shall pay the proportionate insurance charges to Market Management Committee will be responsible for all the godown including common areas.*
- 4. The Purchaser shall obtain licence from Market Management Committee to carry on Committee, wholesale trade in the market*
- 5. The Purchaser shall not use the common areas such as shopping street, service streets for trading purposes.*
- 6. The Purchaser shall pay the maintenance charges to Market Management Committee without fail on or before 5th of every calendar month.*



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7. Any default in payment of maintenance would lead to recovery proceedings under Revenue recovery Act 1976.”

There is no condition, restriction for the absolute enjoyment by the 3rd Respondent in the sale deed except the above conditions. Further there is no condition for restricting the alteration or conversion.

14. Be that as it may. In the meanwhile one of the parties who was in occupation of the one shop viz., Mr.B. Gnanasekaran filed W.P.Nos.28262 & 29583 of 2013 to quash the allotment order and to remove the seal put in the premises situated at H-88 in the Periyar Vegetable Market. In the meanwhile Corporation has passed a resolution permitting the conversion of the shops. It is relevant to note that even at the time of allotment in the year 22.06.2004 only 9 shops in the godown has been allotted to the petitioner. This fact clearly substantiate the submission of the learned counsel for the respondent that the shops have been sold in “as is where is condition.” Persons who have already occupying the portions have resisted the public auction. Some of them also



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challenged the tender notification. Several suits filed as pleaded in the counter affidavit as against the occupants and their dispossession in executing the decrees of the civil court is not disputed before this court. These facts clearly substantiate the version of the respondent that the shops have already converted even at the time of public auction. Further, at the time of handing over, by letter dated 22.07.2004 only 9 shops were handed over in the godown.

15. This fact further fortified by handing over and taking over report issued by the Corporation available in the typed set, wherein it is clearly mentioned that the godown is taken as is and where is condition and followed by the letter of Corporation dated 22.07.2004 stating that shops are divided into 9 shops which are handed over to the allottee.

16. In the meanwhile the Corporation has considered the representation and resolved that since the most of the godowns allotted at vegetable market KWMC are functioning as the shops for long period of time and resolved to accept the request of the allottee for conversion of the godown No.H-88 at Vegetable Market of KWMC into shops purpose in the wholesale trade of vegetables.



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17. Taking into consideration of various writ petitions and suits filed one by one who are in the shops either evicted or not successful in tender, the Corporation finally considered in this regard in its meeting and resolved to accept the request of the allottee for conversion of the godown to the trade of vegetables business. Challenging the resolution Mr.B.Gnanasekaran who is also in one of the defendant in the suit filed by the 3rd Respondent in O.S.No.13396/2009, filed a Writ Petition No.28262 of 2013. This Court vide order dated 29.01.2015 after considering the writ petitions in W.P.Nos.28262 and 29583 of 2013 in para 11 held as follows:

“11. The facts are pleaded by both the Writ Petitioners and the stand taken by the CMDX has been set out in the preceding paragraphs. The petitioner P.M. Sebastian was allotted godown No.H-88 by allotment order dated 08.04.2003 and he became an allottee on the out right purchase basis pursuant to a notification issued by CMDA dated 21.3.2003. On the date when the godown was sold to the petitioner P.M.Sebastian the godown was occupied by 8 persons and one of the occupants being the petitioner Gnanasekaran. Therefore,



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P.M.Sebastian was not given vacant possession of the godown.

It appears he occupied the 9th partitioned portion of the godown. In the interagam, several writ petitions have been filed and the CMDA has also sealed the godown on the ground that it was used as a place for wholesale trade and not as a godown. An allegation made P.M.Sebastian stating that he has violated several undertakings given before this Court and this is denied by PM.Sabatan stating that he has not violated any of the undertakings rather Gnanasekaran has violated the undertakings. This dispute need not be done into on account of the fact that the CMDA themselves have taken a decision to convert the godown into shops for wholesale trade of vegetables. Thus on and after 13.03.2013 when CMDA passed resolution permitting conversion of godown into shops for wholesale trade the earlier objection raised by the CMDA or by third parties stating that the shop has to be used only godown does not any longer survive. That apart the resolution passed on 13.03.2018 permitting conversion not been challenged and has become final, In fact Gnanasekaran filed W.P.No.10797 of 2013 and withdrew the same with liberty Challege the resolution but did not take any steps to challenge the resolution, But has now come forward with a prayer to cancel the allotment order dated: 08.04.2003. The prayer sought for In



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W.P. No.28262 of 2013 is thoroughly misconceived and not maintainable. The order of allotment has fructified into an absolute sale and a sale deed has been executed in favour of P.M. Sebastian by CMDA on 31.08.2009, registered as document No.2896 of 2009 and thereafter only he has been put in possession. in as is where is condition and subsequently in 2013, on a representation made by PM.Sebastian the authorities have permitted conversion of the godown into shops for the purpose of wholesale trade of vegetables. In such circumstance. There cannot be any challenge to the allotment order dated 08.04.2003. Therefore, the Writ Petition in W.P.No.28262 of 2013, is liable to be dismissed.”

18. During the pendency of the writ petitions it appears that these writ petitions have been filed challenging the resolution passed by the Corporation for conversion of the shops. The various proceedings referred in the W.P.No.28262 of 2013 etc., speaks the manner in which the persons who are in occupation of the shops have filed various litigations some or other to see that lawful right created in favour of the 3rd Respondent is obstructed. In the Writ Petition No.28262 and 29583 of 2013 this Court also clearly recorded the fact that the sale deed has been executed and the purchaser has been put in possession “as is where is condition”.



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19. In W.P.No.29583 of 2013 it was ordered to de-seal the premises. It is relevant to note that the entire de-sealing has been happened before the sale. Not stopping with that, one Senthil Kumar who also claims to be in possession of the one portion of the shop has filed Crl.O.P.No.11761, 11802 of 2015 and 11559, 11506 of 2015, this Court dismissed the Crl.O.Ps with the cost of Rs.25,000/- holding that this Court cannot be a mute spectator and throw its hands up in despair, when possession of a legitimate owner is being naked eye threatened by anti-social elements. Turning a blind eye to such rank aggression would make the judicial process inept and the power of this Court under Section 482 Cr.P.C. and article 226 of the Constitution of India otious. Thereafter, this Court also directed the respondent police to give police protection to the 3rd Respondent herein.

20. The dismissal of the Crl.O.Ps were challenged before the apex Court in SLP (Crl.) Nos.5150-5151 of 2015 and the same were dismissed. After all the proceedings now the impugned resolution for permission to convert the shops has been challenged by the person who was unsuccessful bidder in the public auction and he was also evicted from the premises. In such a view of the matter, this Court is of the view that once the sale deed was executed as absolute sale, even



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the conditions stipulated in the sale do not restrict any conversion etc., now merely on the basis of the allotment order, the writ petitioner cannot complain that the very sale is not valid, under the Tamil Nadu Specified Commodities Markets (Regulation of Location) Act, 1996.

21. The object of the Tamil Nadu Specified Commodities Markets (Regulation of Location) Act, 1996 is only to establish market committees to manage and control different markets established in different market areas for different specified commodities and to provide for matters connected therewith or incidental thereto. Section 4 of the said Act empowers the Government to issue notification declaring the area specified in the notification issued by the local authority to be a market area in respect of such specified commodity.

22. Section 5 deals with the Establishment of market committee. Only restriction in the said Act is Section 25. Wherein the restriction put on the market committee for transferring by way of sale, lease, exchange, mortgage or otherwise any land or building vested in it or acquired by it and situated in the market area, without the consent of the local authority and previous sanction of the



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Government. Except that there is no restriction for sale of the property in favour of the purchaser by Government itself. It is not the case of the petitioner that his property is vested with market committee and they have acquired it by legally. Therefore, the contention of the learned counsel for the petitioner that the allotment is totally against the Tamil Nadu Specified Commodities Markets (Regulation of Location) Act, 1996, is without any basis.

23. Though the learned counsel for the petitioner placed much reliance on the judgment of the Honourable Apex Court, the above judgments are not applicable to the facts of the present case. Those judgments deal with the places earmarked for public purposes and vested with the planning authority. Those judgments deal with reserved area under the development plan. Hence, those judgments are not applicable to the fact of the present case. In the case on hand, the sale deed as referred above is absolute sale. There is no restriction at all. It is to be noted that once transfer is made for valid consideration, there cannot be a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the said condition or limitation absolutely restraining the transferee is *void ab initio* as per Section 10 of



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the Transfer of Property Act.

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24. On perusal of the sale deed executed in favour of the 3rd Respondent this Court is of the definite conclusion that it is nothing but absolute sale without any conditions. In such a view of the matter the petitioner cannot claim any right to undo such sale deed or the resolution passed by the Corporation. The resolution came to be passed taking note of the fact that though the building has been constructed for godown purposes, the same has already converted as shops and put in use. In given case the property itself was sold as is where is condition and at the time of allotment 9 shops were handed over to the 3rd Respondent. In such a view of the matter this Court do not find any merits in these writ petitions. This writ petitions are nothing but abuse of process of law.

25. Accordingly both the writ petition are dismissed. Consequently connected M.P.s are closed. No costs.

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Index : Yes
Neutral Citation : Yes
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copy to:

1. The Chief Executive Officer
Chennai Metropolitan Development Authority
Gandhi Irwin Road, Egmore, Chennai-600 008.
2. The Chief Administrative Officer, Market Management Committee
Koyambedu Wholesale Market Complex
Koyambedu, Chennai.



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N. SATHISH KUMAR, J.
ggs

Common Order in:
W.P.No.2293 of 2014 & M.P.Nos.2 and 3 of 2014 and
W.P.No.27905 of 2015 & M.P.Nos.1 and 2 of 2015

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