



ABSTRACT

Urban Development – Chennai Metropolitan Development Authority – Appeal preferred by Tvl. P. Vasudevan, R. Maran and others, Badrian Street, George Town, Chennai-1 under section 45 of the Tamil Nadu Specified Commodities Markets Act, 1996 against the eviction of wholesale traders by Member-Secretary, Chennai Metropolitan Development Authority – Rejected – Orders – Issued.

HOUSING AND URBAN DEVELOPMENT (UD3-1) DEPARTMENT

G.O.(Ms).No.10

Dated: 06.01.2012

Read:

1. High Court's order dated 27.11.2009 in W.P.No.29809 of 2004 and 12909 of 2009 and WPMP.No.36204 of 2004 and M.P.No.1 of 2009 filed by Chennai Retail Flower Merchants Welfare Association, Badrian Street, Chennai-1.
2. High Court's order dated 12.01.2010 in W.P.Nos.4150, 4153, 4142, 4340, 4915 and 4916 of 2010 filed by Thiru. S. Loganathan, S/o. Subramani and others.
3. High Court's order dated 04.02.2010 in W.P.No.2069 of 2010 and M.P.No.1/2010 filed by Chennai Retail Flower Merchant's Welfare Association, Badrian Street, Chennai.
4. From the Member-Secretary, Chennai Metropolitan Development Authority, Letter No.K1/1194/2004, dated 12.02.2010 and 06.07.2011.
5. From Thiru. P. Vasudevan and 54 others, appeal dated 26.02.2010.
6. From Thiru. R. Maran and others, appeal dated 02.08.2011.
7. From the Member-Secretary, Chennai Metropolitan Development Authority, Letter No.K1/6828/2010, dated 07.09.2010 & 16.09.2011.
8. From the Chennai Koyambedu Malar Motha Viyabarigal Sangam, Koyambedu, Chennai, representation, dated 30.08.2011.
9. Government Letter No.5740/UD3(1)/2010-5, dated 04.10.2011.

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ORDER:-

The Member-Secretary, Chennai Metropolitan Development Authority in his letter 4th read above dated 12.02.2010 has issued eviction notice to the appellants i.e. members of Chennai Retail Flower Merchant's Welfare Association who are wholesale flower traders in Badrian Street, George Town, Chennai after giving an opportunity to them by conducting public hearing as per the orders of

High Court dated 27.11.2009, 1st read above in W.P.No.29809 of 2004 and 12909 of 2009 and WP MP No.36204 of 2004 and M.P. No.1 of 2009 filed by them before the High court of Madras. Against the above eviction notice, Tvl. P. Vasudevan, R. Maran and others have preferred appeals to Government under section 45 of the Tamil Nadu Specified Commodities Markets Act, 1996.

2. In the appeal petition 5th read above, Thiru. P. Vasudevan and 54 others have stated as follows: -

A. The Appellant states that no show cause notice was issued calling upon the appellant to show cause why the appellant should not be classified as wholesale dealer as per the Act.

B. The Appellant states that for classification of appellant as a wholesale dealer the respondents till the impugned order is passed, no basic materials were placed or relied upon to rebut the same by the appellant.

C. The Appellant states that the impugned order further referring to the personal inspection by the officers attached to the 1st as well as 2nd respondents on various dates were behind the back of the appellant, and hence the same is invalid.

D. The Appellant states without giving the copies of the report to the petitioner before passing the impugned order, based on alleged inspection respondent comes to a conclusion that the appellant carrying on business as wholesale, hence the order is bad in law.

E. The Appellant states that the respondents ought to have issued a notice after alleged inspection and also ought to have furnished the copy of the report to the appellant.

F. The Appellant states that the unilateral Act of the respondents and report relied on in the impugned order are the self serving documents. The respondents when classifies the appellant a wholesaler instead of retail seller, the respondents ought to have satisfied the conditions which has been stipulated in the Tamil Nadu Specified Commodities Market Act.

3. In the appeal petition 6th read above Thiru R.Marana and others have stated as follows: -

(i) Thiru. Maran one of the traders in shop No.46-A, Badrian Street, George Town area, Chennai-1 with an extent of 120 sq.ft has represented that he is conducting flower business by purchasing flowers from outside and preparing garlands and bouquets etc. He has represented that it is only retail trade and not wholesale marketing. Hence orders issued by Chennai Metropolitan Development Authority in his letter 4th read above, dated 6.7.11 are not as per law and hence the same may be quashed.

(ii) As per Section 2 (1) Tamil Nadu Specified Commodities (Regulation of Location) Markets Act, 1996, "Wholesale Trade" means sale or purchase of

any specified commodity for purpose other than direct consumption or use by the purchaser, and shall include holding of stocks or warehousing of such specified commodity at any place in the market area (but does not include any sale or purchase by any primary producers or retail traders, as the case may be, if such specified commodity and any such seller, buyer holder of stock or warehouse keepers shall be deemed to be a wholesale trader)".

(iii) The petitioner has contended that he is procuring flowers from outside and is engaged in preparing garlands, decorative name boards etc. in small shops to be used for marriage and other such functions and has hence contended that he is not a wholesale trader and is engaged only in retail business.

(iv) The petitioner has contended that it has been decided that the traders are engaged in wholesale trade without any evidence and proper enquiry / personal hearing by higher authority.

(v) The petitioner has contended that the High Court Orders have not been followed by the Authority and hence the orders dated 6.7.2011 for eviction may be cancelled and have requested the Government to pass suitable orders.

4. In his letter 4th read above, the Member Secretary, Chennai Metropolitan Development Authority has reported as follows with reference to the grounds of the appeal preferred by Thiru. P.Vasudevan and 54 others:-

(i) With reference to the ground of appeal at (A), the contention is not correct, since Chennai Metropolitan Development Authority sent letter No.K1/1194/2004 dated 9.12.09 to the Retail Flower Merchants Association and called for a discussion to express their views and grievances on 31.12.2009 and 18.01.2010 with Chief Executive Officer, Chennai Metropolitan Development Authority and a statement was obtained on 31.12.2008. During that time a list of members of the above said Association was furnished.

(ii) With reference to para (B) of the appeal, survey work was conducted on 11.01.2010 and 12.01.2010. During the survey, it was enumerated and ascertained that totally 138 number of traders are doing wholesale business. Again a joint survey along with the officials of Corporation of Chennai was carried out on 02.02.2010 and 03.02.2010 and confirmed that there are 130 number of wholesale flower traders in Badrian Street.

(iii) The contention of the appellant at para (C) of the appeal is not correct since, survey work was conducted on 11.01.2010 and 12.01.2010 and enumerated that totally 138 number of traders doing wholesale business. Again a joint survey along with the officials of Corporation of Chennai was carried out on 02.02.2010 and 03.02.2010 and confirmed that there are 130 number of wholesale flower traders in Badrian Street.

(iv) The contention of the appellant at para (D) of the appeal is not correct since, survey work was conducted on 11.01.2010 and 12.01.2010 and enumerated that totally 138 number of traders doing wholesale business. Again a joint survey along with the officials of Corporation of Chennai was carried out

on 02.02.2010 and 03.02.2010 and confirmed that there are 130 number of wholesale flower traders in Badrian Street.

(v) The contention of the appellant in para (E) of the appeal is not correct, since, survey work was conducted on 11.01.2010 and 12.01.2010 and enumerated that totally 138 number of traders doing wholesale business. Again a joint survey along with the officials of Corporation of Chennai was carried out on 02.02.2010 and 03.02.2010 and confirmed that there are 130 number of wholesale flower traders in Badrian Street.

(vi) With reference to the ground (F) of the Appeal, the very fact of the individual doing wholesale flower business is arrived out of the joint survey done both by Chennai Metropolitan Development Authority and the Corporation of Chennai officials as on ground which is as per law.

5. The Member-Secretary , Chennai Metropolitan Development Authority has reported as follows with reference to the grounds of appeal preferred by Tr.R.Maran and others: -

(i) The contention of the petitioner is not correct. Based on the Court Order dated 27.11.2009, officials from Chennai Metropolitan Development Authority and Corporation had inspected the Badrian Street and had ascertained that there were 130 traders doing wholesale flower business. Eviction notices were issued to all the 130 traders in Badrian Street, George Town area to discontinue their wholesale flower business with effect from 11.06.2010. Subsequently, High Court in its order dated 12.01.2011 in W.P.No.4150/10, 4153/10, 4142/10, 4340/10, 4915/10 & 4916/10 have directed Chennai Metropolitan Development Authority to provide one more opportunity to all the traders to file their contentions. Accordingly, traders were called for personal hearing in batches to file their contentions. Out of 130 traders, 54 traders have attended the personal hearing and have given their contentions in writing and these petitions have been examined and final orders were passed in Lr.No.K1/1194/04, dated 06.07.2011.

(ii) The contention of the petitioner is not correct since it has been observed that the individual is not purchasing flowers from Koyambedu Wholesale Market Complex, instead he is procuring from other places and transporting the flowers by train, bus, mini vans etc. to Badrian Street, George Town area.

(iii) The contention of the petitioner is not acceptable. During inspection of Chennai Metropolitan Development Authority and Chennai Corporation officials, it has been clearly ascertained that the 130 traders in Badrian Street are engaged in wholesale flower business and are storing flowers in godowns and hence they cannot be treated as retail traders.

(iv) The contention of the petitioner is not acceptable. Chennai Metropolitan Development Authority and Corporation of Chennai officials had inspected Badrian Street and ascertained that 130 traders are engaged in wholesale flower business. As per the court order dated 12.01.11 in WP No.4150, 4153, 4142, 4340, 4915/2010 and 4916/2010 reasonable opportunity

was given to the traders. Accordingly, notice was issued to all the 130 traders, and enquiry was conducted in batches. Out of 130 traders, only 54 traders have attended the personal hearing and have filed their contentions in writing.

(v) The contention of the petitioner is not correct. The Hon'ble High Court in its order dated 07.07.2011 in W.A.No.693 of 2011 of M.P.No.1 of 2011 has stated that the order passed by the Chennai Metropolitan Development Authority letter dated 06.07.2011 holds good and it has also been observed that the said individual order passed by the Chennai Metropolitan Development Authority is in accordance with the directions given by the learned Single Judge and hence the writ appeal has been closed. As per the court orders, necessary action is being initiated to evict the wholesale flower traders in Badrian Street, George Town area.

6. Based on the instruction issued during the meeting conducted by the Secretary to Government, Housing and Urban Development Department, on 07.10.2011 at 5.00 P.M, the Member-Secretary, Chennai Metropolitan Development Authority has sent the status report on Wholesale trade in flower goods in Badrian Street, Chennai George Town area and action taken under the Tamil Nadu Specified Commodities Markets (Regulation of Location) Act, 1996. He has stated as follows: -

- i. The Chennai (Koyambedu) Pushpa Vyabarigal & Commissioner Agent Sangam represented by its President, Thiru. T.M. Gnanam filed a Writ Petition No.26053/2004 to stop the wholesale trades in perishable goods (flower) in Chennai Metropolitan Area except in Koyambedu Wholesale Market Complex (KWMC).
- ii. In the above Writ petition, the Hon'ble High Court issued orders directing the Chennai Metropolitan Development Authority to consider the representation dated 03.03.2004 after issuing notice to the affected parties and dispose off the same within a period of 2 months from the date of receipt of a copy of this order". In compliance of the High Court order, the Chennai Metropolitan Development Authority passed the order and intimated the flower merchants in Badrian Street to stop the wholesale trade in flowers in George Town area as per the Court Order in Letter No.K1/1194/2004, dated 07.10.2004.
- iii. Meantime, the Chennai Retail Flower Merchants Association represented by its President filed a WMP No.36204 of 2004 in W.P.No.29809 of 2004. The Hon'ble High Court in its order dated 14.10.2004 granted interim stay. Hence respondents (i.e.) Chief Administrative Officer/Market Management Committee, Chennai Metropolitan Development Authority and Corporation of Chennai were unable to take action against the Flower merchants in Badrian Street.
- iv. Further, one Thiru. M.D. Arul Viswasam, President, Chennai Koyambedu Malar Motha Vyabarigal Sangam has filed a court case in W.P.No.12909 of 2009 to stop the wholesale flower business in Badrian Street.
- v. After subsequent hearings, the Hon'ble High Court vide W.P. Nos.29809 of 2004 and 12909 of 2009 and W.P.M.P. No. 36204 of 2004 and M.P.No.1 of 2009 in its

order dated 27.11.2009 directed the respondents i.e. Chennai Metropolitan Development Authority and Corporation of Chennai as follows: "the notice will be given to Chennai Retail Flower Merchants Welfare Association with Registration No.134/2000 represented by its President at No.29, Badrian Street within one week from the date of receipt of the copy of this order. The said Association will inturn inform all its members as well as furnish a list of members with addresses to Chennai Metropolitan Development Authority. The Chennai Metropolitan Development Authority on fixing the date for an enquiry, shall give an opportunity to those persons either individually or to a nominee of the Association. After hearing them, it can pass an appropriate order. This exercise should be undertaken within one month from the date of receipt of this order. Till such time, Chennai Metropolitan Development Authority passes an order, status-quo as on date shall continue. However, Chennai Metropolitan Development Authority is entitled to utilise the service of the Corporation of Chennai for the purpose of conducting an enquiry including identifying persons and serving notice to the respective parties. The Chennai Metropolitan Development Authority can also cause a public notice in newspapers so that no other person can come and claim that he had not been given any notice. Such publication in a prominent newspaper will be considered as supplement notice."

- vi. In compliance of the above said court orders, an inquiry was conducted by the Chief Executive Officer, Chennai Metropolitan Development Authority on 31.12.2009. The members of the Chennai Retail Flower Merchants Association and Chennai Koyambedu Malar Motha Vyabarigal Sangam attended the inquiry separately.
- vii. The Retail Flower Traders Welfare Association in Badrian Street requested time upto 20.01.2010 to furnish the list of members along with addresses of members association. Subsequently on 18.01.2010 another inquiry was conducted and heard their views and grievances, but as promised by the office bearers of Traders Association, they had not provided the entire list of members and their addresses with shops numbers, in the presence of District Revenue Officer (Land & Estate), Corporation of Chennai and Chief Administrative Officer Market Management Committee.
- viii. In order to comply with the orders of the Hon'ble High Court, a survey for assessing the wholesale flower trade in Badrian Street was conducted with a prescribed questionnaire on 11.01.2010 and 12.01.2010. It was ascertained that totally 138 Nos. of traders were doing wholesale flower business in Badrian Street, George Town Area and they need to be evicted as per the orders of Hon'ble High Court and as per the Tamil Nadu Specified Commodities Markets (Regulation of Location) Act, 1996. In addition, a joint survey was carried out along with the Corporation of Chennai on 02.02.2010 and 03.02.2010 and confirmed that there were 130 traders involved in wholesale flower business in Badrian Street, George Town area as per the definition/provision of the Act.
- ix. In compliance of the Hon'ble Court orders dated 27.11.2009, out of 130 traders identified, 128 of them were served with notice in person and acknowledgements were obtained from them. Two of them, in the meantime had shifted to Koyambedu Wholesale Market Complex for carrying out their business, as informed by the neighbouring co-traders.

- x. Further, as directed by the Hon'ble Court, a Public Notice was published on 17.02.2010 in leading dailies (two in Tamil – Dinamalar & Dinathanthi and one in English – The Hindu) indicating that those who were carrying out the wholesale flower business in the Badrian Street, George Town area should stop the wholesale flower business activities from 01.03.2010 onwards and violation of this notification will lead to seizure of flowers brought for the trade as well as other materials used for their business and also diverting the vehicles carrying on the flower goods without giving any further notice. Subsequently to the Public notice, a Writ petition was filed but the same was dismissed in the admission stage itself. In the meanwhile, Chennai Retail Flower Merchants Association filed W.P.No.2069/2010, dated 4.2.2010 wherein it was ordered that the Writ Petition stands closed as no further orders to be required in the present writ petition.
- xi. Further, one Thiru. Sasikumar filed Writ Petition No.3996/2010 against the issuance of notice and the same was also dismissed by the Court on 03.03.2010.
- xii. Further, W.P. No.4141, 4143, 4151, 4152 of 2010 filed by Thiru. S. Madhu and 3 others, the Hon'ble Court directed the petitioner to appear before the Chennai Metropolitan Development Authority in person on 10.03.2010 to redress their grievances. If there is any difficulty in hearing, the Chennai Metropolitan Development Authority shall intimate further date of hearing to the petitioners.
- xiii. Accordingly, hearing was conducted on 10.03.2010 and 18.03.2010. The petitioners furnished certain evidences as proof of primary producers. The same was scrutinised and reply was sent individually on 19.05.2010 stating that the proofs furnished by the petitioners were not sufficient as to prove themselves as primary producers.
- xiv. On 09.06.2010 and 10.06.2010, hand bills were distributed and public notice boards were displayed on the prominent locations cautioning the wholesale flower traders in Badrian Street not to carry out wholesale business in that area and if found, the flowers would be seized and the shops premises would be sealed without any further notice.
- xv. On 12.06.2010 eviction operation was carried out by Chennai Metropolitan Development Authority with the assistance of Corporation officials, Police department and sealed two shops and confiscated the flowers, meant for wholesale business.
- xvi. Further the Hon'ble High Court in order dated 16.11.2010 in W.P. No.4340, 4915, 4916/2010 in M.P.No.1 to 1/2010 filed by Chennai Retail Flower Merchant Welfare Association had given direction to furnish list of flower merchants in Badrian Street. Based on the court order, Chennai Metropolitan Development Authority officials and Corporation officials inspected the Badrian Street and ascertained that there were 130 traders doing flower business in Badrian Street, George Town Area.
- xvii. The Hon'ble High Court of Chennai in its order dated 12.01.2011 in W.P.No.4150/10, 4153/10, 4142/10, 4340/10, 4915/10 and 4916/10 directed

CMDA to take steps to hold an enquiry by giving notice to all the members and passed orders in accordance with law.

- xviii. In compliance of the Court order, a public notice dated 09.05.2011 was served on all the traders on 11.05.2011 and individual notice vide letter No.K1/1194/2004 dated 05.05.2011 was sent to all the traders by RPAD requesting them to appear for personal hearing before the Chief Executive Officer, Chennai Metropolitan Development Authority starting from 16.05.2011 at 11.30 A.M.
- xix. Further, personal hearing was held in batches on 18.05.2011, 20.05.2011, 25.05.2011, 30.05.2011, 03.06.2011, 06.06.2011, 10.06.2011, 13.06.2011 and 15.06.2011 respectively.
- xx. 53 traders attended the personal hearing and gave their contentions in writing stating that they were doing retail business and requested Chennai Metropolitan Development Authority not to vacate them from Badrian Street, George Town and permit them to continue their retail business. The remaining traders did not attend the personal hearing and hence it was presumed that they had no objection/remarks in this regard. A status report was filed in the Court on 06.07.2011.
- xxi. The contentions of the traders had been examined and it was concluded that the traders were doing wholesale business in the Badrian street. Further it was observed the individuals were not purchasing flower from Koyambedu Wholesale Market Complex, Instead they were procuring from other places and transporting the flowers by train, bus, mini vans etc. to Badrian Street, George Town area.
- xxii. In W.A.No.693 of 2011 and M.P.No.1 of 2011 dated 07.07.2011 filed by Koyambedu Malar Motha Viyabarigal Sangam, the Hon'ble High Court issued orders that "A detailed order was passed on 06.07.2011 after issuing individual notices. In view of the said individual order passed by the respondents in accordance with the directions given by the learned Single Judge, the above writ appeal is closed. In view of the order passed by the respondents, we hope that the respondents will strictly follow the order in the interest of the public. We are satisfied that the respondents have totally complied with the directions given by the learned Single Judge, while quashing the order passed by the respondents impugned in the writ petition. Consequently, the connected M.P. is closed".

7. The Government after careful examination of the appeals and the report of Member-Secretary, Chennai Metropolitan Development Authority on the public hearing made with the appellants have decided to reject the appeals preferred by the appellants Tvl. P. Vasudevan, R. Maran and others. Accordingly, the Government reject the appeals preferred by Tvl. P. Vasudevan, R. Maran and others under section 45 of the Tamil Nadu Specified Commodities Markets (Regulation of Location) Act, 1996 against the eviction order of Chennai Metropolitan Development Authority dated 12.02.2010 banning wholesale trade in flower goods at George Town area, Chennai-1.

8. The Government instruct the Member-Secretary, Chennai Metropolitan Development Authority to take further action along with Chennai Corporation and Police Department for eviction of wholesale flower traders at Badrian Street, George Town, Chennai-1.

(By Order of the Governor)

**K. PHANINDRA REDDY,
SECRETARY TO GOVERNMENT.**

To

Tr. P. Vasudevan, Tr. R. Maran and 54 others, Badrian Street, George Town, Chennai-1.
The Member-Secretary, Chennai Metropolitan Development Authority, Chennai-8.
The Commissioner of Chennai Corporation, Chennai.
The Commissioner of Police, Chennai-8.

Copy to:-

The P.S to Secretary to Government, Housing and Urban Development Department,
Chennai-9.
The Sr. P.A to Minister, Housing and Urban Development Department, Chennai-9.
SF/SC.

//Forwarded / By Order//

SECTION OFFICER.