
(2014) 11 MAD CK 0206

In the Madras High Court

Case No : W.A. (MD) No. 526 of 2014, M.P. (MD) Nos. 1 and 2 of 2014

P. Sekar

APPELLANT

Vs

Nagalakshmi

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Citation : (2014) 11 MAD CK 0206

Hon'ble Judges : V.M. Velumani, J;V. Dhanapalan, J

Bench : Division Bench

Judgement

V. Dhanapalan, J.

1. Heard Mr.K.Mahendran, learned Counsel appearing on behalf of Mr.K.K.Senthil, learned Counsel for the appellant, Mr.K.Seemaraj, learned Counsel for the first respondent and Mr.J.Gunaseelan Muthiah, learned Government Advocate for the second respondent Corporation.

2. This writ appeal is directed as against the order of the learned single Judge dated 28.11.2013 passed in W.P(MD)No. 15922 of 2013.

3. For the sake of convenience, the parties are referred to according to their litigative status before the writ Court.

4. The facts leading to the filing of this writ appeal are set out thus:

4.1. The writ petitioner was allotted the shop No. 279 in the New Central Market at Mattuthavani, by the first respondent Corporation and she has been running the vegetable business therein. Meanwhile, the first respondent has allotted a shop in the pathway in favour of the second respondent, which caused hindrance to the public as well as to the other shop owners to load and unload the vegetables. Hence, the writ petitioner has come before the Writ Court challenging the allotment order passed by the first respondent Corporation in favour of the second respondent.

4.2. Whereas it is the case of the second respondent that the writ petitioner has been allotted a shop which was already enjoyed by the second respondent and that the first respondent Corporation allotted a shop adjacent to the shop allotted to the writ petitioner and that the writ petitioner filed the writ petition on the ground that the second respondent was allotted a shop in the pathway. Further, the second respondent contended that when the shop allotted to him, is not a pathway, the grievance put forth by the writ petitioner would not be entertained.

4.3. Upon consideration of the rival contentions and after looking into the materials available on record, the learned single Judge quashed the impugned order of allotment passed in favour of the second respondent vide proceedings dated 27.08.2013 and further observed that the first respondent Corporation shall consider any alternative place for the second respondent for running a shop.

4.4. Aggrieved by the order of the learned single Judge in quashing the order of allotment dated 27.08.2013, the second respondent is before this Court with the present writ appeal.

5. Mr.K.Mahendran, learned Counsel appearing for the appellant/second respondent has vehemently contended that the first respondent/writ petitioner who is an influential person having so many businesses, has come to this Court with an unclean hands and challenged the order of allotment given in favour of the appellant/second respondent without any cause, but, with an mala fide intention and ulterior motive to deprive his right of livelihood.

6. He also pointed out that there are certain shops similar to that of the appellant/second respondent in the market adjacent to the allotted shops in a projected position and that they are allowed to continue and that the learned single Judge has not appreciated the said position while quashing the allotment order issued in favour of the appellant/second respondent. Further, he submitted that the appellant/second respondent alone has been taken to task because of the instigation and influence made by the first respondent/writ petitioner.

7. Resisting the said submissions, Mr.K.Seemaraj, learned Counsel for the first respondent/writ petitioner submitted that the shop allotted to the appellant/second respondent adjacent to the shop No. 279, is only meant for the movement of the public and if any allotment is made in the said place, there will be a hindrance to the users of the vegetable market and therefore, there cannot be any allotment of shops in the pathway. It is further submitted that the learned single Judge had considered all these aspects and found that the allotment of shops in the pathway will have a serious repercussions and it would definitely cause hindrance to the public and quashed the impugned order of allotment made in favour of the appellant/second respondent, while directing the second respondent Corporation to give sympathetic consideration to the request of the appellant/second respondent for an alternative place.

8. Whereas Mr.J.Gunaseelan Muthiah, learned Government Advocate for the second respondent Corporation submitted that it is not a shop to be allotted,

however, there was an allotment of shop in that area in an earlier occasion and therefore, the second respondent Corporation has taken a view to allot the said place for occupation of the persons, like the appellant/second respondent and that cannot be found fault with.

9. Further, he placed reliance upon the copy of the proceedings of the second respondent Corporation in Ma.Va4/023177/14 dated 03.11.2014, wherein it has been informed and reiterated that as on date, there is no vacant shop available in the market, however, as and when there is a construction of new shops, the appellant/second respondent will be allotted with a shop. The said proceedings of the second respondent Corporation is placed on record.

10. We have considered the rival submissions and perused the materials available on record, in the form of typed set of papers.

11. It is not in dispute that the appellant/second respondent was allotted with a shop in the old market on 23.06.1993 vide proceedings in V2/49067/03 and he has been put in possession of the said shop. However, by virtue of the proceedings of the second respondent Corporation dated 06.05.2010, the appellant/second respondent has been given a place in the New Central Vegetable Market at Mattuthavani and directed to pay the deposit amount, pursuant to which, he has paid the deposit amount of Rs. 60,000/- (Rupees Sixty Thousand only) through a Demand Draft in D.D.No. 000146, drawn in ICICI Bank, Madurai Munichalai Branch, on 28.05.2010 in favour of the second respondent Corporation and the same has been accepted and acknowledged by the second respondent Corporation. Meanwhile, the allotment order dated Nil.08.2010 in Ma.Va.3/28381/2009 was given to the shop No. 279 in the said vegetable market in favour of the first respondent/writ petitioner and she has also occupied the same. Thereafter, the appellant/second respondent made a request on 18.07.2013, based on which, he has been allotted with a place adjacent to the shop No. 279 as a temporary one for selling the vegetables with certain conditions. The same has been challenged by the first respondent as though there is a hindrance in the pathway.

12. The learned single Judge after analysing the position that the place allotted to the appellant/second respondent is meant for the public pathway, quashed the order of allotment made in his favour, but directed the second respondent Corporation to consider the request of the appellant/second respondent for alternative place sympathetically.

13. No doubt, the market in question has been constructed only for the public purpose and the shops are allotted to the vendors in accordance with the terms and conditions of the second respondent Corporation. Moreover, the places in and around the shops should be maintained as a public place in accordance with the Plan for movement of the vehicles as well as the public. But, knowing well that there was an allotment in favour of the appellant/second respondent in the year 1993 itself and also there has been a continuous request, the second respondent

Corporation allotted the shop No. 279 to the first respondent/writ petitioner based on her request. Therefore, the request of the appellant/second respondent has not yielded any result, however, the second respondent Corporation has decided to allot the vacant space adjacent to shop No. 279 in his favour vide proceedings in Ma.Va4/023177/13, dated 27.08.2013. Challenging the said allotment made in favour of the appellant/second respondent, the first respondent/writ petitioner filed the writ petition before the Writ Court.

14. The Writ Court has taken into consideration all the factual position as to the location of the shop in question which is meant for the pathway, which cannot be allotted for running a shop and accordingly, quashed the allotment order.

15. It is unfortunate to point out as to how the place in question was allotted to the appellant/second respondent and similarly, the other shop owners have been in occupation of the places adjacent to the shops, as evidenced from the photographs produced before this Court.

16. It could be seen that the appellant/second respondent who has been in occupation of the shop from the year 1993, has not been allotted any shop in the market and his request has yielded some consideration and thereby, the shop in question has been allotted in his favour.

17. In such circumstances, we find that there is no infirmity or illegality in the order passed by the Writ Court in quashing the order of allotment in favour of the appellant/second respondent and directing the second respondent Corporation to provide any alternative place to the appellant/second respondent. At the same time, it could be a factor that a person who has been in the business of vegetable market since 1993, could be given allotment, however, as revealed from the pleadings, the first respondent/writ petitioner was given allotment of the shop No. 279, when there has been a consistent request on the part of the appellant/second respondent all along with the authorities concerned.

18. Therefore, in our considered opinion, there are certain issues regarding the allotments of shops to be considered and any decision thereon could be visualised by the authorities concerned on due adherence to the allotment Rules. We find that the learned single Judge taking into account the livelihood of the appellant/second respondent, directed the authorities concerned to consider the request for alternative place, which in our opinion, needs to have a special attention by the authorities of the second respondent Corporation.

19. Considering the undertaking given by the second respondent, the Commissioner of Madurai Corporation, vide his letter dated 03.11.2014, we hope that the second respondent will take very effective steps to provide alternative place to the appellant/second respondent at the earliest, in order to give him the livelihood.

20. With that expectation, we dispose of this writ appeal. Consequently, the connected miscellaneous petitions are closed. No costs.