

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WA.No. 1508 of 2015 () IN WP(C).33114/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 33114/2014

APPELLANT/ADDITIONAL 5TH RESPONDENT:

PROJECT ENGINEER,
KERALA ROAD FUND BOARD, T.C.4/1654, MAYOORAM
NO.7, BELHAVEN GARDENS, KOWDIAR
THIRUVANANTHAPURAM-695003.

BY ADV. SRI.ZAKIR HUSSAIN, SC, KERALA ROAD FUND

RESPONDENTS/PETITIONER/RESPONDENTS 1 TO 4:

1. THANKAPPAN,, AGED 60 YEARS
S/O.KILIYAN, POONTHOPPIL HOUSE, MADATHUVILA LANE
MEDICAL COLLEGE.P.O, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
TRIVANDRUM-691001.

3. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT, SECRETARIAT
TRIVANDRUM-691001.

4. THE TAHSILDAR,
TRIVANDRUM TALUK, TRIVANDRUM FORT, TRIVANDRUM-695023.

W.A.No.1508 of 2015 IN WP(C)NO.33114/2014

5. THE TRIVANDRUM CORPORATION,
TRIVANDRUM-695033, REPRESENTED BY ITS SECRETARY.

R5 BY ADV. SRI.N.NANDAKUMARA MENON (SR.)
R5 BY ADV. SRI.P.K.MANOJKUMAR,SC,TVPM CORPORATION
R1 BY ADV. SRI.DINESH R.SHENOY
R1 BY ADV. SMT.K.K.JYOTHILAKSHMY
R1 BY ADV. SRI.SANIL JOSE
R2, 3, 4 BY SPECIAL GOVERNMENT PLEADER SMT. GIRIJA GOPAL
R BY SRI.PHILIP J.VETTICKATTU

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 05.10.2015
ALONG WITH W.P(C)NO.23374 OF 2015 THE COURT ON 16.10.2015
DELIVERED THE FOLLOWING:

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

=====

W.A. No.1508 of 2015

&

W.P(C) No.23374 of 2015

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Dated this the 16th day of October, 2015

J U D G M E N T

Ashok Bhushan, C.J.

Writ Appeal No.1508 of 2015 has been filed against the judgment dated 15.03.2015 in W.P(C) No.33114 of 2014 filed by the first respondent to this Writ Appeal by which judgment the Writ Petition has been allowed directing the respondents to the Writ Petition not to evict or prevent the first respondent from continuing the street vending business at the spot without resorting to the procedure contemplated under the Street Vendors (Protection of livelihood and Regulation of Street Vending) Act, 2014 or the scheme provided under Ext.P9 Government Policy. W.P(C) No.23374 of 2015 has been filed as a Public Interest Litigation praying for a direction to respondents to ensure that the bunk shop owned

by the 7th respondent to the Writ Petition (petitioner in W.P(C) No.33114 of 2014) from functioning at its present location in order to facilitate construction of a bus-bay in that place. Parties shall be referred to as described in the W.P(C) No.33114 of 2014.

2. Facts giving rise to the Writ Appeal are: Writ Petitioner, Thankappan claims to be engaged in street vending on the western side of Ulloor-Medical College road at the Medical College Junction. Petitioner is carrying on the business in a bunk fitted on wheels. Petitioner claims to be selling only vegetables through the said bunk. Petitioner submitted an application for registration of his bunk before the Thiruvananthapuram Corporation on 30.01.2014. Petitioner's case in the Writ Petition is that respondent Nos.1 to 3 came to the bunk of the petitioner and asked him to remove the bunk. Petitioner submitted representation to the 1st respondent praying that his bunk be not removed. Petitioner claims that removal of his bunk is violative of the provisions of the Street Vendors (Protection of livelihood and Regulation of Street Vending) Act, 2014 (hereinafter referred

to as “the 2014 Act”).

3. The Project Engineer, Kerala Road Fund Board, who got impleaded in the Writ Petition as additional 5th respondent filed a counter affidavit pleading that the Medical College-Ulloor road is one of the roads selected for widening. In the counter affidavit it was stated that the spot where the bunk is presently stationed by the petitioner is required for road widening and construction of bus-bay. It was also pleaded that under the Kerala Highway Protection Act, 1999 (for short, “the 1999 Act”), the Project Engineer, Kerala Road Fund Board has been declared as the State Highway Authority and entitled to remove any unauthorised construction, portion of the land in which petitioner's bunk is stationed originally belonged to the Kerala Health Research and Welfare Society and it has been transferred to the Kerala Road Fund Board for the construction of the bus-bay as per detailed project report.

4. A statement was also filed by the Thiruvananthapuram Corporation, 4th respondent stating that the Corporation has not granted any permission to the

petitioner to carry on any business. The place where the pushcart is placed is a no parking area and there is very heavy traffic congestion due to the situation of the Medical College Hospital. The bunk belonging to the petitioner is causing obstruction to the construction work now carried on by the Kerala Road Fund Board.

5. The learned Single Judge vide judgment dated 05.03.2015 held that petitioner has right under the 2014 Act to carry on business at the spot where he is carrying on the business as on date. It was further held by the learned Single Judge that as per the provisions of the 2014 Act, provisions of the 1999 Act cannot be relied by the 5th respondent. Learned Single Judge although held that eviction of the petitioner is intended for widening of the road, it was held that eviction cannot be justified in violation of the rights conferred under the 2014 Act.

6. The Project Engineer, Kerala Road Fund Board, the 5th respondent, aggrieved by the said judgment, has filed the Writ Appeal.

7. W.P(C) No.23374 of 2015 has been filed as a

Public Interest Litigation seeking a direction to reallocate the bunk owned and run by Thankappan (7th respondent in the Writ Petition) from its present place. Case of the petitioner is that he is a permanent resident of Medical College Junction, Thiruvananthapuram. A bus-bay is proposed to be constructed at the Medical College-Ulloor Road which construction has come to a stand-still solely on account of the bunk owned and run by the 7th respondent in an illegal fashion. Petitioner claims to have caused notice to the Kerala Road Fund Board demanding that it shall take immediate steps to remove the bunk run by the 7th respondent. Reference of W.P(C) No.33114 of 2014 and the judgment dated 05.03.2015 obtained in the said Writ Petition were made in the Public Interest Litigation. Petitioner prays for a direction to the respondents to ensure that the bunk owned by the 7th respondent be stopped from functioning at its present location to facilitate construction of the bus-bay in that road.

8. The Public Interest Litigation having raised the same issue as involved in the Writ Appeal, both were heard

together.

9. Learned counsel for the appellant in support of the Writ Appeal submitted that the petitioner (Thankappan) has no jurisdiction or authority to carry on business from the bunk which area is earmarked for construction of bus-bay on the Medical College junction. It is submitted that the land on which the bunk is existing earlier belonged to the Kerala Health Research and Welfare Society which has been transferred to the Kerala Road Fund Board for construction of the bus-bay as per detailed project report. The State has accorded sanction to acquire 46.95 acres of land in the Thiruvananthapuram Taluk to undertake widening of roads by making the Thiruvananthapuram Development Authority as Nodal Agency. The project is being implemented by the Kerala Road Fund Board which has been declared as the State Authority. It is submitted that petitioner is an encroacher of the land which is earmarked for construction of the bus-bay. Learned Single Judge committed error in allowing the Writ Petition holding that petitioner has right to carry on business in accordance with the 2014 Act. Learned

Single Judge also committed error in holding that the 2014 Act overrides the provisions of the 1999 Act which empowers the Highway Authority to remove the encroachments from the State Highway. In fact the bunk has come up after the start of the work of widening roads and construction of bus-bay is not possible on account of the construction of the bunk by the petitioner. It is submitted that petitioner has not obtained any licence from the Corporation and he is not protected by the 2014 Act. Learned counsel for the appellant submitted that the issues in the Writ Appeal are covered by the Division Bench judgment of this Court in **Cherian Philip v. N.H. Authority of India** (2015 [3] KLT 723).

10. Learned counsel for the petitioner (Thankappan) refuting the submissions of the learned counsel for the appellant contended that the petitioner is a street vendor within the meaning of the 2014 Act and petitioner has right to carry on business at the spot where he is carrying on business. It is submitted that petitioner cannot be evicted under Section 3(3) of the 2014 Act which provision provided

protection of street vendors. It is submitted that the State Highway Authority cannot invoke the provisions of the 1999 Act. Learned counsel submitted that the Division Bench judgment in **Cherian Philip v. N.H. Authority of India** (supra) is not applicable to the facts of the present case. It is submitted that the Division Bench did not consider the effect of Section 1(4) of the 2014 Act as per which the 2014 Act is applicable to all lands except land, premises and trains owned and controlled by the Railways under the Railway Act, 1989, hence the land belonging to the National Highway is also included where the 2014 Act is applicable. Learned counsel submitted that Section 1(4) makes it clear that the Act is applicable to all lands including all the lands belonging to State Highways and National Highways. It is submitted that existence of the bunk does not obstruct the bus-bay or traffic.

11. Learned counsel in support of the Public Interest Litigation contended that the 7th respondent (Thankappan) is not even a street vendor as per the provisions of Section 4 (1) proviso since the petitioner (Thankappan) does not have

any kind of permission from the Thiruvananthapuram Corporation and petitioner cannot be deemed to be a street vendor so as to claim protection under the 2014 Act. The 7th respondent (Thankappan) is causing great prejudice to the public interest which lies in construction of the bus-bay and road widening at the Medical College Junction. Medical College junction being congested area where several hospitals situate, widening of the road and construction of bus-bay is in public interest and in view of the greater public interest, bunk of the 7th respondent has to be removed. The 7th respondent cannot claim to carry on business at a particular spot as is contended in the present case.

12. We have considered the submissions of learned counsel for the parties and perused records. From the submissions of the learned counsel for the parties and the pleadings on record, the following are the issues which arose for consideration.

(i) Whether the petitioner (Thankappan) who claims to be street vendor under the 2014 Act has right to carry on his business at the spot where he is carrying on the business and the respondents to the Writ Petition

has no authority or jurisdiction to direct removal/eviction of the bunk for construction of bus-bay?

(ii). Whether by virtue of Section 33 of the 2014 Act, provisions of the 1999 Act shall be overridden and the State Highway Authority under the 1999 Act cannot exercise jurisdiction to direct removal of the bunk from the present spot?

(ii) Whether petitioner can claim right to carry on his business on the State Highway”.

All the issues being interconnected are taken together.

13. From the pleadings detailed on record, it is clear that the petitioner is carrying on a business on the western side of the Ulloor-Medical College road. Although the petitioner claims that he is carrying on the business on a road puramboke, there is a clear pleading on behalf of the respondents to indicate that the land on which the petitioner has stationed his bunk originally belonged to the Kerala Health Research and Welfare Society which land stand transferred to the Kerala Road Fund Board for construction of a bus-bay as per the detailed project report, i.e., Thiruvananthapuram City Road Improvement Project. The Kerala Road Fund Board has been declared the State

Highway by the State Government vide order dated 22.08.2003 as pleaded by the Kerala Road Fund Board. The land beneath the bunk of petitioner is required for construction of a bus-bay. Petitioner claims right to carry on street vending under the 2014 Act. The 2014 Act has been enacted to protect the rights of urban street vendors and to regulate street vending activities and for matters connected therewith or incidental thereto.

14. Section 2(k) defines “stationary vendors”, Section 2(l) defines “street vendor” and Section 2(n) defines “vending zone”. Chapter II deals with regulation of street vending. Sections 3 and 4 which are relevant are quoted below:

“3. (1) The Town Vending Committee shall, within such period and in such manner as may be specified in the scheme, conduct a survey of all existing street vendors, within the area under its jurisdiction, and subsequent survey shall be carried out at least once in every five years.

(2) The Town Vending Committee shall ensure that all existing street vendors, identified in the survey, are accommodated in the vending zones subject to a norm conforming to two and half per cent. of the population of the ward or zone or town or city, as the case may be, in accordance with the plan for street vending

and the holding capacity of the vending zones.

(3) No street vendor shall be evicted or, as the case may be, relocated till the survey specified under sub-section (1) has been completed and the certificate of vending is issued to all street vendors.

4. (1) Every street vendor, identified under the survey carried out under sub-section (1) of section 3, who has completed the age of fourteen years or such age as may be prescribed by the appropriate Government, shall be issued a certificate of vending by the Town Vending Committee, subject to such terms and conditions and within the period specified in the scheme including the restrictions specified in the plan for street vending:

Provided that a person, whether or not included under the survey under sub-section (1) of section 3, who has been issued a certificate of vending before the commencement of this Act, whether known as licence or any other form of permission (whether as a stationary vendor or a mobile vendor or under any other category) shall be deemed to be a street vendor for that category for the period for which he has been issued such certificate of vending.

(2) Where, in the intervening period between two surveys, any person seeks to vend, the Town Vending Committee may grant a certificate of vending to such person, subject to the scheme, the plan for street vending and the holding capacity of the vending zones.

(3) Where the number of street vendors identified under sub-section (1) or the number of persons seeking to vend under sub-section (2) are more than the holding capacity of the vending zone and exceeds the number of persons to be accommodated in that vending zone, the Town Vending Committee shall carry out a draw of lots for issuing the certificate of vending for that vending

zone and the remaining persons shall be accommodated in any adjoining vending zone to avoid relocation.

Chapter IV deals with relocation and eviction of street vendors. Chapter VII deals with Town Vending Committee. Section 22(2) provides for composition of Town Vending Committee. Section 33 provides that “provisions of this Act shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force...”. Section 33 is quoted below:

“33. The provisions of this Act shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

15. A Division Bench of this Court in **Cherian Philip v. N.H. Authority of India** (supra) had occasion to consider the provisions of the 2014 Act in the context of National Highways Authority of India Act, 1988 and Control of National Highways (Land and Traffic) Act, 2002. The Division Bench after considering the provisions in detail came to the conclusion that rights of street vending cannot be claimed on National Highways and the National Highways

Authority have power under the 2002 Act for prevention of occupation of Highways and removal of unauthorised occupation. It was further held that definition of street vendor does not indicate that right of street vending was contemplated on the National Highways also. The Division Bench further held that there is nothing inconsistent in Section 33 of the 2014 Act as well as the 2002 Act. It is useful to quote paragraphs 15 to 20:

“15. The Scheme of the 2014 Act as is delineated by the different provisions quoted above indicate that in the definition of local authority defined under Section 2(c), National Highways Authority cannot be included. The definition is not inclusive definition but an exclusive definition which begins with the words 'local authority means...' The Town Vending Committee is to be constituted in each local authority. Thus the area of jurisdiction of the Town Vending Committee where right to the street vendors are to be given are areas which are within the jurisdiction of the local authority.

16. At the time of enactment of the 2014 Act, the Parliament was well aware of the earlier enactments pertaining to National Highways as noted above. Had the Parliament intended to give right of street vending on the National Highways, the 2014 Act ought to have given any indication or included National Highways Authority also. The definition of street vendors as given in Section 2(l) also indicate that street vendor has been defined in reference to a street, lane, side walk, footpath,

pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to place..... There is no indication that the definition included a street vendor even also on highway.

17. Right to street vendors have been given in vending zone in the local authority to render services to public and rights of street vendors have been recognised on such a street, lane, side walk, footpath, pavement, public park, etc., where such activities can be easily without any hindrance can be carried out. The 2014 Act does not contemplate any such street vending on the National Highway. National Highways are being used for passing of vehicles from one place to other including long distance. As noted above, provisions of the 2002 Act indicate that for occupation or use of any part of National Highways permission of the Highway Authority is required. Without permission of the Highway Authority no one can use any part of the National Highways. Present is a case where petitioner claim carrying on business with the permission of the the Kochi Corporation. The place where the petitioner carries business being part of National Highways, no permission can be granted by the Kochi Corporation to the petitioner to carry on business in the National Highways.

18. The learned counsel for the petitioner referred to Section 33 of the 2014 Act in support of her submission that provisions of the 2014 Act shall override the provisions of the 1956 Act, the 1988 Act and the 2002 Act supra. Section 33 of the 2014 Act provides;

“33. The provisions of this Act shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

19. The key words in Section 33 are “..notwithstanding anything inconsistent therein contained in any other law..” Thus

the overriding effect to the 2014 Act is given if there is anything "inconsistent" in any other law. There is nothing inconsistent in 1956 Act, 1988 Act and 2002 Act to the provisions of the 2014 Act. The provisions relating to National Highways and that of the 2014 Act operate in different fields and there is no inconsistency, hence Section 33 of the 2014 Act has no application. Thus it is held that the provisions of the 2014 Act do not override the provisions of 1956 Act, 1988 Act and 2002 Act.

20. We do not find any error in the notice issued by the National Highways Authority directing the petitioner to vacate the premises. The learned Single Judge did not commit any error in disposing of the Writ Petition observing that petitioner may pursue his remedy before the Kochi Corporation for relocation of his bunk shop to any other place except the area from where the petitioner is asked to vacate. Petitioner can very well pursue his remedy for relocation before the Corporation as permitted by the learned Single Judge. We do not find any error in the judgment of the learned Single Judge warranting interference in this appeal."

16. Learned counsel for the petitioner sought to distinguish the aforesaid judgment on the premise that the Division Bench did not notice Section 1(4) of the 2014 Act. It is submitted that by virtue of Section 1(4) the only exception which has been engrafted under the Act is with regard to the land and premises owned and controlled by the Railways under the Railway Act, 1989. It is submitted that when Section 1(4) only excludes the Railways, all other land

including the lands belonging to the National Highways and State Highways are included in the applicability of Section 1 (4). Learned counsel for the petitioner, in support of his contention relied on the Interpretation of Statutes by N.S.Bindra. Learned counsel submitted that exception in Section 1(4) exempt only Railways which clearly indicate that all other lands fall within the purview of 2014 Act. Reliance has been made on the following observations made by the author on Interpretation of Statutes:

“Exception.- An exception exempts something which would otherwise fall within the purview of the general words of a statute. It is familiar principle of statutory construction that where you find in the same section express exceptions from the operative part of the section, it may be assumed, unless it otherwise it appears from the language employed, that these exemptions were necessary, as otherwise the subject matter of the exceptions would have come within the operative provisions of the section. It is not possible to hold that an exception refers to a different subject from the general rule to which it is an exception. In *Brown v. Maryland*, Marshall, C.J., said: “If it be a rule of interpretation to which all assent, that the exception of a particular thing from general words, proves that, in the opinion of the law giver, the things excepted would be within the general clause had the exception not been made, we know no reason why this general rule should not be as applicable to the constitution as to another instruments. Sometimes, it is also used to explain the general words of the Act and to exclude some ground of

misinterpretation which would extend it to cases not intended to be brought within its operations or purview. Where the Legislature desires to enact an exception to any provision, it normally does so by way of a proviso or an exception to the section itself; and it is seldom that an exception to the particular exemption is in itself a separate exception. Exceptions or provisos to a section are not meant to render the section itself nugatory.”

17. A perusal of the Section indicate that the said Section is a preliminary Section which include the name of the Act, application, date of enforcement and an exception has been engrafted in 1(4). Section 1(2) states that it extends to the whole of India except the State of Jammu and Kashmir. It is true that Section 1(4) provides that the provisions of this Act shall not apply to any land, premises and trains owned and controlled by the Railways under the Railway Act, 1989 but the said exclusion of Railways does not mean that rights under the 2014 Act can be claimed on all other lands which are not excluded by Section 1(4). Right under the 2014 Act of street vending can be claimed as per the scheme as delineated by the 2014 Act. By referring to Section 1(4) it cannot be held that in all other lands except those of Railways right to street vending can be claimed. For

example, land or road owned by private persons, private organization is also a land which is not exempted under Section 1(4). Can it be said that since private land or road is not exempted under Section 1(4), a street vendor shall have right on such land, the answer obviously shall be no. It is relevant to note that in Section 2, definition clause, street vendor is defined, which means that “a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area. Section 2(l) is quoted below:

“2(l) “street vendor” means a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to place and includes hawker, peddler, squatter and all other synonymous terms which may be local or region specific; and the words “street vending” with their grammatical variations and cognate expressions, shall be construed accordingly.”

It means that a person vending articles in a private area is

also a street vendor. But the question is as to whether street vendor can claim a right in a private area? Section 2 defines vending zone also. Section 2(n) defines vending zone which is to the following effect:

“2(n) “vending zone” means an area or a place or a location designated as such by the local authority, on the recommendations of the Town Vending Committee, for the specific use by street vendors for street vending and includes footpath, side walk, pavement, embankment, portions of a street, waiting area for public or any such place considered suitable for vending activities and providing services to the general public.”

A vending zone is an area or place or location designated as such by the local authority on the recommendation of the Town Vending Committee. A perusal of the definition given in Section 2(n) indicate that the words “private area” has not been designately used although while defining street vendor, i.e., by defining the activities of vending, vending in private area has been used. Thus it clearly indicate that although vending of articles in private area is also permissible, a street vendor cannot as a matter of right claim vending in a private area unless that is included in a vending

zone in a particular case. Section 6(2) specifically provides that certificate of vending issued to a street vendor shall specify the vending zone where the street vendor shall carry on his business/vending activities. The above scheme of the Act clearly indicate that all private area cannot be treated as an area where the street vendor can claim as a matter of right to vend his articles unless the said area is designated as vending zone suitable for vending. The above clearly indicate that Section 1(4) cannot be read in a manner that except land, premises and trains owned and controlled by the Railways in all other land and places a street vendor can claim right of street vending. As observed above, there cannot be any general proposition that all lands except land, premises, etc., of the Railways there is a right of street vending. Whether in a particular area or place, or land, etc., street vendor has right and can resist his eviction from that place shall depend on the Scheme of the 2014 Act. As noted above, present is a case where petitioner is claiming his right on a particular place where he has stationed his bunk. Thus whether on particular road/highway a street vendor has right

has to be examined on facts of each case and no general proposition can be accepted that except land of Railways all are covered by the 2014 Act. We are thus of the view that on the strength of 1(4) it cannot be contended that right of street vending can be claimed on all Highways also. Thus the ratio of Division Bench in **Cherian Philip v. N.H. Authority of India** (supra) cannot be impeached on the strength of Section 1(4) as submitted by the learned counsel for the petitioner. As far as the principles of statutory interpretation relied on by learned counsel for petitioner, there cannot be any dispute that the exception is engrafted in a Statute to restrict the enacting clause to a particular clause. It is clear that but for Section 1(4) possibility of claiming right of street vending on the Railway lands could not have been ruled out, if under the 2014 Act vending zones are identified on the Railway premises also.

18. While considering the right of street vendors to carry on their business on street and roads, it has been held by the Apex Court that the right cannot be claimed at a fixed place which may affect the rights of general public or which

may create obstruction to the traffic. In **Sodan Singh v. New Delhi Municipal Committee** ([1989] 4 SCC 155) the following was laid down by the Apex Court:

“..... But can there be at all a fundamental right of a citizen to occupy a particular place on the pavement where he can squat and engage in trading business? We have no hesitation in answering the issue against the petitioners. The petitioners do have the fundamental right to carry on a trade or business of their choice, but not to do so on a particular place. The position can be appreciated better in the light of two decisions of this Court in *Fertilizer Corporation Kamgar Union v. Union of India*, 1981 (2) SCR 52: (AIR 1981 SC 344) and *K. Rajendran v. State of Tamil Nadu* 1982 (3) SCR 628: (AIR 1982 SC 1107).”

19. The issue further to be considered is whether power given to the State Highways Authority under the 1999 Act shall stand overridden by virtue of Section 33 of the 2014 Act? The 1999 Act enacted by the State Legislature is referable to entry 13 of List II of the VIIth Schedule whereas the 2014 Act is a Parliamentary enactment referable to list I, Residuary Clause of the VIIth schedule. The 1999 Act has been enacted to provide for protection and development of Highways and for the prevention of ribbon development along highways and

encroachment. Under the 1999 Act, the State Highways cannot be used without permission of the State Highway Authorities. Section 13 prohibits any person to occupy or continue to occupy any highway or part of a highway for purpose other than traffic. Section 15 empowers the Highway Authority to remove encroachments. Section 33 of the 2014 Act overrides any other law in which in so far as it is inconsistent with the provisions of the 2014 Act. We thus have to first address as to whether the provisions of the 1999 Act are inconsistent with the provisions of the 2014 Act. As noted above, both the enactments, i.e., 1999 and 2014 are referred to two different entries and both do not fall in the Concurrent List. It is well settled that the entries are only field of legislation and the duty of the court is to avoid conflict between the enactments by reconciling the conflict. It has also been laid down that the doctrine of pith and substance is to be invoked while finding out whether there is any inconsistency in the two enactments. A Constitution Bench of the Apex Court in **Special Reference No.1 of 2001, In Re** ([2004] 4 SCC 489) has laid down the

following in paragraphs 13 and 15:

“13. The Constitution of India delineates the contours of the powers enjoyed by the State Legislature and the Parliament in respect of various subjects enumerated in the Seventh Schedule. The rules relating to distribution of powers are to be gathered from the various provisions contained in Part XI and the legislative heads mentioned in the three lists of the Schedule. The legislative power of both Union and State Legislatures are given in precise terms. Entries in the lists are themselves not powers of legislation, but fields of legislation. However, an Entry in one list cannot be so interpreted as to make it cancel or obliterate another entry or make another entry meaningless. In case of apparent conflict, it is the duty of the court to iron out the crease and avoid conflict by reconciling the conflict. If any entry overlaps or is in apparent conflict with another entry, every attempt shall be made to harmonise the same.

15. Although Parliament cannot legislate on any of the Entries in the State List, it may do so incidentally while essentially dealing with the subject coming within the purview of the Entry in the Union list. Conversely, State Legislature also while making legislation may incidentally trench upon the subject covered in the Union List. Such incidental encroachment in either event need not make the legislation ultra vires of the Constitution. The doctrine of pith and substance is sometimes invoked to find out the nature and content of the legislation. However, when there is an irreconcilable conflict between the two legislations, the Central legislation shall prevail. However, every attempt would be made to reconcile the conflict.”

20. The Apex Court time and again emphasised that

before reaching to the conclusion that there is repugnancy/inconsistency between two Statutes, effort should be made to reconcile the conflict by harmonious construction.

21. A perusal of the 2014 Act indicate that the said enactment is for urban street vendors and to regulate street vending activities. The 2014 Act is primarily concerned with street vendors and their activities. It is common knowledge that in urban area hawking and street vending has been continuing from time immemorial which has been noted by the Apex Court in **Sodan Singh v. New Delhi Municipal Committee** (supra). In various Rules and Regulations provisions of vending in street and markets have been made. For eg., in the Kerala Municipality Act, 1994 there are several provisions under Chapter XVII under the heading “regulating the streets”. Further there are several provisions in Chapter XX (Licence and Fee). Section 470 empowers the Municipal Board to prohibit and regulate sale of articles in public street. Section 470 is quoted as below:

“470. Power to prohibit or regulate the sale of articles in public streets.—(1) The Municipality may, prohibit, by public notice, or regulate by licence or otherwise the sale or exposure for sale, of any animals or articles in or on any public street or part thereof.

(2) Where any person exposes for sale any animal or articles in any public street or part thereof in contravention of any public notice issued under sub-section (1) or of the restrictions and conditions of a licence granted thereunder or of any regulation under the said sub-section, the Secretary may, without prejudice to any other action that may be taken against him under this Act, cause to be removed -

- (a) such animal or articles, and
- (b) any vehicle, package, box or any other thing on which the articles referred to in clause (a) is placed.

(3) Any animal caused to be removed by the Secretary under sub-section (2) may, notwithstanding that such animal is not a cattle as defined in the Kerala Cattle Trespass Act, 1961 (26 of 1961), be impounded and dealt with under the provisions of that Act.

(4) Any article, vehicle, package, box, or any other thing caused to be removed by the Secretary under sub-section (2) shall, unless the owner thereof turns upto take back such article, vehicle, package, box or other thing and pays to the Secretary the charges for the removal and storage thereof, be disposed of by the Secretary by public auction or in such other manner and within such time as the Secretary thinks fit.

(5) The charges for the removal and storage of the article, vehicle, package, box or other thing sold under sub-section (4) shall be paid out of the proceeds of the sale thereof and the balance, if any, shall be paid to the owner of the article, vehicle, package, box

or other thing sold, on a claim being made thereof within a period of one year from the date of sale, and if no such claim is made within the said period, shall be credited to the municipal fund.”

The effect of Section 33 of the 2014 Act is that the above provisions of the Kerala Municipality Act which are inconsistent to the provisions of the 2014 Act shall stand overridden, which of course depends on the facts of each case.

22. The 1999 Act on the other hand has been enacted for protection of highways and regulation on highways and development in the State of Kerala. Both have been enacted on different subjects and both regulate different aspects. The 2014 Act cannot be interpreted in a manner that a street vendor who has right to carry on vending business in street shall defy all other enactments and regulatory provisions. Encroachment of highways can only be removed by the competent authority under the 1999 Act and the encroacher cannot take the plea that he has right of vending at a particular place which right flows from the 2014 Act. There is no dispute that right of street vending has been given as per the 2014 Act. The said right has been recognised in accordance with the tenor and scheme of the

2014 Act and it cannot be lead to the interpretation that in exercise of the said right a person can obstruct the widening of roads or construction of bus-bay or any project of public utility nor the said claim can defeat the right of the State Highway Authorities from evicting encroachment in exercise of the power under the 1999 Act. We thus conclude that there is no conflict in the 1999 Act and 2014 Act, both Acts operate in different fields. Section 33 of the 2014 Act cannot be read in the manner that the the 2014 Act overrides all provisions of the 1999 Act including the power given to the State Highway Authorities to remove encroachment. It is relevant to note that encroachment has ben defined in Section 2(f) of the 1999 Act, Section 13 provides for prevention of unauthorised occupation and Section 15 provides for removal of encroachments. Sections 2(f), 13 and 15 are quoted as below:

"2(f) "encroachment" means occupation of a highway or part thereof for purposes other than traffic and any act which causes damage to the highway and includes,-

(i) unauthorised erection of a building or any other permanent or temporary structure, balcony, porches, facades or

projections on, over or overhanging the highway;

(ii) occupation of highway, for stacking building materials or goods of any other description, for parking automobiles for maintenance and repair, for exhibiting articles for sale, for erecting poles, awnings, tents, pandals, arches, platforms, rostrums, hoardings, display boards statues, monuments of all kinds, steps, ramps and other similar structures or stabling domestic animals and poultry and cultivation of any kind including horticulture or for any other, purpose;

(iii) excavation or embankment of any sort made or extended on any highway;

(iv) dumping of waste and filthy materials which may cause hygienic and environmental hazards, letting of waste and polluted water or other effluents into the highway and using the highway for bathing, washing, watering and defecating;

(v) blocking, closing, choking or restricting water flow along the sides of the highway or across it, either free flow or guided flow through drains, channels, conduits, sewers, cross drainage works such as culverts, weirs, undertunnels, bridges, or aqueducts; and

(vi) blocking or closing of channels, streams or any water course which passes through any property, either private or public, and forming part of a natural water course which may result in accumulation of water on a highway causing damage to road crust.

13. Prevention of unauthorised occupation of highway:- No person shall occupy or continue to occupy any highway or part of a highway for purposes other than traffic or do any act which involves any of the activities mentioned in clause (f) of section 2.

15. Removal of encroachment.-(1) Where, as a result of the annual check of highway boundaries made under section 11 or otherwise, the highway authority is satisfied that an encroachment has taken-place on the highway under its jurisdiction, it shall serve a notice on the person responsible for the encroachment to remove the encroachment within such time as may be specified in the notice and if the person fails to comply with the notice the highway authority or the officer authorised by it in this behalf shall cause the encroachment to be removed, with the assistance of police, if required”.

Aforesaid provisions of the 1999 Act cannot be said to have been overridden by Section 33 of the 2014 Act.

23. We however, observe that there can be a situation where the State Highways Authority has granted permission for using a portion of the land/footpath/road for use of vending or any other purpose. The State Highways Authority can permit user of its highways or any part of it for any purpose permissible under the 1999 Act but in the facts of the present case there is no such case that there is any permission given by the State Highways Authority. The Thiruvananthapuram Corporation has pleaded in its counter affidavit that the Corporation has never permitted the petitioner to carry on any business from the bunk in

question.

24. On the pleadings as noted, it is clear that the land on which the bunk has been placed is the land belonging to the Kerala Road Fund Board for construction of bus-bay as per detailed project report, no impediment can be created by the petitioner by the right of carrying on business on a particular spot on the land which is earmarked for construction of bus-bay. Petitioner cannot claim any right under the 2014 Act by which he can obstruct implementation of the Thiruvananthapuram City Road Improvement Project. Learned Single Judge committed error in holding that by virtue of Section 33 of the 2014 Act other provisions including 1999 Act shall be overridden and petitioner cannot be evicted in exercise of the power under the 1999 Act.

In view of the foregoing discussion, we allow W.A.No.1508 of 2015, set aside the judgment of the learned Single Judge dated 05.03.2015 in W.P(C) No.33114 of 2014 and dismiss W.P(C) No.33114 of 2014.

W.P(C) No.23374 of 2015 is allowed. A direction is issued to respondents 1 to 6 to remove the bunk shop of the petitioner forthwith.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**

VSV