

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 3750 of 2015 (P)

PETITIONER(S):

1. P.T. JOSE, PUTHUVELI,
PUTHOORPPALLY, CHANGANACHERRY.
2. ABBAS K.S., PUTHUVELIL,
MALOORKKAVU, CHANGANACHERRY.
3. SHAIJU SHERIF, PUTHUPPARAMBU,
NERCHAPPARA, CHANGANACHERRY.
4. G.V.DAS, PANDARAVILAYIL,
MAMMOOD, CHANGANACHERRY.
5. BABU P.T., PUTHUVELIL,
VANDIPETTA, CHANGANACHERRY.

BY ADV. SRI.V.K.SUNIL.

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT INSTITUTIONS,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE CHANGANACHERRY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
CHANGANACHERRY-686 101.
3. THE SECRETARY, CHANGANACHERRY MUNICIPALITY,
CHANGANACHERRY-686 101.

R1 BY GOVT. PLEADER SMT.ANITHA RAVINDRAN.
R2 & R3 BY ADVS. SRI.M.PASHOK KUMAR,
SMT.BINDU SREEDHAR,
SMT.R.S.MANJULA.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-07-2015, THE COURT ON 22/07/2015 DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 : TRUE COPY OF THE JUDGMENT DATED 04-09-2000 IN O.P. NO. 2412/2000.
- EXT.P2 : TRUE COPY OF THE JUDGMENT DATED 03-07-2002 IN O.P. NO. 2818/2002.
- EXT.P3 : TRUE COPY OF THE GO(RT)2616/03/LSGD DATED 16-07-2003.
- EXT.P4 : TRUE COPY OF THE APPLICATION SUBMITTED BY 3RD PETITIONER UNDER RIGHT TO INFORMATION ACT BEFORE R3 AND ITS ENGLISH TRANSLATION.
- EXT.P5 : TRUE COPY OF THE REPLY DATED 12-03-2014 FROM THE ENGINEERING SECTION AND ITS TRANSLATION IN ENGLISH.
- EXT.P6 : TRUE COPY OF THE REPLY DATED 18-03-2014 FROM REVENUE SECTION AND ITS TRANSLATION IN ENGLISH.
- EXT.P7 : TRUE COPY OF THE REPLY DATED 21-03-2014 ISSUED BY THE HEALTH SECTION AND ITS ENGLISH TRANSLATION.
- EXT.P8 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS BEFORE THE RESPONDENT MUNICIPALITY ITS RECEIPT AND THE ENGLISH TRANSLATION OF THE REPRESENTATION.
- EXT.P9 : TRUE COPY OF THE NATIONAL POLICY ON URBAN STREET VENDORS, 2004 ISSUED BY THE CENTRAL GOVERNMENT.
- EXT.P10 : TRUE COPY OF THE NOTIFICATION S.O.1185(E) DATED 01-05-2014.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 3750 of 2015

Dated this the 22nd day of July, 2015

J U D G M E N T

Aggrieved by the coercive action initiated by the respondent municipality against the petitioners, who are street vendors, the petitioners have come up before this Court.

2. The petitioners allege that they are street vendors doing business on the margins of a wide footpath starting from the No.1 Municipal Bus Stand, Changanacherry. According to them, earlier, they had been doing the business at Kavalam Bazar; and they were shifted from there to the present place on the basis of Exts.P1 and P2 judgments and Ext.P3 Government Order. Their grievance is that now, the respondent municipality required the petitioners to vacate from that area also, which gave such directions only orally. According to the petitioners, the stand taken by the respondent

..2..

municipality is against Exts.P1 & P2 judgments and Ext.P3 Government Order. Exts.P1 & P2 judgments entitle the petitioners adequate rehabilitation before being evicted and the eviction of the petitioners was sought for by the municipality to erect new bunk shops in those places and to allot the same to some other people; it is alleged. The attempt of the municipality is also against the specific provisions contained in the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014; and it is also against the policy of the Central and State Governments on street vendors; according to the petitioners. Hence, they have come up before this Court.

3. A statement has been filed by the respondent municipality. According to them, the petitioners have no legal right to demand any right to conduct business within the bus stand premises and they are not street vendors as averred in the writ petition. It is stated that the contention that the petitioners are doing business on

..3..

the margins of a wide footpath starting from Changanacherry Municipality No.1 bus stand to PMJ Complex is also incorrect. According to them, the petitioners are unauthorized occupants, who are doing illegal business in the Municipal Bus Stand yard area. The municipality is not against the rehabilitation of the existing street vendors including the petitioners, who, according to them, are encroachers. It is further stated that for the rehabilitation of street vendors, the municipality has identified two locations, viz., T.B.Road and around Municipal Stadium. However, the petitioners want to do business in the most congested and crowded places like M.C. Road, entrances of 3 bus stand etc. and they are not prepared to do business in the area identified by the municipality for rehabilitation. The municipality is even now ready to provide rehabilitation facilities either in T.B.Road area or around the Municipal Stadium, which, according to the respondent municipality, are also equally important from commercial

..4..

point of view. The municipality, in its earnest efforts, have constituted the street vending committee and the earmarking of public place for the street vending is in progress. They point out that the M.C. Road is the most crowded and traffic congested road connecting Angamaly and Thiruvananthapuram, which is having a width of 15 meters only. Because of the traffic population and narrow width of the road, accidents are quite frequent in the Changanacherry Municipal Bus Stand area. As per the Municipal Council resolution, the municipality has allotted the land to 11 persons for establishment of 11 bunks in the municipal bus stand. These 11 persons were identified through public auction, in which more than 100 persons participated. However, the petitioners did not participate in the said public auction; and ultimately, the space was allotted to the successful highest bidders; and one shop space was allotted to a man free of rent as ordered by the Human Rights Commission. It is further stated that because of the unauthorized occupation by the

petitioners, the newly allotted bunk shop owners are not able to construct bunk shops in the bus stand. The respondent municipality has taken the stand that the writ petition is devoid of merits; and the petitioners are disguising themselves as street vendors, who, in fact, are unauthorized occupants raising false claims and statements.

4. The petitioners have filed a reply affidavit.

5. Arguments have been heard.

6. According to the learned counsel for the petitioners, street trading is no longer an illegal activity after the formulation of Ext.P9 policy and Ext.P10 notification issued by the Central Government. It was pointed out that it is recognized as an important economic activity of public utility. The petitioners allege that they are doing business at the places pointed out by respondents 2 and 3 on the basis of Ext.P2 judgment and Ext.P3 order; and the place, in which they were doing business, has no vehicular traffic. The grievance of the

..6..

petitioners is that steps have been initiated by the respondent municipality to vacate the places without rehabilitating them in violation of Exts.P1 & P2 judgments. It was pointed out that it is also in violation of Section 3(3) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. It was further pointed out that the respondents have not constituted town vending committees as provided under Section 22 of the aforesaid Act; and they have also not conducted any survey as provided under Section 3(1) of the said Act.

7. It is true that as per Ext.P2 judgment of this Court and as per Ext.P3 order of the Government, the respondent municipality was directed to consider the alternate sites. The petitioners themselves would admit that one of the sites pointed out by the municipality is the TB Road, which is vested with the PWD and the shifting of street traders to that area was opposed by the petitioners. According to them, that area is an isolated

place and is not an appropriate place for rehabilitation of street traders.

8. In answer to the submission made by the learned counsel for the petitioners that till the vending zones are notified and the survey of existing street vendors is completed, no street vendors could be evicted or relocated from their existing places of business, the learned counsel for the respondent municipality would submit that the State Government has not issued any notification in tune with the aforesaid Act.

9. It is evident from the statement filed by the respondent municipality that they are not against the rehabilitation of existing street vendors including the petitioners, who, according to them, are encroachers. The respondent municipality has identified TB Road as well as the area around the Municipal Stadium to rehabilitate them. However, the petitioners want to do their business in a crowded place like M.C.Road, from which there are entrances to three bus stations. Even

..8..

now, the respondent municipality is ready to provide rehabilitation facilities in the aforesaid places.

9. There is no law to envisage that the street trading should be conducted in a crowded area causing obstruction to traffic and to general public. Therefore, this Court is of the view that there is no justification in the demand now made by the petitioners.

In the result, the writ petition fails; and accordingly, it is dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-