

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 33114 of 2014 (L)

PETITIONER :

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

BY ADVS.SRI.PHILIP J.VETTICKATTU
SRI.B.PREMNATH

RESPONDENT(S):

1. THE DISTRICT COLLECTOR,
TRIVANDRUM - 691 001
2. THE EXECUTIVE ENGINEER,
PUBLIC WORKS DEPARTMENT, SECRETARIAT,
TRIVANDRUM-691 001
3. THE TAHSILDAR,
TRIVANDRUM TALUK, TRIVANDRUM FORT,
TRIVANDRUM-695 023
4. THE TRIVANDRUM CORPORATION,
TRIVANDRUM-695 033, REPRESENTED BY ITS SECRETARY.

***ADDL.R5 IMPEADED**

*Addl.R5. PROJECT ENGINEER,
KERALA ROAD FUND BOARD, T.C.4/1654, MAYOORAM,
NO.7, BELHAVEN GARDENS, KOWDIAR,
THIRUVANANTHAPURAM - 695 003.

***ADDL.R5 IS IMPEADED AS PER ORDER DATED 16.01.2015 IN IA.NO.547/15.**

R1 TO R3 BY SR GOVERNMENT PLEADER SRI.M.MOHAMMED SHAFI
R4 BY SRI.N.NANDAKUMARA MENON,SENIOR ADVOCATE
ADV. SRI.P.K.MANOJKUMAR,SC,TVPM CORPORATION
ADDL.R5 BY ADV. SRI.ZAKIR HUSSAIN, SC, KERALA ROAD FUND BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - TRUE COPY OF THE MEMBERSHIP CARD ISSUED BY THE ALL KERALA SMALL MERCHANTS ASSOCIATION
- EXT.P2 - PHOTOGRAPHS SHOWING THE PETITIONER'S BUNK AND THE AREA
- EXT.P3 - TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 28-8-2014 ISSUED BY THE COUNCILOR OF THE WARD
- EXT.P4 - TRUE COPY OF THE RECEIPT ISSUED BY KSHPDG SHOWING REMITTANCE OF SECURITY DEPOSIT BY THE PETITIONER
- EXT.P5 - TRUE COPY OF THE RECEIPT ACKNOWLEDGING THE RECEIPT OF APPLICATION FILED BY THE PETITIONER
- EXT.P6 - TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT ON 28-11-2014
- EXT.P7 - TRUE COPY OF THE LETTER DATED 29-11-2014 ISSUED BY THE MLA, KAZHAKOOTTAM
- EXT.P8 - TRUE COPY OF THE GO(MS)NO.90/2011/LSGD DATED 30-4-2011
- EXT.P9 - TRUE COPY OF THE RELEVANT PAGES OF POLICY FORMED BY THE GOVERNMENT OF KERALA

RESPONDENT(S)' EXHIBITS

- EXT.R5(A)- TRUE COPY OF THE LETTER NO.3448/A/14/HPDC DATED 28/10/2014.
- EXT.R5(B)- TRUE COPY OF THE NOTIFICATION NO.1144/2009 DATED 08/12/2009

/TRUE COPY/

P.S.TO.JUDGE

K.HARILAL, J.

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W.P.(C) No.33114 OF 2014

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Dated this the 5th day of March, 2015

JUDGMENT

The petitioner is a street vendor. According to him, he has been engaged in street vending for the last more than 25 years and the income derived from such street vending is the only source of income for him and his family. He has been conducting his street vending business in an isolated corner at Medical College junction, which is evidenced by Ext.P2. The place where his bunk is stationed is a 'road purampokku' on the western side of Ulloor - Medical College road. The place, where the bunk is presently stationed, has not been using by the general public as road thoroughfare and it will not cause any obstruction or inconvenience either to the general public or to the vehicular traffic. The grievance of the petitioner is that the respondents have initiated the proceeding to demolish the said bunk. Some persons claimed to be under instruction from the respondents 1 to 3 came to the bunk of the petitioner and insisted him to remove the same at once. But, they did not

hand over any written order or the so called instruction from the respondents 1 to 3 to that effect. The said persons again came to the bunk and repeated the demand and threatened the petitioner that if the bunk is not removed, they will demolish and forcibly remove it. The said eviction proceedings were initiated in violation of the provisions under the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (in short, Act No.7 of 2014). According to the petitioner, he has a right to proceed with the street vending unless and until he is evicted in accordance with the provisions under the above said enactment, which had come into force on 4th March, 2014.

2. The 5th respondent *suo motu* got impleaded and filed a counter affidavit denying the allegations in the writ petition. According to the 5th respondent, the Government of Kerala vide its order G.O.(Ms) No.48/2003/PWD dated 22.08.2003 had accorded sanction to acquire 46.95 acres of land within the Thiruvananthapuram Taluk, in view of the need to undertake widening of identical road links, within a short time frame, and to relieve the increasing congestion on city roads by invoking urgency clause under Section 17 of the Land Acquisition Act,

1894. Under the said project, the Medical College - Ulloor - Kochulloor road is selected for widening and the petitioner's bunk is situating on the side of the said road. It is also submitted that the land in which the bunk is stationed belongs to the State Government and not a 'purampokku land' and the drainage canal on the extreme western end of the said land, which is covered by concrete slabs, belongs to Medical College. The land in which the bunk is erected originally belonged to Kerala Health Research and Welfare Society and the Society transferred the said land to the 5th Respondent for widening of the road. The 5th respondent had written to the 1st respondent to remove the unauthorized bunk erected by the petitioner in the project area earmarked for the construction of a bus bay. The Government in exercise of the powers conferred by Sections 3 and 4 of Kerala Highway Protection Act, 1999, declared the Project Engineer, Kerala Road Fund Board as Highway Authority and classified all corridors coming under Thiruvananthapuram City Road Improvement Project as State Highway including Pattom -Medical College - Ulloor - Kochulloor road. The piece of land in which the unauthorized bunk constructed is highly necessary for the construction of

bus bay.

3. The 4th respondent also filed a statement contending that the bunk installed by the petitioner is causing serious hindrance to the vehicular traffic and also to the pedestrians. The above bunk has been placed by the petitioner for carrying on sale of vegetables without obtaining any licence from the Corporation. The petitioner has been carrying on his business of the sale of the products of the Kerala State Horticultural Products Development Corporation, for the last two months. It is also submitted that the place where the bunk is placed is a "No Parking" area where there is heavy traffic congestion due to the situation of the Medical College Hospital.

4. Heard the learned counsel for the petitioner, the learned Senior Counsel appearing for the 4th respondent, the learned Standing Counsel appearing for the 5th Respondent and the learned Government Pleader.

5. Shri Philip J. Vettickattu, the learned counsel for the petitioner advanced arguments pointing out the scope and extent of the new enactment, Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. According to the learned counsel, no street vendor can be

evicted without complying the procedure contemplated under the said enactment after 4th March, 2014 and in the instant case, no proceedings had been initiated in compliance with the procedure contemplated under Sec.3(1) and (3) of the said Act. According to Sec.3(3), no street vendor shall be evicted or re-located till the survey specified under sub-section (1) has been completed and certificate of vending is issued to all street vendors. So, if he is evicted by force, his valuable right to get certificate under the said provision would be lost.

6. Shri N. Nandakumara Menon, the learned Senior Counsel appearing for the 4th respondent pointed out that the petitioner has not obtained a licence from the Corporation and he is conducting the vegetable vending in the bunk. According to the learned Senior Counsel, he has no right to conduct the business in the bunk and proceedings were initiated under the Kerala Municipalities Act also.

7. Shri Zakir Hussain, the learned Standing Counsel appearing for the 5th Respondent strongly opposed the claim of the petitioner under the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and submitted that as per Sections 3 and 4 of the Kerala Highway

Protection Act, 1999, the 5th Respondent is empowered to remove any hindrance/unauthorized construction erected in the project area declared as State Highway. Furthermore, the learned counsel drew my attention to the difficulties that would be caused if the petitioner is allowed to remain there. The removal of the petitioner from the place which he occupies now is necessary for the construction of the bus bay as per the detailed project report. The learned counsel urged for dismissing the petition *in limine*.

8. Going by the respective pleadings of the parties, it is not in dispute that the petitioner is conducting street vending in a bunk on the road margin of Ulloor - Medical College road and the 5th respondent has initiated proceedings to evict him from the said portion of the road. Similarly, it is the case of the 4th respondent that no licence had been issued to the petitioner and unless licence is obtained in accordance with law, the petitioner has no right to continue his business.

9. But, going by the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, it is seen that the said enactment has been made to protect the rights of urban street vendors and to regulate the street

vending activities and the said enactment has preserved the rights of the street vendors to continue their business in the street under the provisions of the said Act. The street vending has been regulated by Chapter II of the said enactment. Under Sec.3(1), the Town Vending Committee shall 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, according to sub-section (2) of Sec.3. But, here, such a Committee has not been constituted so far. According to sub-section (3) of Sec.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.

10. Ext.P8 and Ext.P9 show that before the commencement of Act No.7 of 2014, pursuant to the declaration of National Policy by the Union of India for the protection and welfare of the street vendors in India, the State Government had formulated Ext.P9 State Policy in the line of the policy formulated by the Central Government, and in that Government Policy also a specific scheme is provided for the eviction and rehabilitation of the street vendors, for widening

of the roads. So, the authorities under the State Government have a statutory duty to rehabilitate them and also to provide all helps to maintain their family, in lieu of eviction. The Respondents have no case that the present eviction proceedings are initiated in accordance with the scheme provided under Ext.P9 Government Policy.

11. Subsequently, Act No.7 of 2014 has come into force with effect from 4th March, 2014 and according to sub-section (3) of Sec.3, no street vendor shall be evicted or as the case may be, relocated till the survey specified under clause (1) has been completed and the certificate of vending is issued to all street vendors. Neither the 1st Respondent nor the 5th Respondent has a case that such a survey has been conducted and eviction proceedings are initiated in accordance with the regulations provided under Act No.7 of 2014 or the scheme contemplated under Ext.P9 Government Policy.

12. Going by Ext.P5 receipt dated 30.01.2014 issued by the 4th Respondent, it is seen that the bunk is registered with 4th Respondent, before the commencement of Act No.7 of 2014 though licence has not been issued so far for vending vegetables. Going by the definition of 'street vendor' provided

under Sec.2(l) of the said Act, it is seen that the licence issued by the local authority is not made a condition requisite for claiming the protection under the Act. Therefore, the absence of licence of the 4th Respondent will not stand in the way of claiming protection under the said Act.

13. It is true that eviction is intended for widening of the road, but I am of the view that the said purpose does not justify the eviction of the petitioner in violation of the rights conferred to him under Act No.7 of 2014 and Ext.P9 Government Policy. So, the petitioner has the right to continue his business in the bunk until and unless he is evicted in accordance with the procedure contemplated under Act No.7 of 2014 or the scheme formulated under Ext.P9 by the State Government.

14. Shri Zakir Hussain pointed out that as per the Highway Protection Act, 1999, the 5th Respondent is empowered to evict the petitioner. But, according to Sec.33 of Act No.7 of 2014, the provisions of that Act shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force or in any instrument having the effect by virtue of any law other than Act No.7 of

2014. In view of the above overriding effect of the provisions of Act No.7 of 2014 over all other laws, I find no force in the argument advanced by the learned counsel for the 5th Respondent under the Highway Protection Act, 1999.

15. In the result, the Respondents are directed not to evict or prevent the petitioner from continuing street vending business in the present spot, without resorting to the procedure contemplated under Act No.7 of 2014 or the scheme provided under Ext.P9 Government Policy.

The writ petition is accordingly allowed.

Sd/-
K.HARILAL,
JUDGE

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P.S. to Judge

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