

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.07.2016

Delivered on : 29.07.2016

CORAM:

THE HONOURABLE MR.SANJAY KISHAN KAUL, THE CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.A.No.15 of 2016
and CMP.Nos.255 and 11456 of 2016
W.P.No.36019 of 2015

W.A.No.15 of 2016

The Superintendent of Police,
Villupuram District,
Villupuram. ... Appellant/Third Party

Vs.

- 1.Villupuram Salai Ora Viyabarigal Pothu
Nala Sangam (Regn.No.31/2015)
Rep. by its President,
No.131, M.G.Road, Villupuram. ... Respondent/Petitioner
- 2.Government of Tamil Nadu
Represented by its Secretary,
Municipal Administration Department,
Fort St.George, Chennai-600 009. ... Respondents/Respondents
- 3.The District Collector,
Villupuram District, Villupuram.
- 4.The Commissioner,
Villupuram Municipality,
Villupuram .. Respondents

W.P.No.36019 of 2015

Villupuram Nagara Salai Ora Viyabarigal Pothu
Nala Sangam (Regn.No.31/2015)
Rep. by its President,
No.131, M.G.Road,
Villupuram. .. Petitioner

Vs.

1. Government of Tamil Nadu
Represented by its Secretary,
Municipal Administration Department,
Fort St. George,
Chennai-600 009.
 2. The District Collector,
Villupuram District,
Villupuram.
 3. The Commissioner,
Villupuram Municipality,
Villupuram.
 4. The Superintendent of Police,
Villupuram District,
Villupuram.
 5. The Villupuram Chamber of Commerce,
Rep. by its Secretary N. Premnath,
No.134, M.G. Road, Villupuram. .. Respondents
- (R5 impleaded as per the order dated 05.01.2016
in M.P.No.3 of 2015)

Prayer in W.A.No.15 of 2016: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 20.10.2015 made in W.P.No.33942 of 2015 Prayer in W.P.No.36019 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents to ensure the protection under the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and not to disturb the members of the petitioner Association from carrying on day to day business in M.G.Road, Badhusha Street and Nehru Street of Villupuram Town until the decision taken by Town Vending Committee constituted under the Street Vendors (Protection of Livelihood & Regulation) Act, 2014 and as per the provisions of the above said Act.

For Petitioner/ : Mr.R.Sankarasubbu,
Appellant in W.P.No.36019 of 2015

Mr.P.H.Aravind Pandian
Additional Advocate General
assisted by
Mr.S.T.S.Murthty,
Government Pleader
in W.A.No.15 of 2016

For Respondents : Mr.P.H.Aravind Pandian
Additional Govt. Pleader
assisted by
Mr.S.T.S.Murthty,
Government Pleader
for R1 to R4 in
W.P.No.36019 of 2015
Mr.N.Suresh, for R5 in
W.P.No.36019 of 2015

Mr.R.Sankarasubbu for R1
in W.A.No.15 of 2016

Mr.S.T.S.Murthy,
Government Pleader
for R2 to R4 in W.A.No.15
of 2016

Mr.N.Suresh for R5 in
W.A.No.15 of 2016

COMMON JUDGMENT

The issue arises for consideration in these cases is one and the same. Therefore, both the cases are disposed of by this common judgment.

W.P.No.36019 of 2015

2. "Villupuram Nagara Salai Ora Viyabarigal Pothu Nala Sangam" [Villupuram Town Road Margin Merchants Welfare Association] has filed this writ petition stating among other things that the members of the petitioner Association are eking out their livelihood by street vending in places, namely M.G.Road, Badhusha Street and Nehru Street at Villupuram Town and as per Street Vendors [Protection of Livelihood and Regulation of Street Vending] Act, 2014, Central Act No.7 of 2014 [in short "Street Vending Act"], Town Vending Committee is to be constituted to enumerate, identify and regulate the street vendors in Villupuram Town and till such time, the members of the petitioner Association are entitled to carry on hawking business in the above said places. The petitioner would further state that it has also submitted a representation dated 16.10.2015 for the regulation of street vending business and since no response was forthcoming, it filed W.P.No.33942 of 2015 and vide order dated 20.10.2015, this Court has disposed of the matter by directing the Commissioner of Villupuram Municipality to consider and dispose of the said representation within a period of one month from the date of receipt of a copy of the order and till such time, the petitioner Association was permitted to sell their commodities in the same place, in which they are doing

their business subject to due restrictions. The petitioner Association expressed their grievance that despite such an order, the fourth respondent did not permit them to run their business of hawking and therefore, came forward to file this writ petition.

3. Mr.R.Sankarasubbu, learned counsel appearing for the petitioner would submit that in the light of Street Vending Act, the third respondent, namely the Commissioner of Villupuram Municipality is bound to constitute a Town Vending Committee for the purpose of enumerating, identifying and regulating street vending business and despite the order dated 20.10.2015 made in W.P.No.33942 of 2015, no such action has been taken so far and in gross and utter violation of the said order, the fourth respondent, acting under the instructions of the third respondent, did not permit the members of the petitioner Association to carry on their street vending business and therefore, they are constrained to file the present writ petition and prays for appropriate orders.

4. Mr.S.T.S.Murthy, learned counsel appearing for the third respondent has drawn the attention of this Court to the counter affidavit and would submit that one Thiru P.K.Sekar, Secretary, Villupuram Chamber of Commerce had filed a writ petition in W.P.No.6977 of 2013 praying for issuance of a Writ of Mandamus directing the respondents to remove the encroachments in all the public roads in Villupuram Town particularly in M.G.Road, Bagarsha Road, K.K.Road, Trichy Main Road and Pandit Jawaharlal Nehru Road and it was disposed of with certain directions and it was also directed to be listed for compliance on 19.09.2014 and therefore, the third respondent, in compliance of the said order, took effective steps and evicted the encroachments and also filed the compliance report, based on which this Court has passed the order dated 19.09.2014 directing the concerned authorities to keep vigil in the matter and to continue to maintain encroachment free roads and accordingly, the third respondent Municipality is supervising and following it up and also keeping vigil to see to that there is no recurrence of encroachment and maintaining the said public places free from all encroachments.

5. It is further stated by the third respondent in the counter affidavit that one M/s.Kattidam Mattrum Pothu Thozhilalar Sangam [Construction and General Workers Association], represented by its General Secretary, Villupuram had filed a writ petition in W.P.No.25246 of 2014 praying for issuance of a Writ of Mandamus directing the respondents to permit the members of the petitioner Association to do hawking in terms of the National Policy on Urban Street Vendors, 2009 as enunciated by the Hon'ble Supreme Court of India in the decision reported in 2014 (1) SCC 490 [Maharastra Ekta Hawkers

Union vs. Municipal Corporation, Greater Mumbai] and it was disposed of on 21.04.2015 by observing that it is the bounden duty of the respondent authorities to continue the situation by regulating and monitoring, as the alternative sites have been identified and it is for the hawkers to choose one among those places to carry on their avocation. It is further stated by the third respondent that their officials are monitoring the road and keeping vigil in not permitting any hawkers to do their business in the aforesaid roads and suppressing the said fact, the petitioner has once again filed W.P.No.33942 of 2015 and got orders on 20.10.2015 permitting them to carry on their activities in the same place till the constitution of Town Vending Committee.

6. The learned counsel appearing for the third respondent would submit that the respondent in W.P.No.33942 of 2015, challenging the final order dated 20.10.2015 had filed W.A.No.15 of 2016 and at the time of hearing, also brought to the knowledge of this Court about the pendency of W.P.No.36019 of 2015 and accordingly, it was directed to be tagged along with the writ appeal.

7. Mr.N.Suresh, learned counsel appearing for the fifth respondent, namely The Villupuram Chamber of Commerce has drawn the attention of this Court to the counter affidavit of the fifth respondent and would submit that the members of the petitioner Association are nothing but encroachers on public roads and streets and majority of the members had filed W.P.No.25246 of 2014 and suppressing the fact of orders passed in the writ petition, had filed this writ petition and therefore, they are guilty of suppression of material facts and as such, they are not entitled to any relief. It is the further submission of the learned counsel appearing for the fifth respondent that the petitioners, being encroachers, under the guise of doing business are causing nuisance and health hazards to the locality by not keeping the surrounding clean and in the light of the earlier orders passed by this Court, encroachments have been removed and the roads are kept encroachment free. It is also contended by the learned counsel appearing for the fifth respondent that as and when enumeration and identification is made in accordance with Street Vending Act, members of the petitioner Association may get accommodation, if their claim is genuine and hence, prays for dismissal of this writ petition.

W.A.No.15 of 2016

8. As already stated, Villupuram Nagara Salai Ora Viyabarigal Pothu Nala Sangam [Villupuram Town Road Margin Merchants Welfare Association] had filed W.P.No.33942 of 2015 praying for issuance of a Writ of Mandamus directing the respondents to ensure protection under the provisions of Street Vending Act and not to disturb the members of the

petitioner Association from carrying on day to day business in M.G.Road, Badusha Street and Nehru Street at Villupuram Town until the decision taken by Town Vending Committee constituted under the Street Vending Act and pending disposal of the same, took out an application for ad-interim direction restraining the respondents from evicting the members of the petitioner Association from their place of business and a Division Bench of this Court, vide interim order dated 06.11.2015, has directed the maintaining of Status Quo as on the date of order in respect of existing vending shops/bunk shops and also made it clear that the members of the petitioner Association shall not be permitted to put up new bunk shops or vending shops and spread the periphery of the same by littering goods and articles sold by them in the course of their business. The official respondents aggrieved by the said interim order, filed W.A.No.15 of 2016 and at the time of listing the matter for admission, also prayed for listing of W.P.No.36019 of 2015 along with the writ appeal and accordingly, it was directed to be listed.

9. Mr.P.H.Aravind Pandian, learned Additional Advocate General assisted by Mr.S.T.S.Murthy, learned Government Pleader, appearing for the appellant would contend that steps have already been taken to constitute a Town Vending Committee in terms of the Street Vending Act and the petitioner Association, by deliberately suppressing the pendency of Cont.P.No.1416 of 2015 and the orders passed by this Court in W.P.Nos.6977 of 2013 and 25246 of 2014, had filed W.P.No.33942 of 2015 and got the benefit of interim orders and in the light of the earlier orders passed in the above cited writ petitions, it is extremely difficult to comply with the order dated 20.10.2015 made in W.P.No.33942 of 2015. The learned Additional Advocate General would further contend that since proper and effective steps are taken to constitute a Town Vending Committee and it is also in advanced stage, the order dated 20.10.2015 made in W.P.No.33942 of 2015 is liable to be vacated and the writ appeal is to be allowed.

10. This Court has carefully considered the rival submissions and also perused the materials placed before it.

11. The Villupuram Chamber of Commerce, represented by its Secretary, had filed W.P.No.6977 of 2013 against the Collector of Villupuram District, Superintendent of Police, Villupuram District, The Inspector of Police, Villupuram Town Police Station, The Commissioner, Villupuram Municipality and the Divisional Manager, National Highways, Villupuram, praying for issuance of a Writ of Mandamus directing the respondents to remove the encroachments in all the public roads in Villupuram Town, more particularly in M.G.Road, Bagarsha Street, K.K.Road, Trichy Main Road and Pandit Jawaharlal Nehru

Road and this Court, vide order dated 20.08.2014, has disposed of the writ petition with the following directions:

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i)If any, there had been damages on the road sides, the same shall be repaired;

ii)The respondents will ensure that the areas are kept encroachment free and if re-encroachment is permitted, it will be on the pain of contempt;

iii)For the next fifteen (15) days, every day photographs of the site should be taken showing the area encroachment free and a compliance report be filed in this Court within three (3) weeks to test the functioning of the respondents;

iv)If any re-encroachment is found, disciplinary action shall be taken against the concerned senior most supervising officer responsible in the area."

The said writ petition was listed for compliance of the order on 19.09.2014 and having noted that the order has been complied with, passed a further order of continuous compliance.

12. Kattidam Mattrum Pothu Thozhilalar Sangam [Construction and General Workers Union] had filed W.P.No.25246 of 2014 against the Secretary, Government of Tamil Nadu, Department of Housing and Urban Development, Chennai, The District Collector, Villupuram District, Villupuram, The Superintendent of Police, District Police Office, Villupuram, The Commissioner, Villupuram Municipality, Villupuram and The Divisional Manager, Highways Department, Villupuram, praying for issuance of a Writ of Mandamus directing the respondents to permit the members of the petitioner Association to carry on hawking in terms of National Policy on Urban Street Vendors, 2009 as enunciated in the judgment reported in 2014 (1) SCC 490 and also as per the provisions of the Street Vending Act. This Court, vide order dated 25.09.2014, had called upon the State Government to verify as to the possible area for the street vendors to be temporarily accommodated and taking note of the submissions of the learned Special Government Pleader that there is also Villupuram Old Bus stand area, where it may be possible to accommodate all or most of the street vendors and then directed to take action by way of temporary measure and also directed the Government to look into the issue of mobile vending. The writ petition was listed for hearing on 11.11.2014 and on that day, this Court having taken note of the submission of the learned counsel appearing for the petitioner in W.P.No.6997 of 2013, has directed the authorities that they are free to obtain inputs from whatever sources they feel proper, but the order dated 25.09.2014, should be implemented in letter and spirit and directed the listing of the writ petition on 16.12.2014.

13. W.P.Nos.25246 of 2014 and 6977 of 2013 were listed together on 17.02.2015 and on that day, this Court has called for the respondents as to the setting up of a machinery in terms of the provisions of the Street Vending Act and directed the listing of the matter on 21.04.2015 and on that day, the writ petition was finally disposed of by taking note of the affidavit of the Commissioner of Villupuram Municipality, wherein it has been stated that a joint meeting was convened with the participation of all stake holders and encroachments have been removed with the help of police and now the road is free of encroachments and free flow of traffic is also maintained. This Court also made it clear that in the light of the disposal of W.P.No.25246 of 2014, no further orders are required in W.P.No.6977 of 2013 and also made it clear that in case the respondent authorities permit any future encroachments, the same shall be under the pain of contempt. The petitioner in W.P.No.6977 of 2013, in the interregnum, alleging wilful disobedience of the orders dated 20.08.2014 and 19.09.2014, had filed Cont.P.No.1416 of 2015 and this Court has directed the authorities to file affidavit of compliance and directed the listing of the matter on 26.11.2015.

14. The learned Additional Advocate General would contend that almost all the members of the petitioner Association in W.P.No.25246 of 2014 are members of the petitioner Association in W.P.No. 36019 of 2015 and suppressing the said fact, had filed W.P.No.33942 of 2015 and got interim orders and in the light of the various orders passed in W.P.Nos.25246 of 2014 and 6977 of 2013, the interim order is liable to be vacated and as on today, the concerned roads are free from encroachments and as a consequence, there is a free flow of traffic also. This Court has also put a specific question to Mr.R.Sankarasubbu, learned counsel appearing for the first respondent in the writ appeal/petitioner in W.P.No.33942 of 2015 as to the suppression of materials facts and he is unable to give any plausible explanation or tenable answer. The first respondent in the writ appeal, in all fairness, ought to have disclosed the said fact, but for the reasons best known to them, have deliberately suppressed/omitted to state the said vital and material fact.

15. A perusal of the series of orders passed in W.P.Nos.6977 of 2013 and 25246 of 2014 would disclose that encroachments made by street vendors have been removed and the concerned places are free of encroachment and as a consequence, free flow of traffic is also ensured. It is the submission of the learned Additional Advocate General, on instructions, that the implementation of the Street Vending Act so far as Villupuram Town is concerned, is in very advanced stage and a decision in the form of enumeration, identification and regulation of places of vending will be

taken very soon and in the light of the orders passed in W.P.No.33942 of 2015, the official respondents are compelled by the members of the petitioner association to carry on their business in the same place and in the event of non-compliance, they may face contempt proceedings also. This Court finds considerable force in the submission made by the learned Additional Advocate General.

16. The first respondent Association has deliberately suppressed the fact of filing of earlier writ petitions and the typed set of papers filed by the fifth respondent in W.P.No.36019 of 2015 also discloses that the members of the petitioner Association in W.P.Nos.25246 of 2014 and 36019 of 2015 are almost one and the same persons and in all fairness, while moving W.P.No.33942 of 2015, orders passed in the writ petition ought to have been brought to the knowledge of the learned Judge, however it was not done so. Therefore, the learned Judge has passed the final order permitting the members of the petitioner Association to do hawking business in the very same place till the completion of the formalities as per the Street Vending Act. Since the first respondent in W.A.No.15/2016 has failed to approach the Court with clean hands and in the light of the facts and circumstances enumerated above and the reasons assigned, this Court is of the considered view that the final order dated 20.10.2015 made in W.P.No.33942 of 2015 is liable to be set aside.

17. In the light of the submission made on behalf of the official respondents in W.P.No.36019 of 2015 that the implementation of the Street Vending Act insofar as Villupuram Town is concerned, is in very advanced stage, this Court is of the opinion that no further orders are necessary in the said writ petition.

18. In the result,

(i) W.P.No.36019 of 2015 is closed and the members of the petitioner Association, if aggrieved by the act of the official respondents in compliance of the provisions of the Street Vending Act 2014, are at liberty to workout their remedy in accordance with law before the competent forum. No costs.

(ii) W.A.No.15 of 2016 is allowed and the order dated 20.10.2015 made in W.P.No.33942 of 2015 is set aside and consequently, W.P.No.33942 of 2015 is dismissed. No costs. Consequently, connected miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

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To

1.The Secretary,
Government of Tamil Nadu
Municipal Administration Department,
Fort St.George, Chennai-600 009.

2.The District Collector,
Villupuram District,
Villupuram.

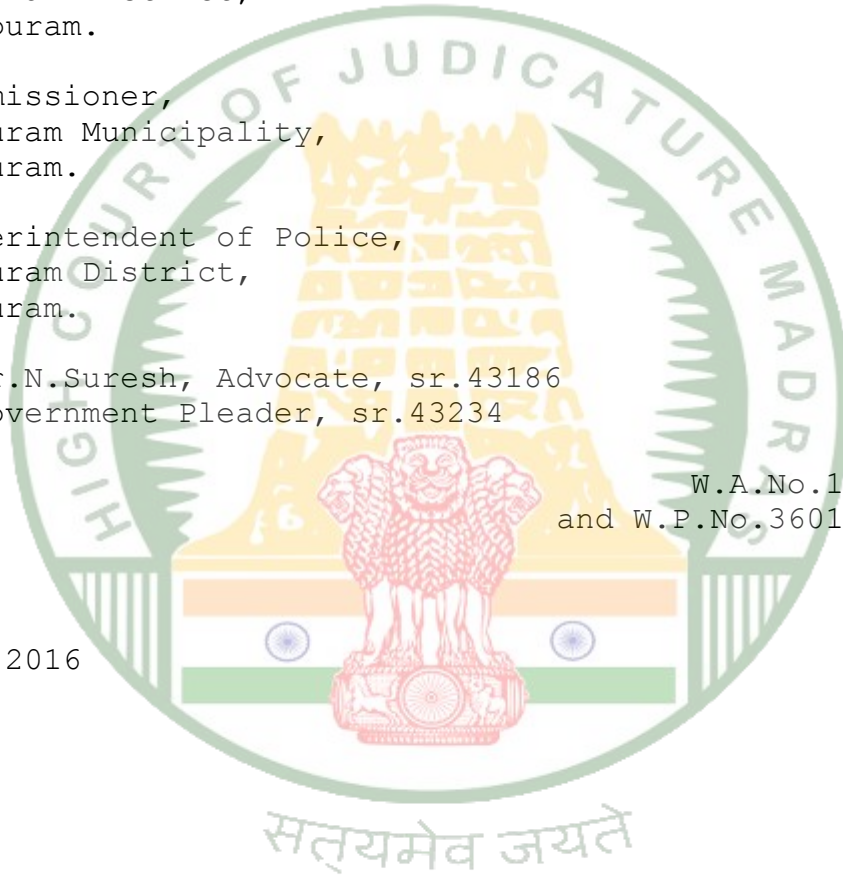
3.The Commissioner,
Villupuram Municipality,
Villupuram.

4.The Superintendent of Police,
Villupuram District,
Villupuram.

1 cc to Mr.N.Suresh, Advocate, sr.43186
1 cc to Government Pleader, sr.43234

W.A.No.15 of 2016
and W.P.No.36019 of 2015

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