

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.Nos.9319 and 20056 of 2016

W.P.No.9319 of 2016:

01. M.Uma Maheswari
02. S.Vijaya
03. N.Sethu
04. V.Shanthi
05. B.Jaya
06. M.Sankar
07. B.Jaya
08. V.Vasanthi
09. S.Gajalakshmi
10. P.Kuppammal
11. R.Muniammal
12. A.Devi
13. M.Kamatchi

... Petitioners

-vs-

1. The Chairman
Hawking Zone Implementation Committee
No.7/6, R.A.Puram III Street
R.A.Puram, Chennai 600 028
2. The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai 600 003
3. The Assistant Commissioner
Corporation of Chennai
Old Zone VIII, New Zone X
Chennai 600 024
4. The Commissioner of Police
Chennai City
Vepery, Chennai 600 007
5. The Inspector of Police (Law & Order)
R-1, Mambalam Police Station
Chennai 600 017

6. The Inspector of Police (Traffic)
R-4, Pondy Bazaar Police Station
T.Nagar, Chennai 600 017

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents 1 and 2 to implement the provisions of "The Street Vendors Protection of Livelihood and Regulation of Street Vending Act, 2014, Act 7/2014" and the order passed by the Hon'ble Supreme Court in Civil Appeal No.4156 of 2002 (Batch) dated 09.09.2013 in respect of the petitioners herein and register them as Street Vendors and grant them the necessary license or certificate to hawk or street vending on the Railway Border Road (in between Vilayattu Vinayakar Koil to Indian Bank ATM end), T.Nagar, Chennai 600 017 and in any event, not to evict them without following the procedure to regulate them under Section 12(1) of the said Act.

For Petitioners:: Mr.M.Venkadesh

For Respondents:: Mr.Master Ganesh for R1
Mr.A.Nagarajan for R2 & R3
Mr.P.S.Sivashanmugasundaram
Special Government Pleader for
R4 to R6

W.P.No.20056 of 2016:

1. Mahendra Jewellers
rep.by its Partner, Mr.Mahendran
Old No.59, New No.37, Usman Road
T.Nagar, Chennai 600 017

2. Khazana Jewellers
rep.by its Authorised Signatory
Mr.Joseph Verghees
Old No.59, New No.37, Usman Road
T.Nagar, Chennai 600 017

.. Petitioners

-vs-

1. The Chairman
Hawking Zone Implementation Committee
No.7/6, R.A.Puram III Street
R.A.Puram, Chennai 600 028

2. The Commissioner
Corporation of Chennai
Ripon Building
Chennai 600 003

3. The Assistant Commissioner
Corporation of Chennai
Old Zone VIII, New Zone X
Chennai 600 024
 4. The Commissioner of Police
Chennai Commissioner Office
E.V.K.Sampath Salai, Vepery,
Chennai 600 007
 5. The Inspector of Police
R-1, Mambalam Police Station
Chennai 600 017
 6. Kizhakku Pagudhi Usman Salai
Sirukadai Vyabarigal Sangam
represented by its President K.S.Palani
Shop No.3, Panagal Park Market
Usman Road, T.Nagar,
Chennai 600 017
 7. Mr.Udhayaraj
 8. Mr.Ramdoss
 9. Mr.Ajiz
 - 10.Mr.Jamal
- ... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents 1 to 5 herein to take appropriate action to remove and prevent Encroachment, Hawking or Vending by the Respondents 6 to 10 in front of the petitioners premises situated at Old No.59, New No.37, Usman Road, T.Nagar, Chennai 600 017.

For Petitioners:: Mr.G.Vijay Anand for
M/s Vijay Anand Associates

For Respondents:: Mr.Master Ganesh for R1
Mr.A.Nagarajan for R2 & R3
Mr.P.S.Sivashanmugasundaram
Special Government Pleader for
R4 & R5
Mr.R.Manickavel for R6 to R10

ORDER

(Order of the Court was delivered by HULUVADI G.RAMESH, J.)

Heard the learned counsel for the parties.

2. The issue raised in both the writ petitions relates to the regulation of street vendors/hawkers and in this context the Apex Court, in the case of Maharashtra Ekta Hawkers Union and

another v. Municipal Corporation, Greater Mumbai and others, (2014) 1 SCC 490, more particularly in paragraph 21.15, has observed that all the existing street vendors/hawkers operating across the country shall be allowed to operate till the exercise of registration and creation of vending/hawking zones is completed in terms of the 2009 Policy. Once that exercise is completed, they shall be entitled to operate only in accordance with the orders/directions of the Town Vending Committee concerned.

3. So far as the relief sought for in W.P.No.9319 of 2016 is concerned, relying upon the counter affidavits, both the learned standing counsel representing the respondent-Corporation and the learned Special Government Pleader representing the State have submitted that as on date, with regard to the vending at Railway Border Road (in between Vilayattu Vinayagar Koil and Indian Bank ATM end) T.Nagar, Chennai, the petitioners are not at all carrying on their business in the place. Rather, they are coming up with a new plea, without there being any proof for carrying on their business for several years. It is for the first time, after the order of status quo, these petitioners are peeping in to make out a case and accordingly sought for dismissal of the writ petition. On the other hand, the learned counsel for the petitioners has submitted that the petitioners are having proof for carrying on their business and that has not been considered, accordingly sought to contend that their case also shall be considered by the Town Vending Committee constituted for the purpose.

4. So far as the relief sought for in W.P.No.20056 of 2016 is concerned, relying upon the counter affidavit filed by the fifth respondent/Inspector of Police, the learned Special Government Pleader has submitted that only the respondents 9 & 10 are carrying on the business and not others.

5. These disputed facts cannot be gone into by us in the writ petitions, when the counter affidavits filed by the fifth respondent/Inspector of Police shows that the petitioners in W.P.No.9319 of 2016 are not carrying at all any business in the place in question as on date vis-a-vis the respondents 9 & 10 in W.P.No.20056 of 2016 alone are doing the business. However, the case of the petitioners vis-a-vis the contesting respondents in both the writ petitions has to be considered by the Vending Committee constituted in this regard on their establishing prima facie the running of their business in the areas in question. In these circumstances, since the Town Vending committee has been vested with the power to take a decision in accordance with law to save the interest of the persons who are vending on the streets as hawkers on the basis of the report of the Corporation or police officials and any other evidence available, without expressing anything on merit, we dispose of these writ petitions with liberty to the parties, namely, the petitioners, the contesting respondents as well as the Corporation and the police

officials to approach the Vending Committee constituted in this regard by the Government and to raise all the contentions before such Committee on the basis of the reports of the official respondents and on such representation, it is for the Vending Committee to take a decision in accordance with law as to their entitlement, within a period of two months from the date of receipt of a copy of this order, on hearing the parties. Consequently, W.M.P.Nos.8308 & 17278 of 2016 are closed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Chairman
Hawking Zone Implementation Committee
No.7/6, R.A.Puram III Street
R.A.Puram, Chennai 600 028
2. The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai 600 003
3. The Assistant Commissioner
Corporation of Chennai
Old Zone VIII, New Zone X
Chennai 600 024
4. The Commissioner of Police
Chennai City
Vepery
Chennai 600 007
5. The Inspector of Police (Law & Order)
R-1, Mambalam Police Station
Chennai 600 017
6. The Inspector of Police (Traffic)
R-4, Pondy Bazaar Police Station
T.Nagar
Chennai 600 017

+2ccs to Mr. A. Nagarajan, Advocate, S.R.No.39023, 39025

+2ccs to Mr.M. Venkadesh, Advocate, S.R.No.39198

+1cc to the Government Pleader, S.R.No.39565, 39566

+ 1 cc to Mr.R. Manickavel, Advocate Sr.39274

+ 1 cc to Mr.G. Vijay Anand, Advocate Sr.39144

GJ(CO)

EU(29/07/2016)

W.P.Nos.9319 & 20056 of 2016