

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.27978 of 2017
and
WMP.No.30023 of 2017

E.Anandhi

... Petitioner

Vs.

1. The Commissioner
Corporation of Chennai
Rippon Buildings
Chennai - 600 003.

2. The Chairperson /
Zonal Executive Engineer (Zone-13)
(The Township Vending Committee)
Corporation of Chennai,
Adyar, Chennai - 600 020.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus, calling for the records relating to Order No.Z.O.13 C.No.A9/4243/2017 dated 11.10.2017 and quash the same and forbear the respondents from interfering with the petitioner's peaceful possession and enjoyment of the above bunk shop situated just opposite to Shifa Medicals, No.1/16, 2nd Avenue, Besant Nagar, Chennai-600 090, till the petitioner's representation dated 6.6.2017, be considered by the Township Vending Committee as per the provisions of the Street Vendors (Protection of Livelihood Regulation) Act, 2014.

For Petitioner : Mr.R.Kamaraj

For Respondents : Mr.K.Soundararajan

O R D E R

[Order of the Court was made by M.SATHYANARAYANAN,J.]

By consent, the writ petition is taken up for final disposal.

2. The petitioner claims that she is a differently abled person, having disability of 75% (LD), which is permanent in nature and she has been issued with a passbook for granting assistance by the District Welfare Officer for Differently Abled, Chennai. It is the claim of the petitioner that she is running a bunk shop just opposite to Shifa Medicals, No.1/16, 2nd Avenue, Besant Nagar, Chennai - 600 090, for quite long time, wherein she sells tea, coffee and other food items, prepared, packed and sold in an hygienic manner and out of the meagre income generated, she is maintaining herself and her family. The petitioner, on an earlier occasion, apprehending dispossession and also to consider her plea to accommodate her in the light of the benevolent provisions of "The Street Vendors (Protection of Livelihood Regulation) Act, 2014, and rules framed therein, had approached this Court by filing W.P.No.15988 of 2017 and two other writ petitioners namely K.Viswanathan and Madhana Gopal, seeking similar relief, filed writ petitions in W.P.Nos.15989 and 15990 of 2017 and this Court, vide common order dated 03.07.2017, has disposed of the said writ petitions, by directing the respondents to consider and dispose of the individual representations submitted to them by the petitioners on merits and in accordance with law, within a stipulated time

3. The second respondent, in compliance of the order dated 03.7.2017, has considered the representation dated 06.6.2017 submitted by the petitioner herein, but vide his impugned proceedings dated 11.10.2017, has disallowed her representation and the relevant portion is extracted hereunder:

" In the reference 3rd cited, Besant Nagar 2nd Avenue is the busiest road. Since the entire area is surrounded by number of Companies, School, Park, Temple, Community Hall, Metrowater Office, E.B. Office, Bank, Hotel, and hence the vehicular movement and the traffic in the said 2nd Avenue, Besant Nagar (Opposite to Shifa Medicals) is very high and the pedestrians movement in the said area is also very high comparing other places. It was presumed that petitioners representation for issue of permission to run the bunk for selling tea, coffee and snacks. The above said bunk shop is erected above the Rain Water Harvesting Well and very near EB Transformer. The petitioner is also letting out the waste in to the footpath and rain water harvesting doors and maintains the area in a unhygienic manner which causes high threat and health hazard to the people in the said area and passers by.

Due to erection of this bunk, the pedestrain's movement is also badly affected and the physically challenged persons will unable to use this footpath.

Hence, it is informed that your representation to run the bunk shop at Besant Nagar 2nd Avenue cannot be considered."

The petitioner, challenging the legality of the same, has come forward to file this writ petition.

4. The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents, especially the disability certificate issued by the District Welfare Officer for Differently Abled Persons, Chennai and also the photographs and would submit that the petitioner is carrying on the business in the bunk shop in question for a quite long time and in the light of the benevolent provisions of "The Street Vendors (Protection of Livelihood Regulation) Act, 2014, duty is cast upon the respondents to consider the request of the petitioner and further, without assigning any proper or tenable reasons, her request came to be rejected through the impugned order and hence, prays for interference.

5. Per contra, the learned counsel appearing for the second respondent has drawn the attention of this Court to the photographs produced by him and would submit that the petitioner by putting up a board stating "THE HIGH COURT ORDER W.P.NO.15988/2017 - E.ANANDHI" wants to create an impression as if the said writ petition is pending and she is having the benefit of the interim orders passed by this Court in running the bunk shop, but whereas, the said writ petition in W.P.No.15988/2017 came to be disposed of 03.07.2017, without granting any protection to the petitioner. Therefore, it appears that the petitioner has failed to approach this Court with clean hands. It is the further submission of the learned counsel for the second respondent that at the time of pendency of W.P.Nos.15988 to 15990/2017, photographs were filed to show that no bunk shop was in existence in that area in question and only after the disposal of the said writ petitions, bunk shop has been put up by the writ petitioner herein and would further add that from the photographs, it also appears that it is recently put up and as such, the petitioner is not entitled to get any indulgence from this Court.

6. In response, the learned counsel appearing for the petitioner would submit that the petitioner was having a push cart stall and in the same place, put up a bunk shop.

7. This Court has considered the rival submissions and perused the materials placed before it.

8. This Court, in the common order dated 03.07.2017 made in W.P.No.15988/2017 (filed by the petitioner herein) and in W.P.Nos.15989 and 15990/2017, has directed the second respondent to consider the individual representations submitted by the

petitioners for claiming the benefit under the above said Act, on merits and in accordance with law. In compliance of the order dated 03.7.2017, the second respondent has considered the representation of the petitioner dated 06.6.2017, and found that the bunk shop put up by the petitioner is of very recent origin and it is also causing hindrance to the vehicular movement of the traffic and it is to be noted at this juncture, that the petitioner was having a mobile bunk shop and later on put up a permanent one. Further, it is also pertinent to point out at this juncture that the petitioner has put up a notice on the bunk shop as stated above, and wants to create an impression that she is running the bunk shop in pursuant to the interim orders passed by this Court and that the said writ petition is pending, but factually it is not so.

9. In the light of the above facts and circumstances, this Court is of the view that there is no infirmity in the reasons pointed out by the second respondent for removal of the bunk shop. However this Court, taking into consideration the fact that the petitioner is a woman and having disability of 75% as per the certificate annexed in the typed set of documents, is inclined to grant time to the petitioner till 04.12.2017 to remove the bunk shop in question. The petitioner is also at liberty to submit an application under the provisions of The Street Vendors (Protection of Livelihood Regulation) Act, 2014, by enclosing relevant and authenticated documents, within a period of two weeks from the date of receipt of a copy of this order, to the second respondent, who shall consider the said representation in the light of the above said provisions and pass orders on merits and in accordance with law as expeditiously as possible.

10. Since the writ petitioner is granted time till 04.12.2017 to vacate the bunk shop, and if she fails to do so within the stipulated time, the second respondent is at liberty to remove the said bunk shop by following the due process of law. It is also made clear that this order granting time came to be passed on the peculiar facts and circumstances of this case and it cannot be cited as a precedent in any other case.

11. The writ petition is dismissed subject to the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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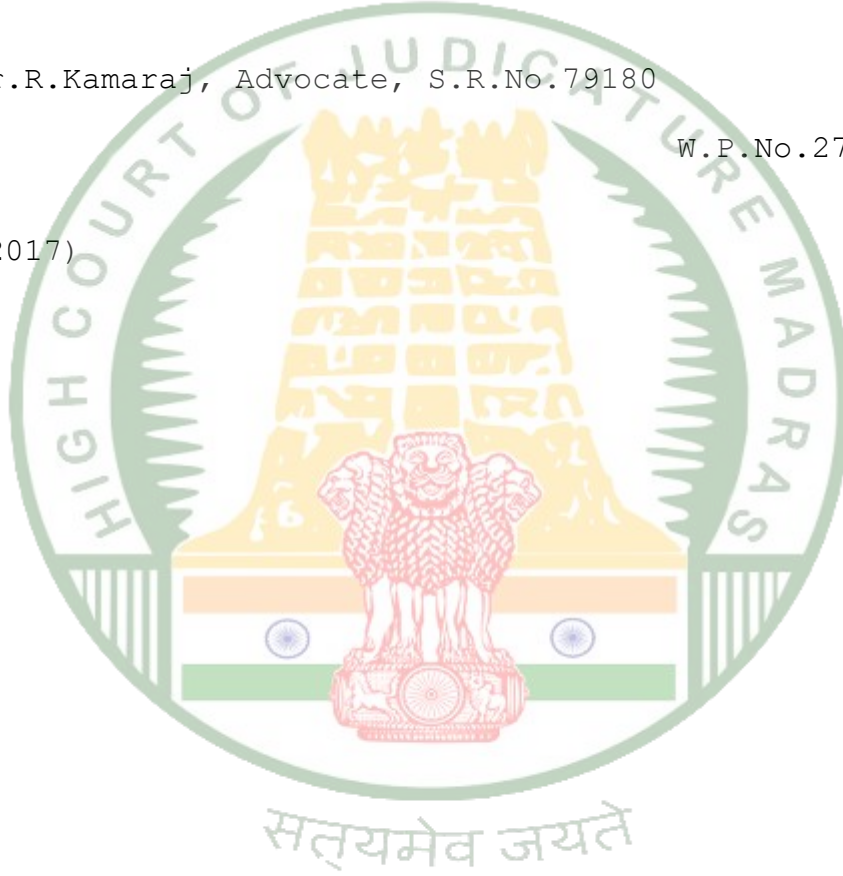
To

1. The Commissioner
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Chennai - 600 003.
2. The Chairperson /
Zonal Executive Engineer (Zone-13)
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Corporation of Chennai,
Adyar, Chennai - 600 020.

+1cc to Mr.R.Kamaraj, Advocate, S.R.No.79180

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