

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

CORAM

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

W.P.No.19858 of 2017
and WMP.No.121438 of 2017

P.Arunkumar

... Petitioner

Vs.

- 1.State Commissioner for Differently Abled
Jawaharlal Nehru Inner Ring Road
K.K.Nagar
Chennai – 600 078.
- 2.The Commissioner
Corporation of Chennai,
Ripon Building,
Chennai – 600 003.
- 3.The Executive Engineer, Zone XI
Corporation of Chennai,
Valasaravakkam
Chennai – 600 087.
- 4.The Junior Engineer
Ward No.143, Zone XI,
Corporation of Chennai,
Nolambur,
Chennai – 600 037.
- 5.The Assistant Engineer
Tamil Nadu Generation and Distribution Corporation
110/11, Bharathi Salai
Western Garden,
Mugappair West,
Nolambur Division
Chennai – 600 037.

6.The Chairman cum Zonal Officer
Street Vending Committee,
Zone XI, Corporation of Chennai
Valasaravakkam
Chennai – 600 087.

.. Respondents

Prayer : Writ Petition filed under Section 226 of Constitution of India praying to issue a Writ of Mandamus, directing the respondents 2 to 4 to comply the order in W.P.No.27693 of 2014 dated 17.10.2014 until the petitioner is provided preferential allotment under Section 43 of the Persons with Disabilities (Equal Opportunities Protection of Right and Full Participation) Act 1995 and following provision under Section Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014 to the petitioner to carry the petty shop on the road side of Mugappair West (beside Bus Terminus) at Bharathi Salai, Mugappair West, Chennai – 600 037, for the petitioner rehabilitation, for which, the petitioner has made representation dated 10.7.2017 to the respondents 2 to 4.

For Petitioner : Mr.C.Jayaprakash

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader [R1]
Mr.A.Nagarajan
Standing Counsel [RR2,3,4 & 6]
Mr.P.R.Dhilipkumar
Standing Counsel [R5]

ORDER

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

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

2. Mr.A.N.Thambidurai, learned Special Government Pleader appears on behalf of the first respondent and Mr.A.Nagarajan, learned Standing Counsel appears on behalf of the respondents 2 to 4 and Mr.P.R.Dhilipkumar, learned Standing Counsel appears on behalf of the fifth respondent.

3. It is the claim of the petitioner that he is a physically handicapped person, suffering 90% disability on account of post polio residual paralysis. He has been issued with National Identity Card and Pass Book with Disability Certificate vide Identity Card No.12185, Disability Code : L.D. District Code : TLR (Thiruvallur), State Code: TN, by the first respondent, which can be utilised for availing the benefits in respect of persons who are physically challenged. The petitioner would further aver that he had studied up to 9th Standard and on account of his physical disability, he is unable to carry on his day-to-day activities and avocation and in order to eke out his livelihood, he is running a bunk shop on the road side of Mogappair West Bus Terminus at Bharathi Salai, without causing any hindrance/nuisance to the public, since 2005. The learned counsel appearing for the petitioner would submit that the petitioner on an earlier occasion had filed W.P.No. 27693 of 2014 against the respondents 1 and 2, praying for issuance of writ of mandamus directing the first respondent to provide accommodation to carry on his business in the petty shop on the road side of Mugappair West, (beside Bus Terminus) at Bharathi Salai, Chennai – 600 037 for rehabilitation. Based on his representation dated 08.9.2014, and vide order dated 14.09.2015, the said

writ petition was disposed of, by directing the first respondent to consider and dispose of the representation dated 08.9.2014, on merits and pass appropriate orders in accordance with law, within a stipulated time and the said order is yet to be complied with. The learned counsel appearing for the petitioner would submit that subsequently, the benevolent provision namely Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2017 came into existence and in the light of the same, the petitioner is entitled to the benefits of the said Act and Rules framed therein, and till such time, enumeration and allotment is made, he may not be evicted from the bunk shop in occupation and therefore, prays for appropriate orders.

4. *Per contra*, Mr.A.Nagarajan, learned Standing Counsel appearing for the respondents 2 to 4 has invited the attention of the Court to the counter affidavit and would submit that the Zonal Officer, Corporation of Chennai, as per the G.O.(4D) No.5 of Municipal Administration and Water Supply (M.C.I) Department, dated 05.10.2016, recommendations has been approved for formation of the Vending Committee and Zonal Officer, Zone-XI, Corporation of Chennai, by proceedings dated 01.11.2016 has initiated steps for formation of the Vending Committee and depending upon the production of the genuine and authenticated documents by the petitioner, his claim will be considered, on par with the said Act.

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

6. The Division Bench of this Court, in a similar case in W.P.No.18677 of 2014 and batch etc., has considered that protection should be given to the street vendors, in the light of the above said Act, vide its common order dated 03.09.2015. It is relevant to extract Paragraph Nos.3 to 8 of the said order :

“ 3. We have noticed in our last order that the present petitions are really only concerned with 'Bunk Shops' and the grievance of the petitioners is that the individual cases are liable to be considered in terms of the provisions of the said Act. We hasten to add that it only implies a consideration and not an inherent right. Whether a bunk shop is to exist or not, if it is to exist, at what location or whether there is need for some other measures of rehabilitation by regulated vending through other methodology are the aspects the committee would have to examine.

4. The real grievance came from the decision of the Corporation which sought to rule out any consideration of the bunk shops, something which could not have been done in our view. The committee under the Act would have to look into these aspects to come to a conclusion specifically in view of the definition of Section 2(l) of the said Act, which defines 'street vendor' to include a temporary built up structure. The plea of the petitioner is predicated on the fact that the bunk owners would thus necessarily have to be considered under the

Provisions of the Said Act. To this extent, we are in agreement with the plea advanced on behalf of the petitioner.

5. In paragraph-5 of the order dated 28.05.2015, we had in fact made some suggestions which could be looked into and those aspects would be examined by the authorities, while framing the policy or by the Committee, as the case may be.

6. Since aforesaid is the only controversy raised, it is conceded that any action against the petitioner would necessarily have to await the decision of the constitution of the Committee, its policy and thereafter consideration by the Committee and thus there would have no threat in the mean time. This however does not mean give a license to persons to keep on setting up bunk shops and no protection would be available to such cases. We also make it clear that the existence in the mean time of the bunk shops already in place does not also mean that they will not comply with the norms applicable depending on the activity they are carrying on in the bunk shops it cannot be a license to do what they please. When example of this keep any endeavour to sell goods which are prohibited or where eatables are involved and norms are not met and hygiene etc. In such situation also, the Corporation can take necessary action. In case of difficulty, liberty to move in W.P.No.4962 of 2013.

7. The petitioners are also not entitled to either increase the size of their bunk shops or to spread beyond the periphery of the bunk still their cases are considered.

8. The writ petitions stand accordingly disposed of. No costs.”

7. The petitioner, even in the year 2014 had approached this Court by filing W.P.No. 27693 of 2014, for consideration of his claim to carry on the business in the bunk shop located in the above said place and vide order dated 17.10.2014, this Court has directed the first respondent to consider and dispose of the same on merits and in accordance with law, and it was brought to the knowledge of this Court that the orders are yet to be passed in the said writ petition.

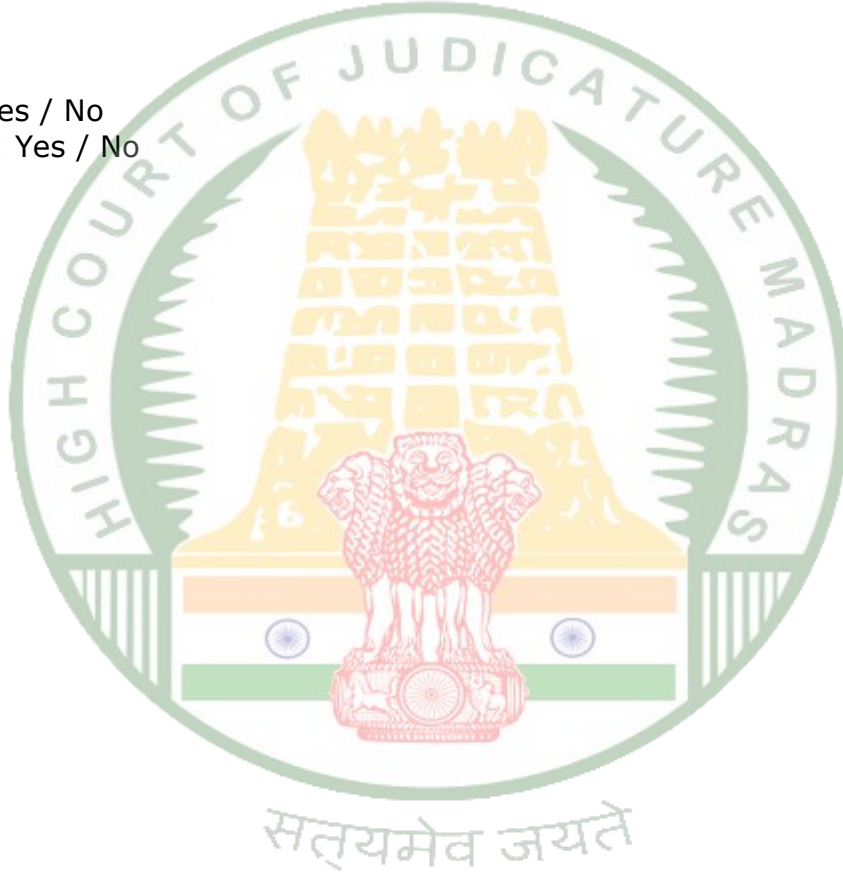
8. Be that as it may, the respondents 2 to 4, shall consider the claim of the petitioner as regards to the applicability of the provisions under the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2017 and the rules framed therein and pass appropriate orders in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order and till such time, the possession of the petitioner in respect of the bunk shop in question, shall not be disturbed. It is made clear that the petitioner shall maintain the bunk shop as well the places adjacent to his bunk shop in a clean and hygienic manner and shall not cause any disturbance or nuisance to the public and the food articles and other products sold by him, shall be in conformity with the norms prescribed.

9. The writ petition stands disposed of accordingly. No costs.
Consequently, connected miscellaneous petition is closed.

[M.S.N.J.,] [N.S.S.J.,]
20.09.2017

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Index : Yes / No
Internet : Yes / No



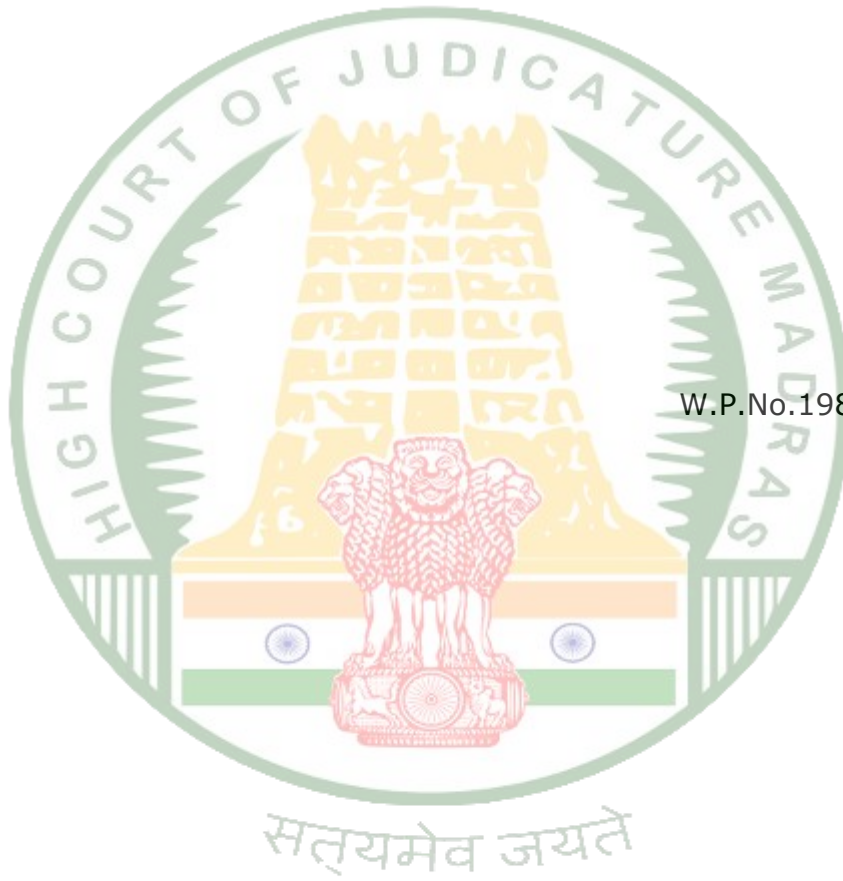
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M.SATHYANARAYANAN,J.,
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N.SESHASAYEE,J.,

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