

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.03.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.30098 of 2017
and
W.M.P.Nos.32672 and 32673 of 2017

Velachery Railway
Road Siru Vyabarigal
Nala Sangam
Rep. By its President
G.Ashok, No.56, Annai
Indira Gandhi Nagar,
Railway Station Road,
Velachery, Chennai - 42

... Petitioner

Vs.

1. The Chairman,
Hawking Zone Implementation Committee,
No.7/2, 3rd street, R.A.Puram,
Chennai - 600 028.
2. The Commissioner,
Corporation of Greater Chennai,
Rippon Buildings,
Chennai - 600 003.
3. The Commissioner,
Chennai City Police,
Egmore, Chennai - 600 008.
4. The Regional Deputy Commissioner
(South), Corporation of Greater Chennai
No.115, LB Road,
Adyar, Chennai - 600 020.
5. The Assistant Commissioner
Corporation of Greater Chennai,
Zone - 13, Adyar, Chennai - 20

6. The Assistant Divisional Engineer,
Highways Department,
Tambaram Sub-Division,
Chennai - 600 042.

7. The Executive Engineer,
Highways Department,
Velachery, Chennai - 42

8. The Zonal Officer,
Zone - 13,
Chennai Corporation,
Adyar, Chennai 600 020

..Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the Respondents to allot suitable pitches for the members of the Velachery Railway Road Siru Vyabarigal Sangam, the Petitioner herein, in any one of the newly constructed Hawkers Plaza in the Velachery Area, Chennai - 600 042, after duly following the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, Act 7 of 2014.

For Petitioner : Mr.R.Abdul Mubeen

For Respondents: Mr.A.N.Thambidurai for R3, R6 and R7

Special Government Pleader

Mr.K.Soundararajan for R1,R2,R4, R5 and R8

O R D E R

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

Heard the Learned Counsel for the Petitioner, Learned Counsel for the Respondents 1, 2, 4, 5 and 8 and the Learned Special Government Pleader for the Respondents 3, 6 and 7.

2. According to the Learned Counsel for the Petitioner, the Petitioner-Sangam is a registered one bearing Registration No.60/2013. The Members of the Petitioner-Sangam are Hawkers carrying on trading on the platform of the Road that lead towards the Velachery Railway Station. The Hawkers sell very small articles like pin, eye brow thread, garland, least stationary items, etc.,

3. It is the version of the Petitioner that the 2nd Respondent / Corporation of Chennai, time and again, published that they are going to construct Hawker's Plaza and allot space for the road side hawkers to make them to trade in a place specially allotted for that purpose. But till date, the 2nd Respondent had not proceeded to issue any application for the Hawkers in the Velachery area, therefore, the Members of the Petitioner-Sangam continue to do their business in the

platform of the Road that leads towards the Velachery Railway Station Road.

4. It transpires that the Petitioner-Sangam addressed a representation dated 08.04.2013 to the 1st Respondent requiring him to permit the Petitioner-Sangam to continue their trade near Velachery Railway Station Road, where now they are continuing. They also suggested to the 1st Respondent in allotting the alternative place, viz., 1. Behind the Railway Bridge, 2. Kaiveli Road, 3. Kaiveli Bus Depot, to be permitted to carry their business operations.

5. By means of a representation dated 10.02.2014 addressed to the 8th Respondent, a request was made by the Petitioner to allot place for them. The Petitioner-Sangam also suggested the same place, as suggested in their previous representation dated 08.04.2013, however, there is no response. Time and again, the office bearers of the Petitioner-Sangam approached the Officials and requested them to consider their plea. They also demonstrated one day fasting to draw the attention of the officials, but there was no response and the Petitioner-Sangam members are continuing to do their trade in the same area with struggle. Further, often the Hawkers are being disturbed by the local police men on the ground that they are not suppose to sell their goods over there, left with no option, the members are continuing their business activities.

6. The grievance of the Petitioner is that time and again, representations were given to the 1st Respondent seeking for an alternative place. The 1st Respondent also by means of a letter having reference H.L.I.C.C.No.22/2014 dated 19.02.2014 addressed to the 2nd Respondent, directed the 2nd Respondent to issue suitable direction to the 4th Respondent to attend the matter urgently as number of representations were already given. But the said letter of the 1st Respondent, according to the Petitioner, did not knock the deaf ears of the 2nd Respondent.

7. The Petitioner-Sangam addressed another representation dated 05.07.2014 to the Assistant Executive Engineer, Zonal - 13 to interfere in the subject matter in issue and made a request to provide an alternative place, in the place as stated supra. However, there is no response for the said letter. While this being a situation, the Policemen often torturing the members of the Petitioner to vacate the place from where they are trading now.

8. The Learned Counsel for the Petitioner contends that the Petitioner-Sangam is ready to extend its fullest co-operation in implementing the Hawkers scheme. But on the other hand, the officials of the 2nd Respondent with the help of the Policemen and others readily brought hooligans, often

throw away the trading articles from the Petitioner-Sangam under the guise of preventing the members of the Petitioner from carrying on business in the Velachery Railway Station Road. On 13.10.2014, the Petitioner had addressed a representation to the 1st Respondent.

9. Aggrieved by such acts, the Petitioner, earlier, filed a W.P.No.27901 of 2014 before this Court seeking for an issuance of a Writ of Mandamus directing the Respondents to allot suitable pitches for the members of the 'Velachery Railway Station Road Siru Vyabarigal Nala Sangam', the Petitioner herein in any one of the newly constructed Hawker's Plaza in the Velachery Area, Chennai - 600 042. By means of an order dated 20.09.2016, this Court directed the Hawking Zone Implementation Committee / 1st Respondent herein to consider the Petitioner's representation dated 08.04.2013 and to pass appropriate orders in accordance with Law, within a period of three months from the date of receipt of copy of the order.

10. Furthermore, on 01.11.2016, the 1st Respondent had issued a letter to the 4th Respondent to inspect and verify and report in two weeks whether the Members of the Petitioner-Sangam are hawkers in the said place for the last several years and further ordered that the report should be received within a period of two weeks. On 12.01.2017, the 6th Respondent issued a notice to all the Hawkers to remove the encroachments within three days and further warned otherwise that the members of the Petitioner-Sangam will be forcibly evicted from the place. On 27.02.2017, the 1st Respondent had issued a letter to the 4th Respondent and directed to send some other responsible officer during evening hours and the inspection should be made in two days and find out whether the Petitioners are really hawking or not and further directed to file the report within two weeks.

11. Besides the above, on 26.03.2017, the Inspector of Police (Traffic), Velachery had issued a notice of eviction to one of the Hawker to remove the encroachments within two days and further warned that otherwise, he shall register a case against the said Hawker. Again on 28.03.2017, the 1st Respondent, issued a letter to the 4th Respondent that the claim of the Members of the Petitioner-Sangam is under consideration and before the vending committee is formed by the Corporation of Chennai, the only course open to them is to regulate the persons and not to drive the hawkers out of force or harassment and further called upon the 4th Respondent to give suitable direction to the concerned Zonal Officer - 13 of Corporation of Chennai not to harass the Hawkers before formation of the Vending Committee.

12. The Learned Counsel for the Petitioner brings it to the attention of this Court that the 6th Respondent had issued a notice dated 09.05.2017 stating that if the Hawkers do not

vacate their shops, the Department shall initiate stringent action and forcibly evict the hawkers, who are the members of the Petitioner-Sangam. On 12.05.2017, the Petitioner had issued a letter dated 12.05.2017 to the 2nd Respondent and the Commissioner of Police (Traffic) requesting the 2nd Respondent to consider their grievances and further suggested for suitable places. The Petitioner-Sangam issued a representation dated 17.05.2017 to the 7th Respondent to consider their grievances.

13. The grievance of the Petitioner - Sangam is that despite several representations, there was an inaction on the part of Respondents 2 to 8 and therefore, the Petitioner issued a representation complaining about the act of Police with the 1st Respondent. The 1st Respondent had immediately issued a letter dated 15.05.2017 to the 4th Respondent requesting the Respondents 2 and 3 to direct their respective subordinates and officials not to harass the members of the Petitioner-Sangam till the claim of the Petitioner-Sangam is disposed of, as the enumeration of Hawkers has already taken place.

14. The Petitioner-Sangam made another representation dated 17.05.2017 to the 1st Respondent suggesting allotment of hawking pitches at alternate places. On 14.06.2017, the Petitioner issued a representation to the 2nd Respondent requesting to allot Hawking pitches at alternate available places. Further, the Petitioner issued a representation on 30.06.2017 to the 1st and 5th Respondents requesting them to consider their grievances. On 03.07.2017, the 1st Respondent issued a letter to the 4th Respondent directing all the Respondents herein and their respective subordinate to maintain status quo, as the hawkers are claiming benefits under the Central Legislation till alternate accommodation is provided to the Hawkers. Further, despite the order of status quo and several directions passed by the 1st Respondent, according to the Petitioner, the authorities are having scant with regard to such directions and are threatening the members of the Petitioner-Sangam to forcibly remove them and disturb their vending business when the enumeration of hawkers is already completed and the suitable allotment of pitches to the hawkers is under consideration. Hence the Petitioner has filed the present Writ Petition.

15. Per contra, it is the submission of the Learned Counsel for the 8th Respondent / Corporation that the Velachery Railway Road in which the Petitioner-Sangam people purportedly doing Hawking business is a State Highways Road connecting the Velachery and Tambaram and the same is maintained by the Highways Department. In view of large number of people using the said road to reach the Velachery Railway Station, the Highways Department recently laid the

footpath and also widened the road. Therefore, the Highways Department is the Authority about the hawking matter in question.

16. Moreover it is represented on behalf of the 8th Respondent that since the Road is a State Highways road, the provisions of the Street Vendors (Protection of Livelihood and Regulation of the Street vending) Act, 2014 is not be applicable to the stretch in which the Petitioner-Sangam are purportedly carrying on hawking. As on date, during the evening peak hours, some hawkers have put up shops on the extended footpath and in some times, they have also extended into the road causing hindrance to the commuting public and the vehicular traffic. The Highways Department laid a wide footpath and if any encroachment is made on the footpath, it will affect the public at large.

17. The Petitioner-Sangam, according to the 8th Respondent/Corporation, had shown the notices issued by the Highways Department in respect of the Velachery Bypass road footpath and Taramani link road footpath to show that the authorities are taking action, whereas, the Petitioner-Sangam admitted that they are purportedly doing hawking on the Velachery Railway Road from Chennai Silks to Velachery Railway Station. In short, it is the submission of the Learned Counsel for the 8th Respondent / Corporation that Street Vendors (Protection of Livelihood and Regulation of the Street vending) Act, 2014 cannot be enforced against the State Highways road, which is meant for vehicular traffic and as such, the prayer of the Petitioner-Sangam cannot be complied with. Also that the enumeration is not a ground to claim for alternate place for hawking when the Act, 2014 is inapplicable to the place, in which the Members of the Petitioner-Sangam are carrying on Hawking.

18. The Learned Special Government Pleader appearing for the Respondents 3, 6 and 7 submits that the service road of Velachery MRTS Grade Separator also connects the southern sector of inner ring road, which is an important feeder corridor for many residential settlements and the people, who travel to GST Road and hence the traffic intensity of this Road is always high and thousands of pedestrians use this road because of this MRTS station. Several shops, mall and commercial complexes, educational institutions are located throughout the stretch.

19. Apart from the above, the Learned Special Government Pleader appearing for the Respondents 3, 6 and 7 contends that taking into account the huge pedestrian volume, footpath to width of 4 to 5 meters was constructed a year back for safe movement of pedestrians and cater the movement commuters of Railways station. In fact, footpath was provided for 5 meters width in this particular stretch, which is very much higher

than the usual. But on the contrary, this wider footpath is being conveniently exploited by the shop keepers in one end and road side vendors on the other end. Also this wider platform is being used as parking zone by the public.

20. In pith and substance, the plea of the Learned Special Government Pleader appearing for the Respondents 3, 6 and 7 is that the pedestrians are compelled to walk in the confined space and also walk off the platform and hence pedestrians become vulnerable when they are made to use the main carriage way. This also results in traffic chaos during peak hours and small vendors today become permanent encroachers in the due course. In brief, the stand of the Learned Special Government Pleader appearing for the Respondents 3, 6 and 7 is that the footpath constructed for safe movement of pedestrians has become ineffective and the efforts of the Government have gone in vain and that the expenditure incurred has become an infructuous one.

21. On a careful consideration of the respective contentions and also this Court taking note of the attendant facts and circumstances of the instant case in an encircling manner, is of the considered view that the reliance placed by the Petitioner-Sangam to the effect that the Street Vendors (Protection of Livelihood and Regulation of the Street vending) Act, 2014 applies to them, is an incorrect one. Furthermore, in the State Highways Road, which is meant for vehicular traffic, the members of the Petitioner-Sangam cannot carry on hawking business. Apart from that, a mere enumeration cannot be made as a cementing platform to make a claim to an alternate place for carrying on business when the Act, 2014 is inapplicable to the Petitioner/ Sangam Members. In short, the Highways Department had clearly spelt out their stand by stating that the foot path, which was provided for 5 meters width in the particular stretch of the road is very much higher than the usual etc., therefore, this Court is of the considered view that the width of the foot path 4 to 5 meters is constructed, according to the 6th Respondent, for safe movement of pedestrians and cater the movement commuters of railway station. Moreover, the foot path, which was constructed for the free access and movement of the pedestrians and in this regard their primordial welfare and interest cannot be thrown to the winds by permitting the Petitioner/Sangam members to carry on 'hawking' in the said place. In any event, this Court is of the earnest opinion that the relief sought for by the Petitioner cannot be acceded to by this Court. Resultantly, the Writ Petition fails and the same stands dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

22. Before parting with the case, this Court points out that the dismissal of this Writ Petition will not preclude the 8th Respondent / Corporation of Chennai to consider the request

of the Members of the Petitioner-Sangam seeking an alternative place, if there are no legal impediments in this regard. It is made quite clear that this observation shall not be in any way a construed one that the Petitioner, Members of the Sangam are permitted to continue to do the hawking business in the prohibition place in question.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssd

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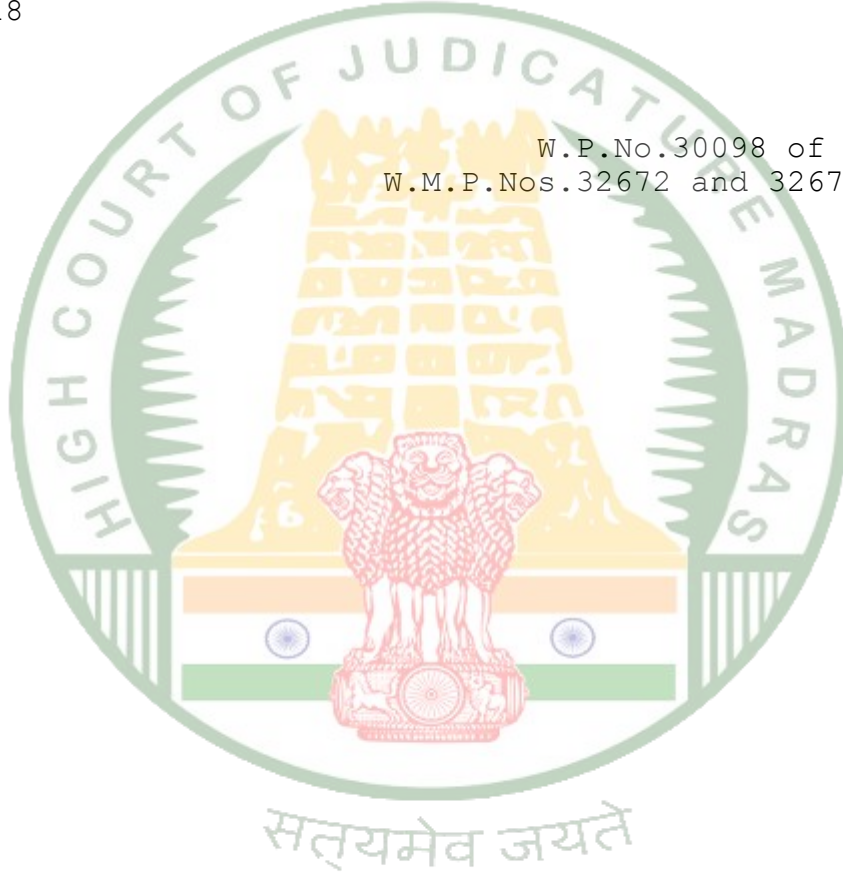
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+1cc to M/s.R.Abdul Mubeen, Advocate SR.No.20793
+1cc to M/s.K.Soundararajan, Advocate SR.No.21481
+1cc to Government Pleader Sr.No.21411

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