

IN THE HIGH COURT OF JUDICATURE AT MADRAS

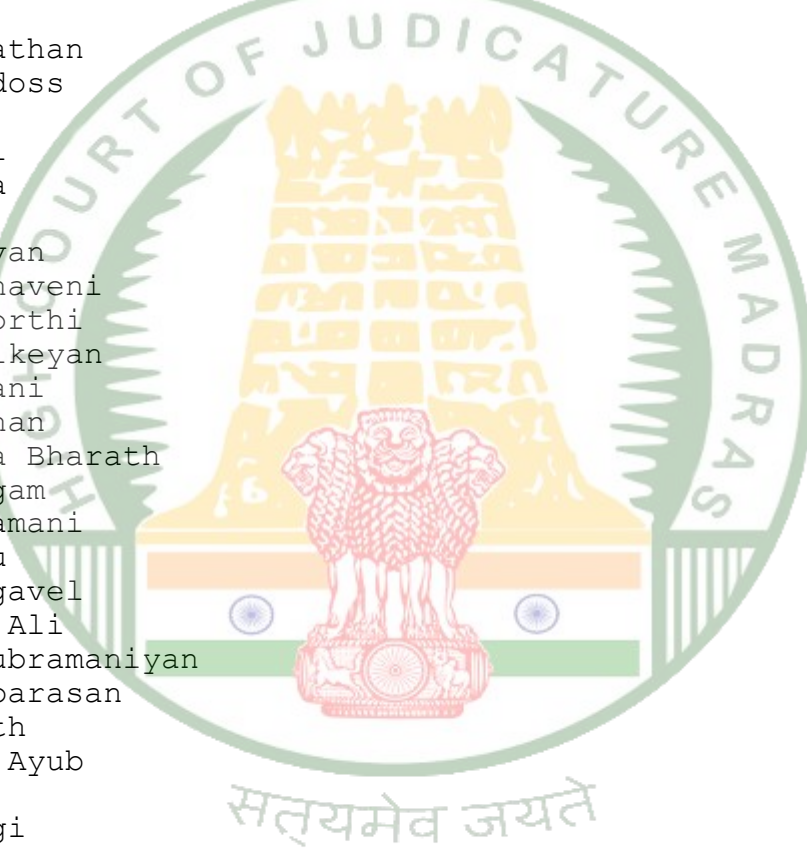
DATED: 27.02.2018

CORAM:

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

W.P.No.21449 of 2017
and
W.M.P.Nos.22441 and 22442 of 2017

1. N.Ulaganathan
2. V.A.Haridoss
3. A.Babu
4. R.Moorthi
5. S.Malliga
6. S.Sankar
7. V.Elangovan
8. G.Krishanaveni
9. V.Ramamoorthi
10. N.Karthikeyan
11. S.Usharani
12. R.Krishnan
13. U.Vijaya Bharath
14. V.Arumugam
15. M.Thangamani
16. E.Sarasu
17. V.Thanigavel
18. A.Jabar Ali
19. V.Sivasubramaniyan
20. M.Silambarasan
21. M.Prasath
22. K.Abdul Ayub
23. A.Raja
24. K.Kannagi
25. V.A.Mohan
26. M.Murugan
27. M.Jabar Ali
28. R.Ellammal
29. B.Mahalakshmi
30. V.A.Ravi
31. P.Krishnamoorthi
32. R.Kannan
33. R.D.Suresh
34. R.D.Babu
35. S.Deshingu
36. A.Sivapushpam
37. A.Purushothaman



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38. P.Paneerselvam
39. K.Loganathan
40. S.Jiyavoor Rahuman
41. M.Settu
42. T.Arulmurugan
43. D.Purushothaman
44. D.Ramachandran

.. Petitioners

Vs.

1. The State of Tamil Nadu,
Represented by the Secretary,
Highways Department,
Fort St.George, Chennai.
2. The District Collector,
Villupuram District, Villupuram.
3. Assistant Divisional Engineer,
Highways Department, Tindivanam.
4. Commissioner, Tindivanam Municipality,
Tindivanam.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in issuance of the impugned order which was signed by him on 27.06.2017 and quash the same and consequently direct the fourth respondent to re-locate in case of requirement of the hawking zone and permit the petitioners to carry on with their business by invoking the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, read with the Tamil Nadu Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme and Rules 2015.

For Petitioner : Mr.D.Ravichander

For Respondents: Mr.S.R.Rajagopal,

Addl. Advocate General,

assisted by Mr.A.N.Thambidurai, Spl.G.P.

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ORDER

(The Order of the Court was made by S.Vaidyanathan, J)

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in issuance of the impugned order which was signed by him on 27.06.2017 and quash the same and consequently direct the fourth respondent to re-locate in case of requirement of the hawking zone and permit the

petitioners to carry on with their business by invoking the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, read with the Tamil Nadu Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme and Rules 2015

2. It is the case of the petitioners that they are Street Vendors carrying on vending of articles by offering service to the general public in the side-walk by putting up small / temporary built up structures. According to them, the shops were there from 1985 and that there was no disturbance. Their entire livelihood is depending upon the said business. The National Highways Authority of India (NHAI) declared the road leading to Pondicherry to Bangalore as NH.66 in and around 1996 and a fly-over-bridge was constructed. Thereafter, the petitioners have shifted their shops on the side-walk and kept the same within the pillars of the fly-over-bridge. Till the impugned order is passed, they were in peaceful possession and enjoyment of the same. But unfortunately, the impugned order is passed without taking into account the plight of the Street Vendors.

3. It is further stated by the petitioners that as per the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, there is protection of their rights and also to regulate them. As per the said Act, 2014, a survey was conducted by the Ministry of Housing and Urban Poverty Alleviation Department and based on the survey, many people were enrolled under the Scheme. The petitioners were also issued with Certificate of Vending and also with Identity Cards. Further, the impugned order dated 27.06.2017 was served on all the Street Vendors in the second week of July 2017 and in the impugned order, Section 28 of the Tamil Nadu Highways Act, 2001, was invoked. There is also a threat of eviction against the encroachers and that the lands were notified as "Natham" lands and that the third respondent does not have jurisdiction to remove the petitioners. According to the petitioners, as per the provisions of the said Act, 2014, the rights of the Street Vendors need to be protected and that action of the respondents which is the subject matter of this Writ Petition, has got to be interfered with, as the same is arbitrary and contrary to the provisions of the said Act, 2014.

4. The first and third respondents have filed detailed counter affidavit/additional counter affidavit stating that Tindivanam Town is a major junction connecting Chennai, Kancheepuram and Thiruvannamalai Districts with neighbouring Union Territory of Pondicherry and hence, the road in question is catering to the major traffic flow in Villupuram District. The road named as Old NH.45 passing through Tindivanam Town from Km 121/085-125/085 is one of the important State Highways being maintained by the Tindivanam Highways, Construction and

Maintenance Sub-Division, Villupuram Highways, Construction and Maintenance Division. In this road, Railway over-bridge of four arms leading to Chennai to Trichy and Puducherry to Gingee is located at Km 123/2. The contention of the petitioners that there is no encroachment, is not correct, and that the entire length of the road is being encroached leading to narrowing of the width of the road, causing heavy traffic congestion in the Tindivanam Municipal limits.

5. It is further averred in the counter that the Sub-Collector, Tindivanam convened a meeting to solve the problem of traffic congestion in Tindivanam Municipal limits on 23.06.2017, and in the said meeting, the Sub-Collector, Tindivanam instructed to clear the encroachments within Tindivanam Municipal limits to the NHAI, State Highways, Municipal Administration and Police Department. The entire stretch of the road is being maintained by the Divisional Engineer (H), Construction and Maintenance, Villupuram, who has not given any permission for putting up a temporary Pandals, temporary stalls or any shed. The petitioners have not got any permission to utilise any part of the Highways land from the Divisional Engineer (H), C & M, Villupuram, Highways Authority for erecting shops, sheds and stalls, etc., in terms of Section 26 of the Tamil Nadu Highways Act. The petitioners have not paid any rent or other charges prescribed by the Highways Authority as per the said Section 26. It is further stated that the encroachments have already been removed and once again, there was encroachment, and that yet another notice was issued after convening a meeting and the same is the subject matter of the present Writ Petition. It is also stated in the counter that as the petitioners are encroachers, they cannot seek any mercy of this Court to get the relief sought for in this Writ Petition.

6. Added further, it is stated in the counter of respondents 1 and 3 that the petitioners have not got any permission from Highways Authority to erect any temporary structures and hence, all the encroachments in the Highways land causing disruption of traffic movements, are considered as encroachments, more particularly, the petitioners are also encroaching the riding surface of the road leading to Indira Gandhi Bus Station and nearby Railway Station which causes heavy traffic congestion. The petitioners have not only occupied the riding surface of the service road of Road Over-bridge (ROB) portion, but also occupied the trestle portion of ROB (beneath the ROB deck portion). The encroachments in the trestle portion of the ROB obstruct the periodical maintenance of the ROB, which causes defect in structural stability of the structures.

7. It is the further stand of the respondents 1 and 3 in the counter that the Assistant Divisional Engineer (H), Construction and Maintenance, Tindivanam Sub-division (third

respondent) is authorised by the Divisional Engineer (H), C & M, Villupuram District, District Highways Authority, to remove the encroachments in Old NH-45 passing through Tindivanam Town Km - 121/085 - 125/085. The notice for removing the encroachment is served on all the encroachers by the Highways Department on 27.06.2017 as per the Act, by following the procedures. The show cause notices were also served on all the encroachers on 27.06.2017 and sufficient time was given to clear the encroachments. In the eviction show cause notice itself, it is clearly stated that the encroachments are to be cleared with the assistance of the Revenue Department, Police Department and Municipal Administration. The petitioners have not given any representation to stop the process of removal of encroachments in the Highways land of Tindivanam Highways, C & M Sub-division. During the entire period of eviction from 03.07.2017 to 08.07.2017, the petitioners have given fullest co-operation for the entire removal of encroachments in the Old NH.45 passing through Tindivanam Town and in the entire ROB portion and its service roads. The Commissioner, Tindivanam Municipality, Tindivanam had requested to give opinion and suggestions for identifying the Vending Zones for regulating the Street Vendors in Tindivanam Town, vide Letter No.3752/2017/H2, dated 17.07.2017, after which, the Sub-Collector, Tindivanam, as also the Commissioner, Tindivanam Municipality, convened a meeting on 01.11.2017 for regulating the Street Vendors in Tindivanam Town. In continuation of the requisition made by the Commissioner, Tindivanam Municipality, the third respondent-Assistant Divisional Engineer, Highways, Construction and Maintenance, Tindivanam has sent opinion for regulating the Street Vendors in Tindivanam Town, by Lr.No.192/2017/JDO, dated 02.11.2017. The road named as Old NH.45 passing through Tindivanam Town from Km 121/085 - 125/085 is one of the important State Highways (SHU-137) being maintained by the Tindivanam Highways, Construction and Maintenance Sub-Division and Villupuram Highways, Construction and Maintenance Division.

8. Moreover, it is stated in the counter filed by the respondents 1 and 3 that this ROB of four arms leading to Chennai to Trichy and Puducherry to Gingee is located at Km 123/2 of the Road, in which ROB portion is adjacent to the Indira Gandhi Bus Station, Tindivanam, which caters more traffic volume of Government and private bus traffic to and fro movements, and further, Tindivanam Railway Station is also adjacent to the ROB portion of the said Road catering more vehicular and passenger's movements which causes traffic congestion. Furthermore, the entire length of the Road is being encroached and thereby, the width of the Road is becoming narrow, causing heavy traffic congestion in the Tindivanam Municipal Limits. Therefore, the entire length of the road Old NH.45 passing through Tindivanam Town Km 121/085 - 125/085 is categorised as 'No Vending Zone' for the following reasons:

(i) The Road NH.45 passing through Tindivanam Town Km 123/2 is a Junction of four Roads, one, leading to Chennai, two, leading to Villupuram, three, leading to Puducherry (Pondicherry) and four, leading to Gingee, and is having heavy traffic volume of 3471 passenger Car unit. In this Road, there are many vehicles plying from the neighbouring Districts of Chennai, Kancheepuram, Tiruvannamalai and Union Territory of Puducherry (Pondicherry) connecting Villupuram District, and hence, the stretch of four kilometers 121/085 - 125/085 is 'prohibited' from being used as Vending Zone.

(ii) This is an entry and exit point of Bus terminals leading to Chennai, Villupuram, Tiruvannamalai and Puducherry, and hence, the ROB portion at CH:122/730 - 123/440, Chennai side, Villupuram side, Puducherry side and Gingee side, is 'prohibited' from being used as Vending Zone.

(iii) The ROB portion at CH 122/730 - 122/440, Chennai side, Villupuram side, Pondy side and Gingee side, is 'prohibited' from being as Vending Zone from the angle of security.

(iv) The ROB portion on two sides connecting NH.66, Puducherry and Gingee on both sides of Railway crossing falling within the Tindivanam Municipality limits, is 'prohibited' from being used as Vending Zone.

(v) The road named as Gidangal Road Km 0/0 - 0/6 is one of the important ODR, being maintained by the Tindivanam Highways, Construction and Maintenance Sub-Division and Villupuram Highways, Construction and Maintenance Division. Thus, the entire length of the road Gidangal Road Km 0/0 - 0/6 is categorised as "No Vending Zone" for the reason that this Road is of 600 m length, which traverses through Gidangal Tank adjacent to Railway track and this Road is 'prohibited' from being used as Vending Zone, that this Road is adjacent to entry and exit of Indira Gandhi Bus Stand at Tindivanam, which is 'prohibited' from being used as Vending Zone, that since this Road is also entry for Tindivanam Railway Station, this Road is 'prohibited' from being used as Vending Zone, and that the said Gidangal Road is acting as a service road catering heavy traffic, since this Road is connecting the stretch of NH.66 passing through Nehru Bazaar having large number of commercial activities, and hence, this Road is 'prohibited' from being used as Vending Zone. Therefore, for all these reasons, the respondents 1 and 3 pray for dismissal of the Writ Petition.

9. This Court passed various orders and finally, on 12.10.2017, this Court passed an order to file additional affidavit as to the identification of the Vending Zones and the Project Director, NHAI, Villupuram as well as the Sub-Collector, Tindivanam were directed to extend their maximum co-operation to the official respondents. The entire issue during the pendency of the Writ Petition is being proceeded with on the basis that the petitioners have encroached the lands and they have got a right to get alternative sites. Since nothing from the

respondents came out fruitful, this Court, on 02.02.2018, passed an order directing the respondents 2 to 4 to appear before this Court today. Accordingly, the second respondent-Dr.L.Subramanian, District Collector, Villupuram, the third respondent-Mr.K.K.Nagarajan, Assistant Divisional Engineer, Highways Department, Tindivanam and the fourth respondent-Mr.B.V.Surendra Sha, Commissioner, Tindivanam Municipality, are present before this Court and their appearance is dispensed with.

10. The fourth respondent-Commissioner of Tindivanam Municipality has filed counter affidavit on his behalf and on behalf of the second respondent-District Collector, stating that they never disobeyed the order passed by this Court and also stated that the fourth respondent is the Ex-Officio Chairman of the Town Vending Committee. The authority responsible for implementation of the terms of the Act, 2014, is the authority responsible for conducting proceedings of the Town Vending Committee constituted under the said Act, 2014. Further, the Rules and Scheme are framed under the said Act, 2014, and the formation of the Town Vending Committee is over by 11.07.2017.

11. It is further stated in the counter of the second and fourth respondents that the fourth respondent is responsible to undertake the works required under the said Act, 2014 and he has initiated steps to find out the vending areas for the Street Vendors and the process of speedy identification of requisite place is under-way under the direct purview of the second respondent herein, on receipt of the order of this Court, dated 02.02.2018. It is further stated that 909 Street Vendors have been identified as on date and these vendors have also been issued with Identity Card. It is further stated that enumeration has also been conducted and that four places have been identified as unobjectionable site nearer to the original places of business, establishing the Vending Zone, which are as follows:

- (a) A site near Gingee Bus Stand (R.S.No.106/1C) of an extent of 2,500 Sq.Mtr.
- (b) A site near Kamatchiamman Koil Street of an extent of 200 Sq.Mtr.
- (c) A site near Santhaimedu (S.No.33) of an extent of 12,080 Sq.Mtr.
- (d) A site near Vandimedu (S.No.106/1B) of an extent of 2,684 Sq.Mtr.

12. It is further stated in the counter affidavit of the fourth respondent that since there is no space along the sides of Highways for establishing the Vending Zones and as the respondents decided to establish the Vending Zone in Sandhai Medu, the fourth respondent has fixed boards regarding the

selection of the suitable site for the vending business and the vendors were called upon to approach the Tindivanam Vending Committee for allotment of the shops/spaces in the above site (s). Unfortunately, none of the Vendors have come forward to submit their consent for allotment in the above sites, for which, they refused to move out from the area below the Tindivanam Fly-over. It is further stated that the second respondent has ordered to take appropriate action to drop the duplication and fake entries noticed from the enumerated vendors list and also instructed to delete the presence of multiple members from a single family. The officials of the Tindivanam Municipality have been instructed to once again verify the list of Street Vendors already approved with the help of the Police Department. If an order is passed by this Court, the respondents would finalise the process as per the 2014 Act.

13. Heard both parties and perused the materials available on record

14. It is not in dispute that the petitioners were the Street Vendors who have been carrying on their activities in the State Highways. Learned counsel for the petitioners fairly submitted that even though they have been evicted, as there is no notice to them, once again they have put up the stalls. The learned counsel for the petitioners also submitted that it is not the intention of the Street Vendors to squat on the properties, provided they are given alternative sites, as any action of the respondents would deprive their livelihood. He further stated that four places mentioned supra, have been identified, which are not conducive for the petitioners to carry on their avocation, as the third place mentioned in (c) above, would be extensively large and they have no idea whether these persons are going to the place mentioned in (d), which if allotted, would cause congestion to traffic and the passers-by.

15. Mr.S.R.Rajagopal, learned Additional Advocate General, assisted by Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents submitted that the names of the genuine persons may be reflected, as the petitioners in the Writ Petition have been identified and enumerated and Identify Card had also been issued to the petitioners/Street Vendors. Since they did not co-operate, no allotment could be given to them. The respondents are willing to provide them the place of their choice on the First Come First Served basis, provided there are available Street Vendors in the place of request made by the petitioners.

16. In view of the submission made by both parties, this Court is of the view that if the petitioners satisfy the conditions stipulated under the 2014 Act or the Scheme/Rules, etc., framed by the Government thereunder and if they are

enumerated in the list and there is no duplication, their case may be considered according to the preference of the shop and the place of their choice for the various shops that had been enumerated by the Tindivanam Municipality for having vending category, namely the Food, Vegetables, Roadside Fish sale, petty shops, forge iron, fruits, flowers, colour powder, clothes, beverages, betel leaf, bangle sale, etc. It is made clear that the petitioners/Street Vendors shall co-operate with the authorities in order to get the preference of the place of their choice. This Court further makes it clear that if there are any persons who have been genuinely allotted the place(s), such place(s) cannot be demanded by the petitioners/Street Vendors, either as a matter of right or as a matter of routine. Similarly, we expect the petitioners/Street Vendors to come forward with the clear facts in order to enable the authorities to avoid duplication/inclusion of the second family member in getting the shop(s) of their choice.

17. With the above observations and directions, the Writ Petition is disposed of. The petitioners/Street Vendors are directed to approach the authorities concerned within a period of one month from the date of receipt of a copy of this order and on and after identification, subject to availability and fulfilment of the conditions stipulated in the Rules/Scheme/Regulations/Act, 2014, etc., the respondents shall allot the place(s) to them to enable the petitioners/Street Vendors to carry on their business activities. It is clarified that for a period of one month from the date of receipt of a copy of this order, the place(s) under occupation now by the petitioners/Street Vendors shall not be disturbed and this time limit will not preclude the petitioners from participating in the enumeration process of allotment of shop(s)/place(s). If the alternative site identified and provided by the Authorities, is not acceptable by the Street Vendors within the time stipulated, it is open for the Authorities to allot the place to any other person based on seniority/empanelled list and the Street Vendors cannot contend later that they have not been given a place. They may not be allotted any place and they can't also stay in the prohibited area.

18. No costs. Consequently, W.M.Ps. are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

CS

To

1. The Secretary to Government
Highways Department,
Fort St.George, Chennai.
2. The District Collector,
Villupuram District,
Villupuram.
3. Assistant Divisional Engineer,
Highways Department,
Tindivanam.
4. Commissioner,
Tindivanam Municipality,
Tindivanam.

+1 CC to Mr.D. Ravichandran, Advocate sr 15535.
+1 CC to The Govt. Pleader sr 15937.

SP(04/04/2018)

W.P.No.21449 of 2017



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