

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.09.2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.24912 of 2016

And

WMP.No.21275 of 2016

S.Sivaraj

... Petitioner

..Vs..

1.The Secretary to Government,
Local Administration Department,
Fort St.George, Chennai-600 009.

2.The State Commissioner for Differently Abled,
J.N.Ring Road, K.K.Nagar,
Chennai-600 078.

3.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-600 003.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 3rd respondent to consider and pass orders on the petitioner's representation dated 28.06.2016 for grant of license/permission to run the bunk shop at Valluvar Kottam High Road, Near Government High School Road Corner, Nungambakkam, Chennai-34.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.R.S.Selvam, Government Advocate
for R1 & R2

No appearance for R3

ORDER

The writ petition is filed for a direction to direct the 3rd respondent to consider the representation submitted by the writ petitioner for granting permissions to run the Bunk Shops (Petty Shops) in Valluvar Kottam High Road, Near Government High School Road Corner, Nungambakkam, Chennai-34.

2. The grievances of the writ petitioner is that he is running small petty shops (Bunk Shops) in Valluvar Kottam High

Road, Near Government High School Road Corner, Nungambakkam, Chennai-34 for six years. The authorities are now initiating actions to evict the Bunk Shop and under these circumstances, the writ petitioner is constrained to move the present writ petition.

3. The learned counsel, appearing on behalf of the writ petitioner, contended that the Bunk Shop is the livelihood of the writ petitioner and in the event of eviction, the family of the writ petitioner would lose his livelihood. The writ petitioner is the breadwinner of his family and running Bunk Shops for six years. Thus, any eviction would cause an irreparable loss to the life of the writ petitioner as well as his family members.

4. The writ petitioner has already submitted his representation to the authorities competent to consider his case favourably, granting permission to run these Bunk Shops. However, the said representations are not considered by the authorities and no decision has been taken in this regard.

5. It is brought to the notice of this Court that the Hon'ble First Bench of this Court passed an order in a batch of writ petitions on 3.9.2015, which reads as follows:-

"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(1) 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."

6. The Street Vendors Act, 2014 (Central Act 7 of 2014) came into force with effect from 1.5.2014. Section 2(d) of the Act, defines "Mobile Vendors" as follows:-

"Mobile Vendors" means "street vendors who carryout vending activities in designated area by moving from one place to another place vending their goods and services".

7. Section 2(1) of the Act, defines "Street Vendor" as follows:-

"(1) "street vendor" means a person engaged in vending of articles, goods,

wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to place and includes hawker, peddler, squatter and all other synonymous terms which may be local or region specific; and the words "street vending", with their grammatical variations and cognate expressions, shall be construed accordingly."

8. Section 2(m) of the Act, defines "Town Vending Committee" as follows:

"(m) "Town Vending Committee" means the body constituted by the appropriate Government under Section 22."

9. Section 2(n) of the Act, defines "Vending Zone" as follows:-

"(n) "vending zone" means an area or a place or a location designated as such by the local authority, on the recommendations of the Town Vending Committee, for the specific use by street vendors for street vending and includes footpath, side walk, pavement, embankment, portions of a street, waiting area for public or any such place considered suitable for vending activities and providing services to the general public."

10. Section 4 of the Act, deals with "Issue of Certificate of Vending". Section 5 of the Act, stipulates the "Conditions for issue of Certificate of Vending". Section 6 of the Act, enumerates the "Categories of Certificate of Vending and issue of Identity Cards". Section 8 of the Act, provides "Vending Fees". Chapter VII to Section 22 of the Act, deals with "Town Vending Committee". The Town Vending Committee is empowered to consider the grievances and the representations submitted by the vendors or the owners of such Bunk Shops. Chapter V of the Act, deals with "Dispute Redressal Mechanism". Section 20 of the Act, stipulates "Redressal of grievances or Resolution of Disputes of Street Vendors". Accordingly, the appropriate Government may constitute one or more Committees consisting of a Chairperson, who has been a Civil Judge or a Judicial Magistrate and two other professionals, having such experience as may be prescribed for the purpose of deciding the applications received under sub-section (2) of the Act.

11. Section 20 (2) of the Act, states that every Street Vendor, who has a grievance or dispute, may make an application in writing to the Committee constituted under sub-section (1) in such form and manner as may be prescribed. Sub-clause (3) to Section 20 of the Act, states that "on receipt of grievance or dispute under sub-section (2), the Committee referred to in sub-section (1) shall, after verification and enquiry in such manner, as may be prescribed, take steps for redressal of such grievance or resolution of such dispute, within such time and in such manner as may be prescribed".

12. Sub-clause (4) to Section 20 of the Act, states that "any person, who is aggrieved by the decision of the Committee, may prefer an appeal to the local authority in such form, within such time and in such manner as may be prescribed".

13. Thus, the Redressal Mechanism has already been provided under the Act itself. The nature of the Bunk Shops and the area under occupation and other relevant factors are to be considered by the Committee, while taking decisions in this regard. The authorities are also bound to consider the fact that whether a permanent Bunk Shops can be allowed in a particular place or these vendors can be allowed to do mobile vending business. All these factors are to be considered by the Competent Authorities and this Court cannot entertain any claim in respect of installation of such permanent Bunk Shops, Mobile Vending or Street Vending in a writ petition under Article 226 of the Constitution of India and a comprehensive policy decision is required for the purpose of allowing these categories of vending in public roads and in public places. Allowing such categories of vending in public places must be regulated by the Competent Authorities.

14. In the event of failure on the part of the authorities to regulate such kind of Mobile Vending, Street Vending or Bunk Shops, the same will cause great hindrance for the general public and the same will further affect the free flow of traffic in the City areas. As far as the Chennai City is concerned, it is already flooded with automobiles and other activities. The public roads are mostly occupied for parking the motor vehicles in an irregular manner.

15. The Corporation Authorities are not initiating any effective steps to control these illegal parkings in the public areas, more specifically, in Chennai City Corporation limits. On account of such irregular and illegal parking of motor vehicles in public roads and in other areas, the same causes lot of nuisances and agony to the citizen, who all are using the public roads for travelling purposes.

16. For instance, in a road, wherein two sides are utilised for the purpose of parking the vehicles, then it would be difficult for the persons to use the road and more specifically, the emergency vehicles like Ambulance, Police Vehicles are also struck on account of such illegal parkings. Effective measures are not taken to control such illegal parkings within the City limits and the Police Officials, who are empowered to control such parkings are also not performing their duties and responsibilities in an efficient manner. Here and there, they are allowing the vehicles or towing the same, in spite of large scale violations are happening day-in and day-out in the City limits.

17. Thus, under these circumstances, regulating the Vendors are certainly important. Equally, regulating the illegal parkings and ensuring free flow of regular traffic, is also certainly required, this Court is of an opinion when the question of regulating the free flow of traffic in public roads, all other public places, the authorities competent should ensure that the irregular vending or installation of bunk shops are to be controlled and regulated. Equally, it is important that all such other illegalities in the public roads and public places are also to be monitored and controlled effectively and efficiently. Thus, the writ petitioners are bound to approach the Town Vending Committee constituted under the provisions of the Street Vendors Act, 2014, for the purpose of redressing their grievances. The Town Vending Committee also shall consider all other aspects, including the public utility and other practical difficulties of the citizen of Chennai at large.

18. The learned counsel appearing on behalf of the Chennai Corporation, brought to the notice of this Court that the Town Vending Committee has already been constituted. However, on account of want of Quorum, it is not functioning and the elections are already commenced for electing the members for the Town Vending Committee and the process will be completed soon. Thus, the writ petitioners may approach the Town Vending Committee for redressing their grievances in the manner known to law.

19. In respect of eviction of encroachers, the Hon'ble Division Bench also passed an order on 19.2.2018 in WP No.15093 of 2017 etc., batch, the learned counsel appearing for the respondents, brought to the notice of this Court that pursuant to the orders of the Hon'ble Division Bench, some of the encroachments were already removed. Under these circumstances, if any encroachments are left out, the same also shall be removed by following the procedures contemplated under law.

20. In this view of the matter, the relief, as such, sought for by the writ petitioner in the writ petition, cannot be

granted. However, it is made clear that all such grievances, now brought to the notice of this Court, can be vindicated before the Committee constituted under the provisions of the Act, for the purpose of redressal of the cases of the writ petitioner in the present writ petition and the writ petitioner is at liberty to submit his representation/application/objection before the Town Vending Committee for their consideration and for taking a decision on merits and in accordance with law and considering the policy decisions of the Government in this regard. If any person is in occupation of a Non-Vending Zone or not meant for vending, as per the decisions of the competent authorities, then the authorities are bound to evict all those encroachers by following the procedures contemplated under the Tamil Nadu Land Encroachments Act, 1905.

21. Accordingly, the writ petitions stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Local Administration Department,
Fort St.George, Chennai-600 009.
- 2.The State Commissioner for Differently Abled,
J.N.Ring Road, K.K.Nagar,
Chennai-600 078.
- 3.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-600 003.

+1 cc Mr.S.Sivakumar, Advocate, SR.No.67532
+1 cc to The Government Pleader, SR.No.67828

WP No.24912 of 2016
28.09.2018

RSV(CO)
CSL/23.10.2018