

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.2232 of 2018
and WMP No.2730 of 2018

Palani ... Petitioner

vs.

1. Government of Tamil Nadu,
Represented by its Secretary,
Municipal Administration Department,
Fort St. George,
Chennai - 600 009.

2. The District Collector,
Villupuram, Villupuram District.

3. The Commissioner,
Villupuram Municipality, Villupuram District.

4. The Superintendent of Police,
Villupuram, Villupuram District. Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents 1 to 4 to consider the representation made by the petitioner dated 17.01.2018 by Regulating the Street Vending / hawking trade sangam in the name of Villupuram Mavatta Salai Ora Pala Viyabarigal and Seru Viyaparigal Sangam in M.G.Road at Villupuram Town or allotment of separate main place to the street vending / hawking sangam members.

For Petitioner : Ms.V.Kayalvizhi

For Respondents : Mr.T.N.Rajagopalan, (For R1, R2 & R4)
Government Pleader

Mr.N.K.Ponraj (for R3)
for Mr.P.Srinivas
Standing counsel for Municipality

ORDER

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

Prayer sought for in the instant Public Interest writ petition is for a direction to respondents 1 to 4, to consider the petitioner's representation dated 17.01.2018 by regulating the Street Vending / hawking trade sangam in the name of Villupuram Mavatta Salai Ora Pala Viyabarigal and Seru Viyaparigal Sangam in M.G.Road at Villupuram Town or allotment of separate main place, to the street vending / hawking sangam members.

2. Short facts leading to the filing of the writ petition are as follows:

(i) Petitioner has stated that in M.G.Road at Villupuram Town, there are around 400 members of "Villupuram Mavatta Salai Ora Pala Viyabarigal and Siru Viyabarigal Sangam" street vendor traders, doing street vending business, for their livelihood. The street vendors are very poor, uneducated, living under the poverty line, and they are occupying places and put up shops on the road sides within the Villupuram Municipal limits, for the past 50 years. They have no other source of income for their livelihood. Street vending, is helpful to the general public, as ruled by the Hon'ble Apex Court in Maharashtra Ekta Hawkers Union Vs. Municipal Corpn. Greater Mumbai, reported in 2014(1) SCC 490. Importance of street vendors & hawkers, can be measured, from the fact that, millions of urban poor, across the country procure their basic necessities mainly from the street vendors / hawkers, because clothe, plastic / house hold items, food items / vegetables, fruits, green leaves etc. are sold on pavements, in pushcarts etc and that they are cheap. Lower income groups also spend a large portion of their income in purchasing goods from street vendors / hawkers.

(ii) Petitioner has further stated that "Villupuram Mavatta Salai Ora Pala Viyabarigal and Siru Viyabarigal Sangam" (Regn. No.31/2015), representing Street Vendors on M.G.Road, Badhusha Street and Nehru Street of Villupuram, filed the writ petition No.33942 of 2015, for a mandamus, which was allowed on 20.10.2015. Being aggrieved, the Superintendent of Police, Villupuram, 4th respondent herein, filed an appeal in WA No.15 of 2016, which was allowed, by setting aside the order made in WP No.33942 of 2015.

(iii). Petitioner has also stated that in the abovesaid circumstances, a representation dated 17.01.2018 has been sent to the respondents to regulate street vending and to allot separate space for their members. As there was no response, petitioner has filed the instant writ petition for the relief

stated supra.

3. A detailed counter affidavit has been filed by the Commissioner, Villupuram Municipality, 3rd respondent herein and paragraph Nos.3 to 16 are extracted hereunder.

"3. The petitioner is not entitled to any remedy, much less the remedy of Writ of Mandamus as prayed for. The petitioner has no right much less a fundamental right to maintain the writ petition, for the reliefs sought for. The petitioner has come forward with the present writ petition at the behest of an association of Street Vendors. The said writ petition has been filed without any authority to file the same. There is no authorisation from the said Association to either file the writ petition and there is no claim or evidence that the petitioner is one of the office bearers of the said association. Therefore the present writ petition for an unrepresented party to the writ petition is not maintainable. For the above reason, the writ petition is liable to be dismissed.

4. It is submitted that the facts leading to the disposal of the Writ Appeal Number 15 of 2016 are matters of record before this Honourable Court. It has been clearly held that the official respondents, including this respondent should not allow the street vendors to occupy the road and road margins the main streets namely, for allotment of the vending place in the M.G.Road and Bagar Sha Street is contrary to the orders of the Honourable Division Benches of this Honourable Court in W.A.No.15 of 2016 and W.A.No.216 of 2016 and W.P.No.6977 of 2014. Therefore the prayer of the Writ Petitioner is liable to be summarily rejected.

5. It is submitted that as per the requirements of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, the process of forming the Town Vending Committee was taken up in the year 2016. Even at that time, the Street Vendors who had formed themselves into various associations, had been filing various writ petitions challenging the efforts of the officials in keeping the roads and streets free from encroachments.

6. Villupuram Town being in the busy thoroughfare between Chennai and Trichirapalli and between Puducherry and the Western parts of the Tamil Nadu state, the town is naturally filled with floating population and long distance traffic, besides the trade population of the surrounding agricultural areas. The Villupuram Municipal Market is one of the busiest markets in the part of the State. Due to this the streets are filled with various vendors who are overflowing from the Market areas.

7. At various points of time, the vendors encroach upon the busy street and cause congestion in the area, so much so that the formation of the Bye pass roads was necessary and the traders were causing huge hardships to the travelling public. Various steps were being taken to remove the encroachments from the streets to enable the free movement of the traffic and pedestrians.

8. It is submitted that the Vendors had filed various writ petitions to stall the efforts of the respondents herein to keep the streets free from encroachments. Various writ petitions were filed and orders were passed by this Honourable Court. The said writ petitions were disposed of by this Honourable Court. Finally the Writ Appeal No.15 of 2015 filed by the Superintendent of Police against the order passed in W.P.No.33942 of 2015 was taken up along other similar writ petition and this Honourable Court passed final orders on 27.07.2016 and directed that the process of the Town Vending committee should be continued and that pending the same, the official respondents were free to take steps to clear the encroachments from the streets.

9. It is submitted that the process of formation of the Town Vending Committee was started with the enumeration of the vendors starting as per Resolution Number 1890 Dated 29.02.2016. As per the process of Enumeration a total of 630 Street Vendors were identified and given the Photo Identity Cards after verification of the particulars. Subsequent to the enumeration, the process of formation of the Town Vending Committee was started and the Election for the Elected Members was notified on 9.6.2016. Nominations were closed on 30.06.2016. After scrutiny of nominations on 01.07.2016, withdrawal of nominations on 04.07.2016, the election was held on 08.07.2016 and counted on the same date.

10. As per the requirement, the total number of elected members is 6 and out of the same, there is a reservation for one Female member and one Differently abled member. The other members of the committee are the ex-officio members and members of Traders Association, Local Residents Association, representative of NGOs. The committee is comprised of a total 13 members including this respondent as the Chairman with the members as follows:-

S.No .	Designation	Type of Members	Name & Address of Members
1	Chairman	Nominated Member	Commissioner, Villupuram Municipality

S.No .	Designation	Type of Members	Name & Address of Members
2	Member / Health Officer	Nominated Member	1. Municipal Health Officer.
3	Member / Police Department	Nominated Member	2. Inspector of Police {L&O}, Town Police Station, {West} 3. Inspector of Police {Traffic}, Town Traffic Police Station
4	Member / Concerned Local Body Officers	Nominated Member	4. Town Planning Officer
5	Member / Selected from Elections	Elected Members	5. Late Mr.Morgan 6. Mr.Murugan 7. R.B.Mohammed 8. Mrs.Pramila 9. Mr.Manikandan
6	Members / Merchants Association	Nominated Member	10. N.Ramakrishnan
7	Member {NGO}	Nominated Member	11. Mr.T.Jayabal 12. Sister.Jeyajothi
8	Member / Residents Welfare Association.	Nominated Member	13. Mr.Shathaji

11. The Town Vending Committee was formed as above and the first meeting was held on 25.01.2017. As per the requirements of the Street Vendors Act, the Town Vending Committee (TVC) has to first identify the Vending Zones and no-vending Zones in a local area and the number of vendors permissible in each area and then allot the vendors for areas concerned.

12. In this regard the TVC has undertaken the process of identifying the areas under the encroachment of the Vendors and the availability of the space in the town and has called for reports from the concerned Officials of the Municipality.

13. In this regard the various sites were identified for allotment of Vending areas for the Street vendors for their business. The following sites were identified for allotment to the Vendors.

- i. Site near Old Bus Stand in T.S.No.4
- ii. Old Court Road.
- iii. Kamarajar Street
- iv. Site near New Bus Stand
- v. Hospital Road
- vi. Ayyanar Kulam Road
- vii. Park Road
- viii. Pandit Jawaharlal Nehru Road

14. These sites were studied in detail and the departments with which the same were vested were called upon for their remarks and consent. The departments such as the State Highways Department, Police Department, Revenue Department, HR&CE Department, etc. The remarks from the said departments are being received one by one. The process of identification of tentative sites as above was completed on 3.1.2018 and the remarks of the concerned departments were called for.

15. After considering the merits and demerits of the said departments, the various locations that were not feasible were dropped and the locations that were unobjectionable alone have been finalised. The said locations are:-

- i. Ranganathan Road,
- ii. Old Court Road,
- iii. Kamarajar Street and
- iv. Varadarajan Layout.

16. This proposal has been sent to the Office of the Commissioner of Municipal Administration for his Approval. The proposal involves the development of various facilities for the Vendors and for this purpose a Detailed Project report for the project cost of Rs.57,54,000/- has been prepared and forwarded for Administrative sanction. On receipt of the approval, the further action for development of the requisite facilities will be undertaken for the assistance program for the Street Vendors in the designated vending zones."

4. Heard Mrs.V.Kayalvizhi, learned counsel for the

petitioner, Mr.T.N.Rajagopalan, learned counsel for the respondents 1, 2 and 4 and Mr.P.Srinivas, learned standing counsel appearing for the 3rd respondent/municipality.

5. In WP.No.33942 of 2015, Villupuram Salai Ora Viyabarigal Pothu Nala Sangam, rep. by its President, Villupuram, petitioner therein, has sought for a writ of mandamus, directing the respondents therein to consider the representation dated 16.10.2015, by regulating street vending / hawking trade, in M.G.Road, Badhusha Street and Nehru Street, Villupuram Town, and for a further direction to the respondents therein to constitute, Town Vending Committee, as per the Street Vendors (Protection of Livelihood & Regulation) Act, 2014.

6. After hearing the learned counsel for the parties, vide order dated 20.10.2015, writ Court, passed the following order.

"The Third respondent, viz., the Commissioner, Villupuram Municipality, Villupuram, is hereby directed to consider the representation of the petitioner Association dated 16.10.2015 by regulating the street vending / hawking trade in M.G.Road, Badhusha Street and Nehru Street at Villupuram Town and also to constitute Town Vending Committee as per the Street Vendors (Protection of Livelihood & Regulation) Act, 2014 within a month time, let the petitioner association be permitted to sell their commodities in the same place, in which they are doing their business subject to due restrictions. Consequently, connected Miscellaneous Petition is closed."

7. Being aggrieved, the Superintendent of Police, Villupuram District, Villupuram, has filed WA No.15 of 2016. Taking note of the order made in W.P.Nos.6977 of 2013 and 25246 of 2014, dated 21.04.2015, a Hon'ble Division Bench of this Court in W.A.No.15 of 2016 and WP No.36019 of 2015 dated 29.07.2016 ordered as follows.

"16. The first respondent Association has deliberately suppressed the fact of filing of earlier writ petitions and the typed set of papers filed by the fifth respondent in W.P.No.36019 of 2015 also discloses that the members of the petitioner Association in W.P.Nos.25246 of 2014 and 36019 of 2015 are almost one and the same persons and in all fairness, while moving W.P.No.33942 of 2015, orders passed in the writ petition ought to have been brought to the knowledge of the learned Judge, however it was not done so. Therefore, the learned Judge has passed the final order permitting the members of the petitioner Association to do hawking business in the very same place till the completion of the formalities as per the Street

Vending Act. Since the first respondent in W.A.No.15/2016 has failed to approach the Court with clean hands and in the light of the facts and circumstances enumerated above and the reasons assigned, this Court is of the considered view that the final order dated 20.10.2015 made in W.P.No.33942 of 2015 is liable to be set aside.

17. In the light of the submission made on behalf of the official respondents in W.P.No.36019 of 2015 that the implementation of the Street Vending Act insofar as Villupuram Town is concerned, is in very advanced stage, this Court is of the opinion that no further orders are necessary in the said writ petition.

18. In the result,

(i) W.P.No.36019 of 2015 is closed and the members of the petitioner Association, if aggrieved by the act of the official respondents in compliance of the provisions of the Street Vending Act, 2014, are at liberty to workout their remedy in accordance with law before the competent forum. No costs.

(ii) W.A.No.15 of 2016 is allowed and the order dated 20.10.2015 made in W.P.No.33942 of 2015 is set aside and consequently, W.P.No.33942 of 2015 is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed."

8. By observing that Villupuram Salai Ora Viyabarigal Pothu Nala Sangam, rep. by its President, Villupuram, petitioner in W.P.No.33942 of 2015, has suppressed the earlier orders of this Court in W.P.Nos.6977 of 2013 and 25246 of 2014, dated 21.04.2015, a Hon'ble Division Bench of this Court in W.A.No.15 of 2016, passed the above order.

9. At this juncture, it is relevant to consider, what the Hon'ble Court considered and ordered in W.P.No.6977 of 2013 and W.P.No.25246 of 2014 dated 21.04.2015 and why, a Hon'ble Division Bench of this Court, held that there is suppression of the earlier order of this Court. Orders made in W.P.No.6977 of 2013 dated 20.08.2014 is reproduced.

"On a perusal of the pleadings, it is quite apparent that what is happening is that the encroachments are periodically removed and they again come back to the original site. We really wonder as to how this is possible, unless the concerned authorities, being the administration, the police, look the other way. If that is the position, then certain departmental action is required against officers responsible, for

ensuring that not only encroachments are removed, but re-encroachment does not take place.

2. Learned counsel for the petitioner pleads that rather than removing the encroachments, the authorities have, in fact, damaged the drains next to the road, which damages the business interest of the petitioner and thus, is more in vengeance than a corrective action.

3. We, thus issue the following directions:

(i) If any, there had been damages on the road sides, the same shall be repaired;

(ii) The respondents will ensure that the areas are kept encroachment free and if re-encroachment is permitted, it will be on the pain of contempt;

(iii) For the next fifteen (15) days, every day photographs of the site should be taken showing the area encroachment free and a compliance report be filed in this Court within three (3) weeks to test the functioning of the respondents;

(iv) If any re-encroachment is found, disciplinary action shall be taken against the concerned senior most supervising officer responsible in the area.

4. The writ petition stands disposed of with the aforesaid directions. No costs."

10. Order made in W.P.No.25246 of 2014, dated 21.04.2015, is extracted hereunder:-

"The affidavit dated 17.04.2015 filed by respondent No.4 states that a Joint Committee Meeting was held with all the stakeholders and it was assured by the representative of the petitioner's association that they will discuss the issue and select suitable place for their hawking out of six options given to them, as enumerated in paragraph 2 of the affidavit. Thereafter also, the representative of the petitioner's association requested time to finalise the alternative sites and ultimately, three locations were agreed to with request of time to shift up to 08.04.2015, as per paragraph 4 of the affidavit. Despite that, shifting did not taken place, resulting forcible eviction with the help of police on 16.04.2015 and it is stated that the roads are now free of encroachment and flow of traffic is maintained.

2. In our view, it is the bounden duty of the respondent authorities to continue the situation by regulating and monitoring, as the alternative sites have been afforded and it is for the hawkers to choose where in the alternative sites, they will settle down.

3. In view of the aforesaid, W.P.No.25246 of 2014 stands disposed of and no further orders are required

in W.P.No.6977 of 2013, which was called for and shown in the cause list, except to maintain the position at the location. No costs.

4. It is made clear that in case the respondent authorities permit any future encroachments, the same shall be under the pain of contempt."

11. Mandamus cannot be issued to consider the representation of the petitioner dated 17.01.2018, which would have the effect of nullifying an order of a Hon'ble Division Bench. Decisions of this Court in W.P.No.6977 of 2013 and W.P.No.25246 of 2014 dated 21.04.2015, are binding on parties, including the writ petitioner in W.P.No.2232 of 2018. On the facts and circumstances of this case, claiming himself to be a Public Interest Litigant, the petitioner has sought for a mandamus, to consider his representation dated 17.01.2018, for the relief extracted supra. When associations, espousing the cause of the members, have filed writ petitions, and the prayer sought for, in the said writ petitions have been considered and answered, it is binding on the parties to the lis, in particular, Villupuram Municipality, who is bound to act and implement the directions issued.

12. Respondents have filed a counter affidavit stating that the request of the petitioner, to provide a separate place, has been taken up by the Commissioner, Villupuram Municipality, Villupuram and that proposals for providing basic amenities, drinking water, street lights, rest room, goods storage hall with cold storage, estimated at the cost of Rs.57,54,000/- has been sent to the Commissioner of Municipal Administration, for administrative sanction. Added further, Mr.P.Srinivas, learned counsel for Commissioner, Villupuram Municipality, 3rd respondent herein, submitted that the proposals submitted have been returned yesterday, i.e., on 17.09.2018, for certain details.

13. On the basis of the instructions given by Mr.K.Murali, Town Planning Inspector, Villupuram, present in Court, Mr.P.Srinivas, learned counsel for the 3rd respondent submitted that the returned proposals would be resubmitted, within ten days from today. Placing on record the above, Commissioner, Villupuram Municipality, Villupuram, is directed to resubmit the proposals within a period of ten days from today.

14. On receipt of the revised proposals, Commissioner of Municipal Administration, Chennai, though not a party to this writ petition, is directed to consider the same, with reference to the statutory provisions, and if in order, accord administrative sanction, within a period of three weeks from the date of receipt of the revised proposal by the Commissioner of

Villupuram Municipality, Villupuram, 3rd respondent herein.

15. Mr.P.Srinivas, learned counsel for the 3rd respondent submitted that street vendors, in M.G.Road at Villupuram Town, would be provided appropriate place, in any one of the locations, by 'draw of lots' system. He further submitted that allotment of space is, stage No.1 and proposal for providing basic amenities, drinking water, street lights, rest room, goods storage hall with cold storage, stage No.2, can go on simultaneously. According to him, allotment of space to the vendors by 'draw of lots' system, is yet to commence. He further submitted that there are 638 vendors and therefore, requested four weeks time, for allotment of space by, 'draw of lots' system.

16. Placing on record the above, Commissioner, Villupuram Municipality, Villupuram, is directed to go ahead with the allotment of space, by 'draw of lots' system, and complete the same, within a period of four weeks from today.

17. After obtaining administrative sanction from the Commissioner of Municipal Administration, Chennai, respondents 1 to 3 are directed to complete the project proposed, within a period of two months from the date of administrative sanction. Financial sanction by the competent authority, be accorded, for implementation of the directions by this Court.

18. Petitioner in the representation dated 17.01.2018 has prayed for

"எனவே ஐயா அவர்கள் தயவுசெய்து இந்த சிறு விறியாபாரிகளின் அடிமட்ட வாழ்க்கை நிலையை கருத்தில் கொண்டு ஊடிளேவரைவடை டிக் ஐனையை ருசவடைந 19-ன் படியும், சீடிவநடவடை டிக் டுளைநடனாடின யனே சுநபரடயவடை டிக் ருவசநநவ ஏநனேபே ருவ 2014இ ஊநவேசயட ருவ 7.2014-ன் படியும், எங்கள் பகுதியில் உள்ள சிறு விறியாபாரிகளின் வாழ்வாதாரத்திற்கு வழி செய்யும் விதத்தில் விழுப்புரம் நகராட்சியில் சாலை ஓர விறியாபாரிகளுக்கு கடைகள் அமைத்து தருமாறும், சுமார் 400 குடும்பங்களை காப்பாற்றுமாறும், வாழ வைக்குமாறும் தங்களை பணிவன்புடன் கேட்டுக் கொள்கிறேன் ;

Translated version:

"Hence, Respected Sir consider the below poverty line small scale business street vendors livelihood and save their live under Constitution of India Article 19 and Protection of Livelihood and Regulation of Street Vending Act 2014, Central Act 7/2014 to protect the street vendors livelihood and to allotment shop to be placed for around 400 members and their family livelihood. "

19. In the light of the decisions of this Court, in the foregoing paragraphs, second prayer sought for in W.P.No.2232 of

2018 alone can be considered, and from the counter affidavit dated 16.09.2018 in the instant WP.No.2232 of 2018, it could be deduced that steps have been taken by the Commissioner of Villupuram Municipality. From the averments made in the counter affidavit in the instant WP.No.2232 of 2018, it could be deduced that the Commissioner, Villupuram Municipality, has taken note of the earlier orders of this Court, and taken steps to implement the orders, referred to above. No directions can be issued in the instant writ petition No.2232 of 2018, contrary to the order of this Court in W.P.No.6977 of 2013 and W.P.No.25246 of 2014 dated 21.04.2015. We make it clear that directions issued be implemented in letter and spirit by the respondents.

20. With the above directions, the writ petition is disposed of. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

ars/dm

To

1. The Secretary,
Government of Tamil Nadu,
Municipal Administration Department,
Fort St. George, Chennai - 600 009.

2. The District Collector,
Villupuram, Villupuram District.

3. The Commissioner,
Villupuram Municipality, Villupuram District.

4. The Superintendent of Police,
Villupuram, Villupuram District.

5. The Commissioner, Municipality, Administration Chennai.

+2cc to Ms.V.Kayalvizhi, Advocate SR.No.64682
+1cc to Mr.P.Srinivas, Advocate SR.No.64794
+1cc to Government Pleader SR.No.65224

WP.No.2232 of 2018
and WMP No.2730 of 2018

GMY (03/10/2018)