

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.02.2018

Coram

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

W.P.Nos.15093, 17952, 28818 and 32520 of 2017 and
W.M.P.Nos.19481,19482, 31014 and 35850 of 2017

C.Sivaji ...Petitioner in W.P.No.15093 of 2017

Anbu Nilayam Physically
Handicapped,
Self Employed Welfare
Association

Rep. By its President,
Mr.A.Chandrasekaran
No.47, Sait Jaswanthmal St.,
Choolai, Chennai

...Petitioner in W.P.No.17952 of 2017

Sarala
S.Uma

...Petitioner in W.P.No.28818 of 2017

...Petitioner in W.P.No.32520 of 2017

Vs.

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

2. The Chairperson / Zonal Executive Engineer
Zone No.7, (The Township Vending Committee)
Corporation of Chennai
Chennai - 3

3. The Administrative Director,
SIDCO Small Factor Industrial Estate,
Ambattur, Chennai - 58

4. M/s Chennai Auto Ancillary
Industrial Infrastructure
Upgradation Company (CAAIUC)
SIDCO Administrative Building,
Second Main Road, Ambattur
Industrial Estate,
Chennai - 600 058 ...Respondents in W.P.No.15093 of 2017
(R4 Suo motu Impleaded)

1. The State Commissioner
for Differently Abled
O/o the State Commissioner
for Differently Abled,
J.N.Ring Road, Chennai - 78
 2. The Administrative Director,
SIDCO Ambattur Industrial Estate
Ambattur, Chennai - 600058
 3. The Director,
Chennai Auto Ancillary
Industrial infrastructure
Upgradation company,
SIDCO Ambattur Industrial Estate,
Ambattur, Chennai - 600 058
 4. The Estate manager,
TANSIDCO Industrial Estate,
Ambattur, Chennai - 600 058
 5. The Commissioner
Greater Chennai Corporation,
Chennai - 600 003
 6. The Chairperson/
Zonal Executive Engineer (Zone-7)
(The Township Vending Committee)
Corporation of Chennai
Ambattur,
Chennai - 600053
- Respondents in W.P.No.17952 of 2017
1. The Special Commissioner
for Handicapped
O/o the State Commissioner
for Differently Abled,
no.15/1, Model School Road,
Thousand lights, Chennai - 600 006
 2. The Administrative Director,
SIDCO Small Factor Industrial Estate,
Ambattur, Chennai - 58
 3. The Director,
M/s Chennai Auto Ancillary
Industrial Infrastructure
Upgradation Company (CAAIUC)
SIDCO Administrative Building,
Second Main Road, Ambattur
Industrial Estate, Chennai - 600 058

4. The Estate manager,
TANSIDCO Industrial Estate,
Ambattur, Chennai - 600 058
5. The Commissioner
Greater Chennai Corporation,
Chennai - 600 003
6. The Chairperson / Zonal Executive Engineer
Zone No.7, (The Township Vending Committee)
Corporation of Chennai
Ambattur
7. The Commissioner,
E.V.R.High Road,
Chennai - 600 007 ... Respondents in W.P.No.28818 of 2017
1. The Special Commissioner
for Handicapped
O/o the State Commissioner
for Disabled,
no.15/1, Model School Road,
Thousand lights, Chennai - 600 006
2. The Administrative Director,
SIDCO Small Factor Industrial Estate,
Ambattur, Chennai - 58
3. The Director
M/s Chennai Auto Ancillary
Industrial Infrastructure
Upgradation Company (CAAIUC)
SIDCO Administrative Building,
Second Main Road, Ambattur
Industrial Estate, Chennai - 600 058
4. The Estate manager,
TANSIDCO Industrial Estate,
Ambattur, Chennai - 600 058
5. The Commissioner
Corporation of Chennai
Rippon Building, Chennai - 600 003
6. The Chairperson / Zonal Executive Engineer
Zone No.7, (The Township Vending Committee)
Corporation of Chennai
Ambattur

7. The Commissioner,
E.V.R.High Road,
Chennai - 600 007

... Respondents in W.P.No.32520 of 2017

Prayer in W.P.No.15093 of 2017 : Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the respondents to consider and pass orders on the petitioner's representation dated 19.04.2017 as per the provisions of the Street Vendors (Protection of Livelihood Regulation) Act, 2014 made for granting permission / certificate of Vending and till such time not to disturb with the running of the petitioner's bunk shop near Maruthi Suzuki Service, G/29, Opposite side, 3rd main road, Ambattur Industrial Estate, Chennai - 58.

Prayer in W.P.No.17952 of 2017 : Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 6th respondent in Ma.a.7/Na.Ka.No.2414/2017 dated 18.04.2017 and the order passed by the 4th respondent in Rc.No.169/A8/2012-2, dated 12.06.2017 and quash and forbear the respondents 2 to 6, their men, officials, servants, subordinates from interfering with the peaceful running of the bunk shops by the members of the petitioners' association on the road side margin of Ambattur Industrial estate, Chennai - 600 058, till the representation dated 25.03.2017 is considered by the 6th respondent, as per "The Street Vendors (Protection of Livelihood Regulation) Act, 2014".

Prayer in W.P.No.28818 of 2017 : Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus forbearing the respondents 2 to 6, their officials servants from interfering with the peaceful running bunk shop at on the line of Ambit Park Road, in front of Prince Info part back side gate, ambit part road, Ambattur Industrial estate, Chennai - 58 selling tea, coffee and allied foods and further directing the 6th respondent to dispose of the petitioner's representation dated 10.03.2017 include before vending committee constituted by the 5th Respondent in the running the petitioner bunk shop on the line of Ambit Park road, in front Prince Info park back side gate, Ambit Part Road, Ambattur Industrial Estate, Chennai - 600 058 selling tea, coffee and allied foods.

Prayer in W.P.No.32520 of 2017 : Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus forbearing the respondents 2 to 6, their officials servants from interfering with the peaceful running bunk shop at vacant land ATC Road, Opp NATE Commercial Boundary Equipments Pvt., Ltd., D-20, 3rd Cross Street, 1st Main Road, Ambattur Industrial Estate, Chennai - 58 selling tea, coffee and allied

foods and further directing the 6th Respondent to dispose of the petitioner's representation dated 10.03.2017 include before vending committee constituted by the 5th Respondent in running the petitioner bunk shop on the line of vacant land ATC Road, Ambattur Industrial Estate, Chennai - 58, selling tea, coffee and allied foods.

W.P.No.15093 of 2017

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.A.Nagarajan for R1 and R2
Mr.V.P.Senguttuvel for R3
Mr.Thomas T.Jacob for R4

W.P.No.17952 of 2017

For Petitioner : Mr.R.Raman laal

For Respondents : Mr.R.Udayakumar for R1
Additional Government Pleader
Mr.V.P.Senguttuvel for R2 and R4
Mr.Thomas T.Jacob for R3
Mrs.R.Arunmozhi for R5 and R6

W.P.Nos.28818 and 32520 of 2017

For Petitioners : Ms.P.S.Mercy Gnanammal

For Respondents : Mr.R.Udhayakumar for R1 and R7
Additional Government Pleader
Mr.V.P.Senguttuvel for R2 and R4
Mr.R.Saravana kumar for R3
Mr.A.Nagarajan for R5 and R6

C O M M O N O R D E R

[Common Order of the Court was made by S.VAIDYANATHAN, J.]

Since the Writ Petitions are interlinked, they are taken up together for disposal by a common order.

2. When the Writ Petitions are taken up for hearing, the learned counsel appearing for the petitioners in W.P.Nos.28818 and 32520 of 2017 seeks permission of this Court to withdraw the same and she has also made an endorsement to that effect.

3. The facts of the case in W.P.No.15093 of 2017 and W.P.No.17952 of 2017 are as follows:

(i) The petitioner in W.P.No.15093 of 2017 as also the Members of the Petitioner Association in W.P.No.17952 of 2017 are physically challenged persons and are eking out their livelihood by running a bunk shops on the road side margin of Ambattur Industrial Estate, Chennai - 58 for the past several

years by selling tea, coffee and food items in a hygienic manner and that there is no disturbance to the general public and free flow of traffic.

(ii) The Central Government has enacted 'The Street Vendors (Protection of Livelihood Regulation) Act, 2014', hereinafter called 'the Street Vendors Act, safeguarding the street vendors by regulating their business. According to the petitioner, by the said Act, the State Government has to form the Town Vending Committee and the Committee shall declare a zone or part of which to be a 'No vending Zone' for any street purpose, the street vendors vending in that area, in such manner, as may be specified in the scheme. As per the Street Vendors Act, 'Street Vendors' include the persons who are offering services to the general public in a street, lane, side walk, foot path, pavement in a temporary built up structure also. Therefore, under the provisions of the Act, the State Government has to form a Township Vending Committee and take steps to regulate street vending and till such time, the business of the street vendors shall not be interfered with.

(iii) As per Section 3 of the Street Vendors Act, 'no street vendor' shall be evicted, relocated till the survey specified is conducted as per the provisions of the Act. According to the petitioner in W.P.No.17952 of 2017, they have already approached this Court by way of a Writ Petition in W.P.No.14456 of 2015 to consider the request for grant of license / permission to its members for running bunk shops on the road margin at the Ambattur Industrial Estate, Chennai and not to disturb their peaceful running of the bunk shop business by its members and this Court, passed an order to dispose of their representation. Pursuant thereto, the 4th Respondent had passed an order on 28.05.2016 rejecting the representation of the petitioner-Association. Thereafter, the said order was challenged in W.P.No.16075 of 2015. The Hon'ble First Bench of this Court allowed the Writ Petition in W.P.No.18677 of 2014, batch of cases, wherein, it is clearly ordered that till the Township Vending Committee is formed and the issue is decided, there shall be no threat to the bunk shops of the members of the Petitioner's Association.

(iv) In the meantime, there was a notice from the 4th respondent to the members of the Petitioner / Association to vacate the shops within ten days, failing which, appropriate action will be taken to remove their petty shops. In the said notice, the 4th respondent referred to an order dated 21.11.2016 passed by this Court in W.P.No.5232 of 2014. According to the petitioners, the said order will not be applicable to the facts of this case and the action of the authorities, namely, the 4th respondent is contrary to the provisions of the Act and that the petitioners are entitled to continue in the existing place. Therefore, the petitioner / Association filed W.P.No.6280 of

2017 for issuance of a Writ of Mandamus seeking to forbear the Respondents 2 to 6 therein from interfering with the peaceful running of the bunk shops and this Court, on 15.03.2017, passed an order permitting the petitioners to approach the vending committee and submit a representation. Though the Petitioners made such representation, the same was not considered by the Committee.

(v) According to the Petitioners, Metropolitan Transport Corporation buses are plying through roads where their shops are situated and that public have easy access to the shops and that there is no hindrance to anyone much less to the commuters. Further, it is the contention of the petitioners that the impugned order passed by the 6th Respondent dated 18.04.2017 and also the order passed by the 4th Respondent dated 12.06.2017 are illegal and that it is incorrect to state that the road vests with the SIDCO and that the road and platform are managed by the Corporation. When the Statute gives protection, even assuming that the authorities have the right to initiate action, the 4th Respondent will have to initiate action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and not act according to their own whims and fancies. If the petitioners are disturbed from the present place and they are not given alternative place, they will be put to great hardship. Hence they prayed that the impugned order may be interfered with and that their representation may be considered by the 6th Respondent in terms of the Act.

(vi) According to the petitioners, in an identical circumstance, this Court in W.P.No.10029 of 2017, by an order dated 24.04.2017 directed the Vending Committee to pass orders on the representation of the petitioner therein following the provisions of the street vendors (Protection of Livelihood Regulation) Act, 2014 and the petitioners herein are also similarly placed persons and thereby they are also entitled for a similar relief.

4. Counter affidavit has been filed by the 4th respondent in W.P.No.15093 of 2017, wherein, it has been stated that the entire industrial area is a non-vending zone and that the said respondent has no role in relocating and that the petitioner/Sivaji has caused much hardship to all. Furthermore, the order passed in W.P.No.18677 of 2014 does not mean to give license to the bunk shops. That apart, the fact remains that the Vending Committee has refused to permit them to be vendors in the industrial land and they have rejected the same, as they have no control or authority.

5. Counter affidavit has been filed by the Respondents 2 and 4 in W.P.No.17952 of 2017, wherein it has been stated that SIDCO was formed in the year 1972 for promoting the industrial

activities and carrying out maintenance of the industrial estate. The Government of Tamilnadu vested the ownership of the entire Ambattur Industrial Estate including the common areas with SIDCO. Therefore, SIDCO is maintaining the entire Industrial Estate to promote industrial activity by Government of Tamilnadu. Suddenly, unauthorised petty shops came to be put up on the road margins and on the drainage facilities in the Ambattur Industrial Estate and the so called members of the petitioner/ Association in W.P.No.17952 of 2017 are causing serious health hazards by preparing the most unhygienic vegetarian and non-vegetarian food items in the open area on the platform and road side with improperly cleaned utensils and poor quality food ingredients. Also that, LPG cylinders are being used by these street vendors in the open area without any safety measures, thereby endangering the life of common people.

6. Further, in the counter affidavit filed by Respondents 2 and 4 in W.P.No.17952 of 2017, it is stated that food waste, used paper cups, plates and bottles and other materials are disposed in the storm water drain, thereby creating blockages, which leads to stagnation of water and water-borne diseases. The members of the petitioner-Association in W.P.No.17952 of 2017 have put up bunk shops without the permission / approval of the SIDCO on the road margin and on the drainage system. When the said respondent initiated eviction proceedings and issued notice to evict all the unauthorised bunk shops / kiosks, the petitioner and some of the persons have approached this Court by way of Writ Petition in W.P.No.14456 of 2015 and this Court, on 13.05.2015, directed the respondents 2 and 4 to consider the representation of the petitioner. On 28.05.2015, the representation of the petitioner was considered and that it has been stated that no license / permission to set up bunk shops would be permitted.

7. That apart, in the counter affidavit filed by Respondents 2 and 4 in W.P.No.17952 of 2017, it is stated that yet another W.P.No.16073 of 2015 was filed and this Court, by its Common Order dated 03.09.2015, observed that the Town Vending Committee has to be constituted under the provisions of Act and directed to take action in accordance with the provisions of the Act. Thereafter, the 3rd respondent has approached this Court by filing W.P.No.5232 of 2014, seeking a direction to remove the encroachments caused by the petty shops running within SIDCO and this Court, by an order dated 21.11.2016 directed the SIDCO to take action against the encroachments in accordance with Law. In view of the continued nuisance caused by the members of the petitioner-association by way of illegal occupation, the people in the industrial estate are forced to walk on the roads facing risk of accidents by several heavy vehicles moving on the road. Once again, notice was issued by the said respondent for removal of unauthorised

petty shops. The petitioner, again approached this Court in W.P.No.6280 of 2017 seeking to forbear the respondents from interfering with their peaceful running of the bunk shops. This Court, on 15.03.2017, directed the Vending committee to consider their representation and pass orders. On 18.04.2017, the request of the petitioner's Association was rejected holding that the Committee has no jurisdiction, as the entire Industrial Estate is owned and maintained by the SIDCO, Chennai.

8. Besides the above, in the counter affidavit filed by Respondents 2 and 4 in W.P.No.17952 of 2017, it is stated that Chennai Auto Ancillary Industrial Infrastructure Upgradation Company, who is the 3rd Respondent in the said Writ Petition, has been appointed by SIDCO for the maintenance of the entire Ambattur Industrial Estate and the said Auto Ancillary Industrial Infrastructure Upgradation Company and the Ambattur Industrial Estate Members Association, Ambattur have joined in the exercise with SIDCO for removing the encroachments. According to the respondents 2 and 4, 55 persons were said to be the members of the petitioner's Association to set up bunk shops and that the Act is not at all applicable to the Industrial Estate maintained by SIDCO. It is also stated that SIDCO has been established for promoting the industrial activities and carrying out the maintenance of the Industrial Estate and that the members of the petitioner-Association have not taken any prior permission / license from the SIDCO and that they have no right to carry on the activities and that the Writ Petition is liable to be dismissed.

9. The 3rd Respondent has filed a counter in W.P.No.17952 of 2017 almost on the similar lines with regard to that of the counter filed by respondents 2 and 4. However, he stated that the 3rd Respondent / Company was formed in July, 2004 and that there was a Memorandum of Understanding entered on 06.03.2006 between SIDCO and the 3rd Respondent to implement the upgradation works in SIDCO's existing industrial estates of Ambatur, Thirumazhisai and Thirumudivakkam. The Memorandum of Understanding was entered not only to give authorization for the 3rd Respondent to develop, design, engineer, finance construct, establish, repair, rehabilitate, improve, upgrade, manage, operate and maintain the infrastructure and facilities in the industrial estates, which were managed under the custody of SIDCO, but also demand, collect by suitable mechanism, retain and appropriate maintenance fees/ user charges from the users of the project and thus, the Corporation of Chennai have no authority, as they are not the local authority, who provide civic services within the industrial area and thus, they have no right to permit setting up of petty shops or bunk shops and that they have no locus to interfere with the activities of the SIDCO or the 3rd Respondent.

10. The 6th respondent in W.P.No.17952 of 2017 has also filed a counter stating that the Greater Chennai Corporation will commence the enumeration of street vendors within the road limits of Chennai Corporation and the same will be placed before the vending committee. Further, the roads within the Ambattur Industrial Estate are being maintained by the SIDCO and the Greater Chennai Corporation is not the competent authority to grant permission within the Ambattur Industrial Estate and hence, directed the Petitioner-Association to approach the SIDCO for obtaining 'No Objection' to carry out activities within the Ambattur Industrial Estate.

11. Heard all the parties and perused the documents placed on record.

12. The fact that the members of the Petitioner / Association in W.P.No.17952 of 2017 and the petitioner in W.P.No.15093 of 2017 are carrying on the activities relating to Bunk shops are not disputed. Admittedly, there is no certificate of vending and the petitioners have not taken any permission from SIDCO for running of bunk shops under the Act. In this case, though the entire area is vested with SIDCO, neither the Corporation, nor the SIDCO has granted permission to the petitioners to run bunk shops.

13. A reading of the Street Vendors (Protection of Livelihood Regulation) Act, 2014 would make it very clear that it applies only to the Street Vendors / Vending Zones within the local limits of the Corporation and not within the exclusive jurisdiction of SIDCO. For better appreciation of the case, the Sections 11 and 12 of the Tamilnadu Industrial Township Area Development Authority Act, 1997, are extracted hereunder:

"11. Proceedings of the Authority not be Questioned: No act or proceedings of the Authority shall be invalid by reason of the existence of any vacancy in or defect in the constitution of the Authority.

12. Cessation of application of local body Act: Subject to the provisions of Section 11, on and from the date on which an Authority is constituted under Section 3, the Government may direct that any functions exercisable by the local authority, within the Industrial Township Area shall be transferred and performed by the Authority under the local body Act which is applicable on the said date, in relation to such Industrial Township Area, which shall cease to apply to the said Industrial Township Area."

14. In terms of the said provisions, it is very clear that the Street Vendors Act is not applicable to SIDCO. Even though

the petitioners have vehemently contended that the roads are maintained only by the Corporation, from the available records and more particularly, from the communication dated 03.10.2017, it is very clear that the entire area is vested with SIDCO and without the permission of SIDCO, no activities / vending could be allowed to be permitted.

15. As stated supra, the Street Vendors Act and the Rules made therein will not be applicable to this Case. Petitioners in W.P.Nos.17952 and 15093 of 2017 have approached this Court more than once and in the numerous Writ Petitions, this Court has not considered the applicability of the Street Vendors Act to the Vending / Hawking Zones within the premises of SIDCO. Hence, this Court is of the view that the petitioners have no locus to run bunk shops within the limits of SIDCO and that they have no right to continue in the existing place by filing one writ petition or the other and thereby stall the entire activities, which may be carried on by the respondents concerned. The photographs produced before this Court would make it clear that the use of cooking gas is hazardous not only to the passers-by, but also to the shop owners. The petitioners must have valid license and appropriate permission need to be obtained from SIDCO for carrying on such activity and from the Photographs, it is also very clear that by affixing the Writ Petition Numbers in the bunk shops, the petitioners are carrying on activities, thereby threatening the authorities that action would be taken as the matter is sub-judice before this Court, and the same cannot be acceded.

16. Also, the 3rd Respondent in W.P.No.17952 of 2017 drew the attention of this Court and referred to a decision of the High Court of Bombay in the case Vile Parle Kelvani Mandal & Others V. Municipal Corporation of Greater Mumbai & Others, reported in CDJ 2015 BHC 2254 Firstly, this Judgment is not applicable to the facts and circumstances of the present case, as it is pertaining to Street Vendors and it is made very clear therein that there cannot be any kind of preparing food in the street using LPG cylinders. Even assuming that Street Vendors Act is applicable in terms of the said Judgment, street vendors cannot carry out any activity using LPG cylinders on the road. Secondly, the Street Vendors Act is not applicable where there is a specific prohibition for a street vendor / hawker not to carry on / prepare food items in the street.

17. Since the petitioners have no locus to continue in the place belonging to SIDCO and that the Street Vendors Act is not applicable to the Vendors / Hawkers, who are within the precincts of SIDCO, this Court is of the view that no relief much less the relief sought by the petitioner can be granted. Also, this Court makes it clear that the petitioners are given 15 days' time from the date of receipt of a copy of this order

to vacate the bunk shops on their own, failing which, it is open to the respondents, namely, 2 to 4, to remove the encroachments forthwith, with the assistance of jurisdictional police.

18. In view of the foregoing, the W.P.Nos.15093, 17952 of 2017 fail and the same stand dismissed. In view of the submission and endorsement made by the learned counsel for the petitioners in W.P.Nos.28818 and 32520 of 2017 seeking to withdraw the same, the said Writ Petitions are dismissed as withdrawn. Consequently, connected miscellaneous petitions, W.M.P.Nos.19481 and 19482 of 2017 in W.P.No.17952 of 2017 and W.M.P.No.31014 of 2017 in W.P.No.28818 of 2017 and W.M.P.No.35850 of 2017 in W.P.32520 of 2017 are closed. No costs.

Post for compliance on 20.04.2018.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

ssd
To

1. The Commissioner,
Corporation of Chennai
Rippon Building,
Chennai - 600 003
2. The Chairperson / Zonal Executive Engineer
Zone No.7, (The Township Vending Committee)
Corporation of Chennai
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10. The Director
M/s Chennai Auto Ancillary
Industrial Infrastructure
Upgradation Company (CAAIUC)
SIDCO Administrative Building,
Second Main Road, Ambattur
Industrial Estate,
Chennai - 600 058

+2 CCs to Mr.A. Natarajan, Advocate sr 14357,14356.

+3 Ccs to Mr.V.P. Sengottuvel, Advocate sr 10590,13588.13589.

+1 cC to M/s. Mercy Gnanamal Advocate sr 14341.

+1 CC to M/s.R. Arunmozhi, Advocate sr 14355.

+1 CC to M/s. L. Chandrakumar, Advocate sr 13956.

+1 CC to M/s.R.Ramanlaal, Advocate sr 13943.

+1 CC to M/s. Thomas T.Jacov, Advocate sr 13650.

+1 CC to Mr. Abdul Saleem, advocate sr 13841.

+1 Cc to Mr.R. Saravanakumar, Advocate sr 13579.

W.P.Nos.15093, 17952, 28818 and 32520 of 2017 and
W.M.P.Nos.19481,19482, 31014 and 35850 of 2017

GMI (CO)
SP(27/03/2018)