

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2018

Coram

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

W.P.No.26597 of 2017

S.Prabhakaran

.. Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai
Ribbon Buildings,
Chennai - 600 003

2. The Chairperson /
Zonal Executive Engineer Zone No.7
(The Township Vending Committee)
Corporation of Chennai
Chennai - 600 053

3. The Administrative Director,
SIDCO Small Factory Industrial Estate,
Ambattur,
Chennai - 600 058

.. Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus for beaing the Respondents 2 and 3, their officials, servants from in any manner interfering with the running of the Petitioner's Bunk Shop at Back Gate of India Land IT Company, 3rd Cross Street, ICICI Bank Backside, Chennai - 600 058, wherein selling tea, coffee and other food items, by using LPG stove, till the Township Vending Committee decides as per the provisions of the Street Vendors (Protection of Livelihood Regulation) Act, 2014

For Petitioner : Mr.R.Kamaraj

For Respondents : Mr.A.Nagarajan for R1 and R2
No appearance for R3

O R D E R

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

Heard both sides. By consent, the main Writ Petition itself is taken up for final disposal.

2. According to the Petitioner, he is differently abled person having permanent disability of 85% and is running a bunk shop at Back Gate of India Land IT Company, 3rd Cross Street, ICICI Bank Backside, Chennai - 600 058 for the past several years. He is selling tea, coffee and food items by using LPG stove in a hygienic manner. It is the Petitioner's case that his bunk is no way disturbing the general public for the free flow of traffic.

2. The version of the Petitioner is that as per Section 43 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, he is having statutory right to claim the right of business and the ingredients of Section 43 reads as under:-

"The appropriate Government and local authorities shall have to frame schemes in favour of persons with disabilities, for the preferential allotment of land at concession rates for-

- a. House
- b. Setting up business
- c. Setting up of special recreation centers
- d. Establish of special schools
- e. Establish of Research Centers
- f. Establishment of factories by entrepreneurs with disabilities."

3. At this stage, the Learned Counsel for the Petitioner points out that the Central Government had enacted "The Street Vendors (Protection of Livelihood Regulation) Act, 2014" safeguarding the "Street Vendors" by regulating their business and by the aforesaid, the State Government has to form 'The Town Vending Committee' and the Committee shall declare a Zone or part of which to be a non vending zone for any street purpose, the Street vendors vending in that area, in such manner, as may be specified in the scheme etc.,

4. The grievance of the Petitioner is that since the State Government and the Local Body have not taken any steps to regulate the Street Vending, the Respondents 2 and 3 are to be refrained from interfering with the Petitioner's business of running bunk shop in the aforesaid place.

5. It comes to be known that the Petitioner had addressed a representation on 21.09.2017 before the 3rd Respondent narrating

the facts and prayed that there shall be no interference to running of his bunk shop till Township Vending Committee determines whether the shop can be allowed to continue. In this connection, the Learned Counsel for the Petitioner points out that in W.P.No.18677 of 2014 batch, this Court, has held that till the constitution of Town Vending Committee and its policy, there shall be no threat with regard to the running of the bunk shops. Therefore, the interference made by the Official Respondents 2 and 3 are to be curtailed. Apart from that, it is the plea of the Petitioner that differently abled persons have to be given preferential allotment in the shops constructed by the Respondents 2 and 3 and further that 3% reservation is to be made in favour of the differently abled persons in the shop. The sum and substance of the plea advanced on behalf of the Petitioner is that the conduct of the Respondents 2 and 3 in interfering the running of bunk shop is unsustainable in Law and as such, he has filed the present Writ Petition.

6. At this stage, this Court worth recalls the Common Order dated 21.12.2017 in W.P.No.32355 of 2017 etc., batch passed by one of us, viz., S.V.N.J., between [Jaishankar V. The Special Commissioner for Handicapped, Office of the State Commissioner of Disabled, No.15/1, Model School Road, Thousand Lights, Chennai - 600 003 and two others] whereby and whereunder in Paragraph Nos.14 to 19, it is observed as under:

"14. As representations are pending pursuant to the order of this Court, the respondent-Corporation of Chennai is expected to dispose of the same at the earliest point of time, within the time stipulated by this Court and the Vending/Hawking committee must ensure that the said bunk shops in these Writ Petitions are preferably not situated before/near the Schools, Colleges and Hospitals and that they shall not sell any hazardous products like cigarettes, paanparag, etc. Petitioners herein are eking out their livelihood by running bunk shops. Hence, it is for the State to encourage self-employment, as they are not in a position to provide employment to all citizens, who are qualified. By creating self-employment, the State can ensure compliance of Article 19 and Article 41 of the Constitution of India. It is needles to state that the Corporation of Chennai, which has formed the Vending/Hawking committees, shall consider the request of aggrieved persons at the earliest point of time, so that they can decide about the further course of action, either to question the rejection order or to enable the aggrieved persons, take up other avocation.

15. Accordingly, the petitioners shall make fresh representations to the the Vending/Hawking

Committee within one month from the date of receipt of a copy of this order and the same shall be considered by the said Committee within a period of one month, thereafter. The names of the members of the Vending/Hawking Committee shall be furnished to the petitioners or exhibited in the Notice Board in the respective Zone, to enable the petitioners approach the said Committee, as the case may be.

16. Further, it is represented that the bunk shop in W.P.No.32812 of 2012, which was already there, has been removed by the Corporation. According to the learned counsel appearing for the Corporation, the said bunk shop was not there and even assuming that it was there, it was removed only by the petitioner. In reply, the learned counsel for the petitioner submitted that the Bunk shop in W.P.No.32812 of 2012 had been removed by the Corporation and it is in the custody of the Corporation. It is made clear that when the petitioner in W.P.No.32812 of 2012 approaches the Hawking/Vending committee concerned, it shall examine this issue and render a finding on that aspect.

17. It is needless to state that the respondents shall follow the guidelines formulated in the order dated 18.09.2017 passed by the Hon'ble Apex Court in W.P.No.1141 of 1987 together with the order dated 12.10.2017 passed by this Court in W.P.No.26134 of 2017 for grant of regularisation to the petitioners.

Those who are interested in availing a shop by approaching the Vending/Hawking Committee, must produce a copy of their Aadhar Card, failing which, no indulgence need be shown to them. This will prevent duplication of shops in the name of the same person.

18. With the above observations and directions, all the above Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

19. Before parting with the cases, this Court opines that the Corporation of Chennai shall scrupulously follow the above directions/observations in respect of allotment/grant of licence to the bunk shops in and around the city of Chennai."

7. In view of the aforesaid order dated 21.12.2017 passed by this Court in W.P.No.32355 of 2017 etc., batch, the Respondents 1 and 3 are directed to follow the exercise adumbrated in the Order dated 18.09.2017 passed by the Hon'ble Supreme Court in W.P.No.1141 of 1987 coupled with the order

dated 12.10.2017 in W.P.No. 26134 of 2017 for grant of regularisation to the Petitioner. Accordingly, the Petitioner is directed to approach the Vending / Hawking Committee by producing the copy of his Aadhar Card and seek necessary relief thereto.

With the aforesaid observations and directions, this Writ Petition is disposed of. Before parting with the case, this Court, directs the 1st Respondent / the Commissioner, Corporation of Chennai to scrupulously adhere to the directions issued by this Court in W.P.No.32355 of 2017 etc., batch, which is extracted supra in regard to the allotment of licence to the Bunk shop in and around the city of Chennai. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Commissioner,
Corporation of Chennai
Ribbon Buildings,
Chennai - 600 003
2. The Chairperson /
Zonal Executive Engineer Zone No.7
(The Township Vending Committee)
Corporation of Chennai
Chennai - 600 053
3. The Administrative Director,
SIDCO Small Factory Industrial Estate,
Ambattur,
Chennai - 600 058

+1cc to Mr.A.Nagarajan, Advocate, S.R.No.5607
+1cc to Mr.R.Kamaraj, Advocate, S.R.No.5624

W.P.No.26597 of 2017

RRK(14/02/2018)