

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2018

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

W.P.Nos.16629 to 16633 of 2017

T.Ramalingam .. Petitioner in W.P.No.16629 of 2017
R.Dharmalingam .. Petitioner in W.P.No.16630 of 2017
K.Prakash .. Petitioner in W.P.No.16631 of 2017
R.Manmathan .. Petitioner in W.P.No.16632 of 2017
D.Ramesh .. Petitioner in W.P.No.16633 of 2017

Vs.

1. The Secretary to Government,
Municipal Administration and Water Supply Dept.,
Government of Tamilnadu
Fort. St. George, Chennai - 600 009
 2. The District Collector,
Tiruvarur, Thiruvarur District
 3. The Commissioner,
Municipality Office,
Thiruthuraipoondi
 4. Deputy Superintendent of Police,
Thiruthuraipoondi
- ..Respondents in all the Petitions

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to eviction notice Na.Ka.No.294/2017/F1 dated 21.06.2017 of the 3rd Respondent and quash the same and consequently direct the 3rd respondent to regulate the vending activities at 3rd respondent Town Panchayat Area as per provisions of Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014

For Petitioners : Mr.S.T.Varadarajulu

For Respondents : Mr.A.N.Thambidurai for R1, R2 and R4
Special Government Pleader

Mr.Jayaprakash Narayanan for R3
Special Government Pleader

C O M M O N O R D E R

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

Heard the Learned Counsel for the Petitioners, the Learned Special Government Pleaders for the Respondents 1 to 4. No counter is filed on behalf of the Respondents 1, 2 and 4. However, the 3rd Respondent has filed a counter.

2. According to the Petitioners, there are nearly about 200 street vendors engaged in street vending activities in Thiruthuraipoondi Town at North Ram Mada Street, where the street vendors are engaged in vending activities. Further, the stand of the Petitioner is that the street vending provides a source of self employment and it acts as a measure to alleviate urban poverty without major involvement of Government etc.,

3. The Learned Counsel for the Petitioner refers to Section 22 of Street Vendors (Protection of Livelihood and Regulation of the Street Vending) Act, 2014 and in and by which, the 1st Respondent is to form a Town Vending Committee for each locality and the said committee should survey the street vendors and issue certificate for vending. Apart from that, the 1st Respondent had issued a G.O.Ms.No.159 dated 02.11.2015 framed as a 'The Tamilnadu Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme and Rules, 2015' and the vending committee was constituted in terms of the Rule and the said committee shall consist of 15 members, which includes a Chairperson. In fact, except the members elected from the street vendors, other members of the Town Vending Committee shall be nominated by the Commissioner of Corporation of Chennai and in respect of Corporation of Chennai, the respective Regional Directors of Municipal Administration in respect of other Corporations and Municipalities and the respective Assistant Directors in respect of Town Panchayat.

4. The Learned Counsel for the Petitioners proceeds to contend that the petitioners in W.P.Nos.16629 and 16630 of 2017 are one of the elected vending committee members and till date, no meeting of the representative of the street vendors was convened and vendors are enumerated and ID cards were issued and therefore, vendors are to be regulated. However, the 3rd Respondent, according to the Petitioners leased the place to the contractor to collect vending fee and the contractor being Local Ruling Party Member had demanded more than the vending fee, as required under Rule and therefore, they had resisted and organised demonstration before the 3rd Respondent's office on 20.06.2017. Therefore, to victimise the Petitioners and others, a notice was issued under Section 182(1) of the Tamilnadu District Municipalities Act, 1920 ignoring the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and the Rules framed under.

5. The Learned Counsel for the Petitioners submits that it is arbitrary and illegal to invoke the provisions of the Tamilnadu District Municipalities Act, 1920, when the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 is in vogue. Apart from that, every street vendors has a right to carry out street vending activities in accordance with the terms and conditions mentioned in the certificate of vending and also the Petitioners were issued I.D.Card for vending, so far no certificate of vending is given. Therefore, Issuance of Eviction Notice is against Section 12 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.

6. The Learned Counsel for the Petitioners contends that every Street Vendors, who possess certificate of vending have the right to relocation in new site or area to carry out vending activities and without showing any new site or area, issuance of Eviction Notice is against Section 13 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.

7. Lastly, it is the submission of the Learned Counsel for the Petitioners that the Petitioners are governed by the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and the present Writ Petitions are filed by the Petitioners to quash the Eviction Notice dated 21.06.2017 issued by the 3rd Respondent.

8. Per contra, it is the submission of the learned Special Government Pleader appearing for the 3rd Respondent that the Writ Petitions are not maintainable in Law and also on facts. Further, the Review Meeting was called for by the 2nd Respondent / District Collector, Thiruvarur, Thiruvarur District in regard to the removal of encroachment made in Government Lands and Review Meeting was held on 28.03.2017 under the Chairmanship of the Collector of the Thiruvarur District. As a matter of fact, various officials from different Departments (including 3rd Respondent) took part in the Review Meeting and in the said meeting, it was resolved to remove encroachments over Thiruthuraipoondi Town Municipal Roads and State Highways on 06.04.2017. Apart from that, since decision being taken, it was addressed over mike and through print media in and around the encroachment area requesting the public and street vendors to remove the encroachment of their own accord and in default they were informed that the encroachment will be removed by the Municipality and the expenses arisen thereto will be incurred by then.

9. The Learned Special Government Pleader for the 3rd Respondent contends that the encroachment in question were not removed despite the request made and ultimately the encroachment

were removed during five days intervening from 06.04.2017 to 11.04.2017. Indeed, the encroachments in Tiruvarur Road, Mannargudi Road, Nagai Road, Vedaranyam Road and Muthupettai Road, were within the Municipal Area, which are highly objectionable one and those encroachments, has affected day today free movement of public at large.

10. The Learned Counsel for the 3rd Respondent brings it to the notice of this Court that the Tahsildar of Thiruthurapoondi and Municipal Commissioner and the 3rd Respondent / Commissioner, Municipality Office, Thiruthuraipoondi warned the Public and Traders against further encroachment in the same place and further, if any encroachment is made, it was informed that proper legal action will be taken in accordance with Law.

11. The Learned Counsel for the 3rd Respondent draws the attention of this Court that an Advocate by name, Thiru.S.S.Chellapandian submitted a Petition to the District Judge, Thiruvaur to remove the encroachments close to the compound wall of Thiruthuraipoondi Integrated Court Complex and the District Court directed the Municipality to take necessary steps to remove the encroachments (vide Official Memorandum of Principal District Court, Thiruvarur addressed to the Municipal Commissioner, Thiruthuraipoondi Municipality) and in turn, the Commissioner, Municipality Office, Thiruthuraipoondi, the 3rd Respondent herein issued Notice under Section 182(1) of the District Municipalities Act, 1920 to and in favour of the Petitioners and other encroachers to evict the premises, where they are in possession of road and carrying on their business.

12. Apart from that, one V.Sundar and other residents of North Ramamada street, Thiruthuraipoondi Town had addressed a Petition to the Hon'ble Chief Minister of Tamilnadu Special Cell to remove in North Ramamada Street. The 2nd Respondent / District Collector addressed a communication to the 3rd Respondent / Commissioner, Municipality Office, to take suitable action and as such, the 3rd Respondent / the Commissioner, Municipality issued a notice under Section 182(1) of the District Municipality Act, 1920 to remove encroachment.

13. The Learned Special Government Pleader for the 3rd Respondent adds to point out that the Petitioners had approached this Court to quash the Eviction Notices and they filed Writ Petitions and this Court was pleased to grant an order of Interim Stay of eviction notices for a period of four weeks in WMP No.18015 to 18019 of 2017 in W.P.Nos.16629 to 16633 of 2017 by means of an order dated 30.06.2017.

14. The Learned Counsel for the 3rd Respondent proceeds to

state before this Court that the census of street vendors was undertaken as per provision of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 forming vending committee and list of 83 street vendors was prepared by the 3rd Respondent and on that basis, Identity Card was issued to the registered street vendors. Also an advertisement was issued in Tamil Daily, "Thinamani" on 18.12.2016 for constitution of Vending Committee consisting of six members. Pursuant thereto, an Election took place on 28.12.2016 and six members were duly elected and after the election, the consent for the committee was obtained from the Regional Director of the Municipality on 03.04.2017 and the First Meeting of the Vending Committee head by the 3rd Respondent / Municipality's Commission as Chairman Person of the Vending Committee took place on 17.05.2017. In fact, all the members participated in the meeting and it was discussed in the meeting in regard to the constitution of vending zone and suggestions were called for from the vending committee members, however, no suggestion was put forward by the committee members so far.

15. The Learned Special Government Pleader for the 3rd Respondent points out that the meeting was convened on 19.04.2017 in Thiruthuraipoondi Taluk Office under the Chairmanship of RDO, Mannargudi in which all the members of Vending Committee participated in the meeting and discussed about the implementation of the scheme and Act for identifying the vending zone and non-vending zone and the scheme framed by the Government to protect the interest of the street vendors. Also, meeting was conducted in the office of the 3rd Respondent on 17.02.2017, which was informed to the members including the representatives of the street vendors that the following places are having broad road approach, which will not cause any hindrance to the free flow of traffic and those places are ideal or providing temporary structures to the street vendors and further extending other basic amenities to the street vendors as well as public as per the Scheme and therefore, the Committee sought opinion of its all members to declare those places as vending zones and the places are as follows:

- a. Thiruvarur Road
- b. New Bus Stand Cross Lane
- c. North Street
- d. Mettu Street
- e. Muthupettai Road

and if further any objection is there for declaration of those places, as Vending Zones, they were given opportunity of 30 days time to project their objections either by the Representatives of street vendors or the street vendors, but, no objection was received in regard to the declaration of those areas as Vending Zones.

16. The grievance of the 3rd Respondent is that without submitting their objections to the Vending Committee i.e., (Street Vendors including all the Writ Petitioners) conducted agitation in front of Thiruthuraipoondi Municipal Office on 20.06.2017 alleging that they were compelled by the authorities to evict from the premises where they are running street vending shops with the members of political parties and members of political parties and members of CITU Trade Union and raised slogans against the authorities.

17. The Learned Counsel for the 3rd Respondent points out that since no objections were received from the representatives of the Street Vendors, the places already proposed were identified and declared as Vending Zones. Consequently, on 27.10.2017 at 11.00 a.m., a meeting was held in the presence of the 3rd Respondent herein to take decision with regard to allotment of places for the street vendors in the identified street vending zone, as per the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and eight members of street vending committee have also participated in the meeting including four representatives of street vendors.

18. It comes to be known that the following issues were discussed in the aforesaid meeting on 27.10.2017 and a decision was taken in the meeting and the same is mentioned as under:

(i) The Committee already identified four vending zones and informed to the street vendors if they have any objection for the places chosen for vending zone they have to submit their objection within thirty days with valid reasons but no objection received from any of the vendors as on 27.10.2017. Therefore all of the street vendors were asked to shift their vending places to the zones identified by the committee. The representatives of the street vendors now refused to shift the places and informed to the committee that if they shifted the present vending places their livelihood will be affected. Thereafter the representatives of the Street Vendors refused to put their signature in the minutes of meeting and walked out from the meeting. The objection was rejected on the following grounds

(a) The places identified are broad roads which will not cause any hindrance to the free flow of traffic and those places are ideal for providing temporary structures to the street vendors and further extending other basic amenities to the street vendors as well as public as per the scheme.

(b) In spite of their knowledge and information on two meetings was convened earlier on 19.04.2017 & 17.05.2017 proposal to declare the places for vending

zone no objection was received.

(c) The places where now they are running the street vending activities is totally prohibited for any such type of street vending since it is causing lots of traffic congestion and much inconvenience to the free flow of vehicles as well as pedestrians on the road therefore continuance of street vending in the places will cause hindrance to the public.

(ii) One Mr. Prakash (Writ Petitioner in W.P.No.16631 / 2017) being one of the committee members and the representative of the street vendors refused to shift the place and on the other hand they want to continue their business with the same place where at present doing. He further claims that they will not agree for any of the welfare measures taken by the Government under the Tamilnadu Street Vendors (Protection of Livelihood, Regulation of Street Vending and Licensing) Scheme, 2015. He will agitate the issue with the help of likeminded people such as Community party members and CITU Trade Union members. He further refused to put his signature in the minutes of the meeting.

(iii) Though the planning inspector of the third respondent Municipality explained the members of the Vending Committee including the representatives of the street vendors how their illegal occupation on the busy road & streets affects the free flow of traffic and in order to ease the traffic and without affecting the livelihood of street vendors the vending zones were identified by the committee and with basic amenities to be provided to the vendors.

(iv) The third respondent instructed them to shift their vending places to the newly identified places as per the decision taken by the committee constituted under the street vending as per the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. सत्यमेव जयते

(v) The street vendors and their representatives refused to accept the request made by the 3rd respondent and further they claimed that they will follow only the advice of their leaders namely CITU Labour Union Leader and Local Communist Party Leader.

(vi) The Commissioner, Thiruthuraiipoondi Municipality finally informed the Street vendors to shift their places to the vending zone within three days and even thereafter also they refused to shift their places. It is ascertained that they are organizing to conduct agitation in front of the third respondent office in case if the third respondent taken

steps to evict them."

19. The Learned Counsel for the 3rd Respondent contends that that though three days time granted by the 3rd Respondent already over by 30.10.2017, none of the Street Vendors including the Petitioners had chosen to shift their places and further, they are causing inconvenience to the free flow of traffic in the busy roads and thereby violated all the Rules and Regulations and measures taken by the Government for their livelihood, as required under the said Act and further, because of the Interim Orders in these Writ Petitions, the 3rd Respondent is unable to carry out the eviction process under the Tamilnadu District Municipalities Act on the basis of notice issued to the violators of Law.

20. In this connection, it is not out of place for this Court to make a relevant mention that Section 180-A of the Tamil Nadu District Municipalities Act, 1920 speaks of 'Public Street Open to All'. As a matter of fact, as per the ingredients of said Section, 'All Street vested in or to be vested in or maintained by a Municipal Council shall be open to persons of whatever caste or creed'. Section 182 of the said Act, 1920 refers to 'Removal of Encroachments'. Indeed, the role of Corporations usually vest with the Municipality, if the road is in occupation of a private person, the municipality has every right and jurisdiction to order Eviction.

21. It is relevant for this Court to make a pertinent mention that Section 17 of The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 deals with 'Relocation or Eviction of Street Vendors'. Section 18 of the said Act deals with 'Payment of Maintenance Charges'. Section 19 refers to 'Seizure and Reclaiming of Goods'. More importantly, Section 20 pertains to 'Redressal of Grievances or Resolution of Disputes of Street Vendors'. Section 21 pertains to 'Plan for Street Vending' etc.,

22. In regard to the plea taken on behalf of the Petitioners that the Issuance of Notice dated 21.06.2017 by the 3rd Respondent is an illegal one because of the fact that the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, gives protection for the vendors, it is to be pointed out by this Court that Sections 180(A) and 182 of the Tamil Nadu District Municipalities Act, 1920 are self explanatory and the Act, is an built and is self contained one. Furthermore, the said Act cannot be ignored by any one, much less, the Petitioners because of the simple reason the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 is only to protect the livelihood rights of the street vendors and to regulate their street vending

activities in urban areas across the country and for matters connected therewith. Therefore, it is lucidly clear that the ingredients of Tamilnadu District Municipalities Act, 1920 especially Section 180(A) and 182 of the Act are mandatory one and in fact, the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 is regulatory in character. As such, the contra plea taken on behalf the Petitioners that the 3rd Respondent has no right to issue Eviction notice dated 21.06.2017, which is assailed in these Writ Petitions has no legs to stand and is not accepted.

23. At this stage, this Court refers to the Common Order dated 21.12.2017 in W.P.No.32355 of 2017 etc., batch, 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] in which one of us, viz., S.V.N.J., is a party whereby and whereunder at 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."

24. As far as the present cases are concerned, the Writ Petitioners and others are identified and they were enumerated by means of issuance of ID Card. Therefore, this Court without any haziness or hesitation comes to an inevitable conclusion that the relief sought for by the Writ Petitioners is devoid of merits. Consequently, the Writ Petitions fail. In fine, the Writ Petitions are dismissed leaving the parties to bear their own costs and connected Miscellaneous Petitions are closed.

25. Before parting with the case, this Court relevantly points out that if the Petitioners have genuine, bonafide and reasonable grievances, then, they are at liberty to workout

their remedies in terms of the ingredients of The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (7 of 2014) if they so desire / advised.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

ssd

To

1. The Secretary to Government,
Municipal Administration and Water Supply Dept.,
Government of Tamilnadu
Fort. St. George, Chennai - 600 009
2. The District Collector,
Tiruvavarur, Thiruvavarur District
3. The Commissioner,
Municipality Office,
Thiruthuraipoondi
4. Deputy Superintendent of Police,
Thiruthuraipoondi

+1cc to Mr.V.Jayaprakash Narayanan, Advocate SR.No.3039
+1cc to Mr.ST.Varadarajalu, Advocate SR.No.8133
+1cc to Government Pleader SR.No.8471

W.P.Nos.16629 to 16633 of 2017

GMI (CO)
GN (27/02/2018)

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