



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

Writ Petition (MD).No.23399 of 2017

and

W.M.P(MD).No.19673 of 2017

A.Somagiri

... Petitioner

Vs.

The Assistant Divisional Engineer,
Highways Department (Construction & Maintenance),
Melur,
Madurai District.

... Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the respondent in Memo No.7-5/2017/A1/தாக்கீது/dated 14.12.2017 and quash the same as illegal and consequently direct the respondent to consider the petitioner's representation dated 14.04.2017 the street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014 for other reliefs.

For Petitioner	:	Mr.J.Lawrance
For Respondent	:	Mr.D.Muruganandham Additional Government Pleader

ORDER

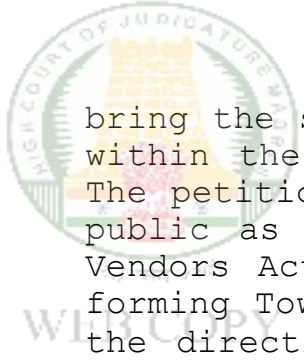
(Order of the Court was made by T.S.SIVAGNANAM,J.)

Heard Mr.J.Lawrance, learned counsel appearing for the petitioner and Mr.D.Muruganandham, learned Additional Government Pleader appearing for the respondent and Mr.N.Anand, learned counsel appearing for the intervenor, who had filed a writ petition before this Court earlier in W.P(MD).No.2129 of 2016.

2.The issue involved in the writ petition lies in a very narrow campus. The respondent has issued the impugned notice directing the petitioner, who is the secretary of a Trade Union, to evict the encroachment on the highway. Apart from the encroachment made by the petitioner, there is also a small temple, which is also an unauthorized construction. The petitioner seeks to take umbrage under the Provision of Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014.

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3.The endeavour of the learned counsel for the petitioner is to



bring the service done by the petitioner's Trade Union, which falls within the definition of "street vending" under Section 2(L) Act. The petitioner's claim is that they are offering service to general public as they are loadsmen. Though the provision of the Street Vendors Act was notified, till date scheme has not been framed by forming Town Vending Committee by issuing notification, in spite of the direction issued by the Division Bench in the case of *B.Noor Ahmed and others v. State of Tamil Nadu, Rep. By its Secretary, Chennai and others* reported in (2015) 7 MLJ 860. In such circumstances, we cannot decide the issue as to whether the petitioner would fall within the definition of "Street Vendor" under Section 2 (L) of the Act. The encroachment is on a Highways which is stated to about 7 metres in width. We cannot make any observation to state as to whether it is marginal encroachment or otherwise, since the safety of travelling public and other road users has to be borne in mind.

4.Thus, we are not inclined to interfere with the impugned notice. However, we direct the respondent to conduct an inspection of the place in the presence of the office bearers of the petitioner's union and fix a date by which the petitioner union shall dismantle the structure put up by them. If they do not do so, the respondent shall proceed with the removal of the structure, if necessary with aid of police. So far as the unauthorised construction in the form of temple is concerned, there is no restrain for removal of the same nor the petitioner union has made a prayer in that regard. Therefore, it is open to the respondent to remove the temple, which is admittedly an offending structure.

5.The above direction shall be complied with within a period of three weeks from the date of receipt of copy of this order. Accordingly, this writ petition is disposed of. No Costs. Consequently, W.M.P(MD).No.19673 of 2017 is closed.

Sd/

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

The Assistant Divisional Engineer,
Highways Department (Construction & Maintenance),
Melur, Madurai District.

+1cc to Mr.J.LAWRANCE, Advocate, SR.No. 51835

+1cc to Mr.R.ANAND, Advocate, SR.No. 51542

+1cc to M/s.Special Government Pleader, SR.No.51952

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