

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.10.2019

PRONOUNCED ON : 31.10.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.26701 of 2019 and
W.M.P.No.26083 of 2019

1.S.Selvam
2.N.Kumar
3.T.Mani
4.N.Lakshmi
5.R.Ramanujam
6.V.Annadurai

..Petitioners

Vs

1.The Commissioner of Municipality,
Thiruvarur Municipality,
Thiruvarur.

2.The District Collector,
Thiruvarur District,
Thiruvarur.

3.Thiruvarur Town Vending Committee,
Thiruvarur by its representative,
The Chairman.

4.The Regional Director of Municipality,
Thiruchirapalli.

5.The Superintendent of Police,
Thiruvarur District,
Thiruvarur.

6.The Secretary to Government,
Municipal Administration and
Water Supply Department,
The Government of Tamil Nadu,
St. George Fort,
Chennai - 600 009.

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus calling for records connected with the impugned order dated 31.07.2019 vide Na.Ka.No.3811/2015/F1 issued by the first respondent and quash the same and further direct all the respondents not to evict or relocate the petitioners from their existing stationary vending shops till the issuance of certificate of vending in the approved vending zones as per section 3 of the Street Vendors (Protection of Livelihood under Regulation of Street Vending) Act, 2014 and its Tamil Nadu Rules and Schemes, 2015.

For Petitioner :Mr.L.Chandrakumar for
M/s.Law Square

For 1st Respondent : Mr.P.Srinivas, Standing Counsel

For Respondents 2, 4 to 6:Mr.N.Inbanathan,
Additional Government Pleader

ORDER

The petitioners are street vendors of Tiruvarur Town. Pursuant to the direction of this Court in W.P.No.399 of 2016 dated 08/01/2016, the first respondent invited them to the meeting on 30/07/2019 to discuss about relocation of their existing vending shops to an alternate site since, the existing site is located on the State Highways and causing hindrance to free flow of traffic. Five of them participated in the discussion. The vendors opted place near the entrance gate of "Uzavar Sandai" (chth; re;ij).

2.Considering the traffic in that place and being highly crowded, the first respondent has issued the order of relocation on 31/07/2019 allotting space for four of them (S.Selvam, T.Mani,Smt.N.Lakshmi and R.Ramanujam) near old bus stand-outside the compound wall of the Municipal Ward Office and Divisional Sanitary Inspectors Office and directed the fifth participant Thiru. Annadurai s/o Pappathiammal to produce legal heirship certificate and get the allotment order.

3.The above said order is impugned in this writ petition on the ground that the petitioners are carrying on their livelihood as street vendors on the rear side of the Cement Godown of the Highways Department nearby Thiruvarur Panchayat Union Office for several years. In the year 2015, when the authorities tried to

evict them forcibly contrary to the protection under the Street Vendors Act, they filed W.P.No.11364 of 2015 before this Court to direct the first respondent to form a Town Vending Committee, ward and Zone vending Committee within his municipal limits as per the provisions of Street Vendors Act, 2014 (hereinafter referred to as "the Act"), and to issue identity card and duly allot a space for them, within the Thiruvavur town limits. This Court disposed the writ petition on 20/04/2015 directing the respondents to consider the representation and pass orders within a period of 8 weeks from the date of receipt of the order copy. Since, the respondents failed to comply the said order, Contempt Petition No.2185 of 2015 was filed. To avoid action, the first respondent issued order dated 29/10/2015 stating that they are taking steps to form a vending zone at "Uzhavar Sandhai" (உழவர் சந்தை) near old bus terminal of Thiruvavur Municipality and asked to vacate within 30 days with an assurance that their livelihood will not be affected. Later, the respondents have formed a vending zone at Uzhavar sandhai (உழவர் சந்தை) but, did not allot the place to the petitioners.

4.The petitioners have filed W.P.No.399 of 2016 alleging that without completing the survey and certificate of vending is issued, the first respondent has issued order dated 29/10/2015 contrary to Section 3(1) of the Street vendor Act, 2014, which say no street vendor shall be evicted or as the case may be, re-located till the survey specified under sub section (1) has been completed and the certificate of vending is issued to all street vendors.

5.When the order of the first respondent dated 29/10/2015 was challenged by the petitioner in W.P.No.399 of 2016, this court disposed the said writ petition making the following observations:-

"4. From the photographs, it is seen that the petitioners are carrying on vending in streets by erecting temporary structure and some of them are carrying on business in pushcarts. Since the impugned proceedings is only a show cause notice, this Court is not inclined to quash the same.

5. However, there will be a direction to the petitioners to submit their objections within a period of 15 days from the date of receipt of a copy of this order. On the objections being submitted, the first respondent or the Competent Authority shall consider the same, call upon the petitioners to appear before him and work out a solution to the issue, so that the interests of the street vendors are also protected and at the same time, the project, as envisaged by the Municipality, is also implemented. Till final orders are passed by the first respondent on the objections to be raised by the petitioners, they shall not be evicted from the area in question.

6. In the course of arguments, the learned counsel for the petitioners submits that the petitioners are willing to shift to any alternate site.

7. This aspect shall also be examined by the first respondent while considering the objections of the petitioners."

6. While so, now it is alleged in this writ petition that instead of second respondent (District Collector) the survey of street vendors was conducted by the first respondent contrary to sections 3, 6 and 28 of the Act. Out of 500 street vendors, only 280 were identified and enumerated. The Town Vending Committee was constituted by the first respondent and not by the Regional Director of Municipal Administration which is contrary to the Act and Ccheme. No adequate representation for SC/ST and Disabled Persons in the vending committee constituted. The identity card is issued by the first respondent instead of second respondent. No certificate of vending is issued so far to the vendors. The Government has not so far approved and notified vending and non-vending zone as far as Thiruvarur Municipality. Hence, the order of the first respondent dated 31/07/2019 has to be quashed.

7. The petitioners have raised the following issues in this writ petition for consideration:-

"a)Whether the 1st respondent has any powers to pass orders relocating stationery vending shops of the petitioners treating them as mobile street vendors to another inconvenience and dangerous traffic place at his will and pleasure after the formation of the Town Vending Committee ?

b)When the Government of Tamil Nadu has not yet notified the Vending Zone and Non Vending Zone and approved the Town Vending Plan, whether the 1st respondent, who is not the authority to do so and out of his jurisdiction, can pass such the impugned orders to the petitioners ?

c)Whether the petitioners can be evicted by the illegal impugned orders passed by the 1st respondent from the existing stationery vending place rear side of the Cement Godown and at the edge of the road side without conducting proper survey and issuing Certificate of Vending by the Town Vending Committee as mandatorily required under section 3 of the said Act, 2014 ?"

8.The first respondent has filed a detailed counter to emphasis how and why his order dated 31/07/2019 impugned in this writ petition is valid in law and no illegality or infirmities in it. In the counter, the first respondent has submitted that, as far as Thiruvarur Municipality is concerned, the enumeration of street vendors, identification of vending and non-vending area are almost completed and a detailed implementation plan has been prepared and submitted to the Commissioner of Municipal Administration for approval and the same is pending with the Government.

9.The survey and enumeration of vendors of Thiruvarur had already been prepared. Out of 280 street vendors registered, after eliminating double entries, 202 street vendors including the petitioners were identified and bio-matric Identity cards had been issued after collecting complete particulars of the street vendors. The process of allotment of vending zones has

been proposed and for the development of the facilities such as street lights, platforms, water supply and safekeeping facilities for the vendors at an estimated cost of Rs.4,42,000/- is under consideration of the Government.

10.The petitioners herein are occupying the area of the State Highways Road. The said road is only about 30 feet in width and almost half of the width is occupied by these petitioners. Due to their illegal occupation, pedestrians and vehicular traffic are affected making impossible to pass through the road. Therefore, it was proposed to allot alternate sites to the petitioners so that, the Highway Department can be kept free for the vehicular traffic. The present shifting of the shops of the petitioners near the old bus terminal for the reason stated is nothing to do with the vending zones or vending certificates. Under the guise of the Street Vendors Act, the petitioners are trying to stick on to the area for their own selfish reasons and are squatting on the Highways causing untold hardship to the public.

11.According to the first respondent, before passing the order impugned in this writ petition, the petitioners were called for meeting, they were explained about the traffic congestion and provided alternate space at Ward Office and Divisional Sanitary Inspectors Office near the old bus stand which is a prime location surrounded by other commercial establishments. The alternate space provided to the petitioner is not a dirty place as contented by the petitioners.

12.To buttress their rival submissions, both the learned counsel for the petitioners and the learned Standing Counsel for the first respondent produced photographs of the location. While the petitioners say that the alternate site is near public toilet and not fit for doing business and also very narrow road. To contradict the same, the first respondent produced photos to show that the alternate site located to the petitioners is not near toilet but opposite to it and abutting the compound wall of the Municipality Ward Office and Divisional Sanitary Inspectors Office.

13.The object of the Act, is to protect the street vendor's livelihood and ensure when eviction is inevitable, they should be provided with alternate site to do their vending. Section 3 of the Act is the provision which reflects the said object.

Nowhere in the Act it is said that, the street vendors have right to stay at the place of their choice at the cost of public interest. The act only ensures an alternate site for their livelihood. In this case, the first respondent, after taking note of the fact that the petitioners are occupying State Highways Road and causing hindrance to public movement, had offered alternate site for them to carry on their trade for livelihood. On a flimsy reason, that the alternate site is a dirty place and unfit to do business, the petitioners are refusing to shift from the highways and alleged that the impugned order is in violation of the Act and the Scheme.

14.As a street vendor, the petitioners are well protected. After survey, Identity card has been issued to them. As and when the proposal of vending zone is notified by the Government, the petitioners are sure to get a space in the vending zone. At present, the administration after taking note of the fact that the existing place of their business is on the Highways and disturbing the public movement had provided alternate site in a prime location as a temporary measure.

15.Section 3 of the Act has to be read and understood the way it should be and not otherwise. A pedantic interpretation of this section detrimental to general public will defeat the very object and purpose of the Act. A squatter cannot have predominance over the right of public at large. The counter of the first respondent indicate that the process of implementing the Act is at the advance stage and the present action of the first respondent is an alternate arrangement for the interregnum period.

16.The first respondent balancing the right of the individuals as against the right of the public at large has taken a decision to temporarily accommodate the petitioners to the nearby spot so that, they can continue their trade without affecting the right of free movement vested on the general public. This temporary measure is only till the process of notifying the vending zones and allotment of space to the registered street vendors gets complete. This action has no trace of malafide, arbitrariness or illegality. While so, nothing warrants for this Court to interfere in the impugned order of the first respondent dated 31/07/2019.

17.For the aforesaid reasons, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

jbm

To

1.The Commissioner of Municipality,
Thiruvarur Municipality,
Thiruvarur.

2.The District Collector,
Thiruvarur District,
Thiruvarur.

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Thiruvarur by its representative,
The Chairman.

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Municipal Administration and
Water Supply Department,
The Government of Tamil Nadu,
St. George Fort,
Chennai - 600 009.

+1 cc to M/s.Law Square Advocate sr90796

+1 cc to Government Pleader sr90693

+1 cc to Mr.P.Srinivas Advocate sr90607

W.P.No.26701 of 2019

aa12/11/2019