

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.13899/2020 & WMP.No.17273/2020

1. Sundar
Running bunk shop at MRC Nagar Park
Sathyadev Avenue,
Opp Leela Palace.
2. C. Saravanamoorthy
Running bunk shop at MRC Nagar Park
Sathyadev Avenue,
Opp Leela Palace
Residence
26A/ New Street,
Mylapore Chennai - 600 004. ... Petitioners

Versus

- 1.The Commissioner,
Corporation of Chennai
Rippon Buildings,
Chennai 600 003.
- 2.Zonal Officer,
Zone 13, Town Vending Committee,
Corporation of Chennai
No.115, Dr.Muthulakshmi Salai,
Adayar, Chennai - 600 020.
- 3.Chairman/Zonal Executive Engineer,
Town Vending Committee,
Zone XII Corporation of Chennai,
No.115, Dr. Muthulakshmi Salai,
Adayar, Chennai - 600 020. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, to call for the records in Impugned order in ZO.13 Na.Ka.No.A4/3724/2020 dated 09.09.2020 on the file of the 2nd respondent and quash the same and consequentially direct the Town Vending Committee/ 3rd respondent to convene its meeting and consider the case of the petitioner for running the

bunk shop near MRC Nagar Park, Sathyadev Avenue, Opp leela Palace.

For Petitioners: Mr.V.M.Venkataramana
For R1 to R3 : Mr.K.Raja Srinivas,
Standing counsel

ORDER

- (1) By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2) Mr.K.Raja Srinivas, learned Standing counsel accepts notice on behalf of the respondents.
- (3) The petitioners claim that they are running Bunk shop at MRC Nagar Park, Sathyadev Avenue, Opposite to Leela Palace, Mylapore, Chennai-4.
- (4) The learned counsel for the petitioners would submit that the petitioners are entitled to protection of the Street Vendors [Protection of Livelihood and Regulation of Street Vending] Act, 2014 and the Rules framed thereunder and in compliance of the said statutory provisions, the Municipal Administration and Water Supply Department of the Government of Tamil Nadu, has also passed an Government Order in G.O. [4D] No.5, dated 05.10.2016 for formation of the Town Vending Committee and according to the Commissioner, they are not at all aware of the fact of the formation of the Town Vending Committee.
- (5) The learned counsel for the petitioner would submit that the 1st petitioner, on an earlier occasion filed WP.No.22941 of 2017 against the Corporation of Chennai as well as the State Commissioner for Differently Abled, praying for issuance of a writ of certiorarified mandamus, to quash the records relating to the Notice dated 17.08.2017 issued by the Zonal Health Officer, Zone-13, Corporation of Chennai-20 and forbearing the officials of the Corporation of Chennai, from interfering with the running of the Bunk shop opposite to Leela Palace, Corporation Park, MRC Nagar, R.A.Puram, Chennai - 28, by using LPG stove, till the Township Vending Committee decides the matter and it was disposed of on 28.08.2017 by permitting the petitioner therein to give a representation to the Town Vending Committee constituted under the above said Government Order with a further direction to give a disposal of the same within the stipulated period.
- (6) The learned counsel for the petitioner would further submit that though a representation is submitted in this regard, nothing is forth coming from the Corporation officials and to

the shock and surprise of the petitioners, they were issued with Notice dated 09.09.2020 by referring to the order dated 27.06.2017 made in WP.No.16009 of 2017 as well as the order dated 28.08.2017 passed in WP.No.22941 of 2017 and calling upon the petitioners to remove the bunk shop since it is declared as a non-vending zone. He would also submit that in the light of the fact that the 1st petitioner is a differently abled person and that the 2nd petitioner is aged about 70 years and that they have no avenue for earning revenue to eke out their livelihood, they may be provided with an alternative accommodation and also points out that the declaration of MRC Nagar Main Road as a 'Non Vending Zone', has also been done without due and proper application of mind to the facts and circumstances of the case and prays for interference.

- (7) Per contra, Mr.K.Raja Srinivas, learned Standing counsel appearing for the respondents would submit that after following due process of law only, the impugned Notice has been issued and the petitioners are admittedly, encroachers and they cannot claim any right both lawfully and equitably against the users of the platforms as public interest prevails over the private interest and prays for dismissal of this writ petition.
- (8) This Court has considered the rival submissions and also perused the materials placed before it.
- (9) This Court comes across very many cases where encroachers always claim that the respondents, without adhering to due process of law or in violation of the statutory Rules, Norms and Regulations, are resorting to unethical practice of vacating them overlooking the fact that being the citizens, they are also expected to abide by law. Though the learned counsel for the petitioners would submit that without putting them on prior notice and without giving them sufficient time in the impugned Notice and any opportunity of hearing, they are sought to be dispossessed, has overlooked the fact that before occupying the platform meant for pedestrians, they have not put the Corporation of Chennai on notice.
- (10) The above said attitude of the encroachers and unauthorised occupiers may be on account of the fact of inapt attitude shown by the concerned Corporation officials who developed the habit of turning a blind eye to realities that are happening right in front of their eyes.
- (11) Be that as it may, it is relevant to extract Section 18 of the Street Vendors [Protection of Livelihood and Regulation of Street Vending] Act, 2014:-

''18.Relocaktion or eviction of Street vendors:-

- (1)The Local Authority may, on the recommendations of the Town Vending Committee, declare a zone or part of it to be a no-vending zone for any public purpose and relocate the street vendors vending in that area, in such manner, as may be specified in the scheme.
- (2)The local authority shall evict such street vendor whose Certificate of Vending has been cancelled under Section 10 or who does not have a Certificate of Vending and vends without such certificate, in such manner as may be specified in the scheme.
- (3)No street vendor shall be relocated or evicted by the local authority from the place specified in the Certificate of Vending unless he has been given thirty days notice for the same in such manner as may be specified in the scheme.
- (4)A street vendor shall be relocated or evicted by the local authority physically in such manner as may be specified in the scheme only after he had failed to vacate the place specified in the Certificate of Vending after the expiry of the period specified in the notice.
- (5)Every street vendor who fails to relocate or vacate the place specified in the Certificate of Vending after the expiry of the period specified in the notice, shall be liable to pay for every day of such default, a penalty which may extend upto two hundred and fifty rupees, as may be determined by the local authority but shall not be more than the value of the goods seized.''

(12)In the light of the above facts and circumstances, this Court is of the considered view that the impugned Notice granting the petitioners three days time appears to be unsustainable and it shall be construed as thirty days notice from the date of receipt of the said Notice by the petitioners on 12.09.2020 and thereafter, the respondents shall follow due process of law and act accordingly.

(13) In the result, the writ petition is disposed of with the above observations. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP
To

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Chennai 600 003.
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Zone 13, Town Vending Committee,
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Town Vending Committee,
Zone XII Corporation of Chennai,
No.115, Dr. Muthulakshmi Salai,
Adayar, Chennai - 600 020.

+1 cc to M/s.V.M.Venkatramana, Advocate Sr.No. 33415
+1 cc to M/s.K.Rajasrinivas, Advocate Sr.No. 33607

SR(CO)
RMP (20/10/2020)

WP.No.13899/2020

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