

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.11.2018

Coram

THE HONOURABLE **Mr. JUSTICE M.VENUGOPAL**
AND

THE HONOURABLE **Mr. JUSTICE R.PONGIAPPAN**

W.P.No.33886 of 2018 and
W.M.P.No.29212 of 2016

H.Sethu

.. Petitioner

Vs.

1. The State Commissioner for Differently Abled,
O/o State Commissioner for Differently Abled,
J.N.Ring Road, Chennai – 600 078

2. The Commissioner,
Corporation of Chennai,
Ribbon Buildings,
Chennai – 600 003

3. The Chairman cum Managing Director,
Tamilnadu Housing Board,
Nandanam, Chennai

[R3 Impleaded as per order
dated 03.08.2018 by
NKKJ & KRJ in
W.M.P.No.22072 of 2018]

..Respondents

Prayer: Petition filed under Article 226 of Constitution of India for
issuance of a Writ of Mandamus forbearing the 2nd Respondent from
interfering with the running of the Petitioner's shop situated at opposite

to Jaya Lakshmi Super Market, Pillayar Koil Street, Annanagar West, Chennai by selling coffee, Tea and Snacks till alternative accommodation is provided.

For Petitioner : Ms.R.Savitha for
Mr.R.Karunakaran

For Respondents : Mr.S.N.Parathasarathy
Government Advocate for R1
Mr.V.C.Selvasekaran for R2
Mr.V.Anandamurthy for R3

ORDER

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

Heard both sides. No counter is filed on behalf of the 1st and 3rd Respondents.

2. The Petitioner has filed the present Writ of Mandamus praying for passing of an Order by this Court in restraining the 2nd Respondent / Commissioner, Corporation of Greater Chennai from interfering with the running of his shop situated opposite to Jaya Lakshmi Super Market, Pillayar Koil Street, Annanagar West, Chennai by selling Coffee, Tea and Snacks till alternative accommodation is provided thereto.

3. The grievance of the Petitioner is that differently abled persons have to be given preferential allotment in the shops constructed by the 2nd Respondent. Added further, 3% reservation is to be made in favour of the differently abled persons. As such, the Petitioner's case as a differently abled person is to be looked only by a Special Committee constituted by the 2nd Respondent in this regard, with a view to find out whether the place of running bunk shop is an objectionable one or otherwise.

4. The Learned Counsel for the Petitioner submits that the Petitioner's running of the bunk shop is no way hindrance to traffic or pedestrians. Furthermore, if the Committee decides that the Petitioner's bunk shop is to be removed, then, he is entitled for preference in allotment of shops constructed by the 2nd Respondent and till such time, the running of bunk shop shall not be disturbed. The Petitioner has filed the present Writ Petition seeking for restraining the 2nd Respondent from running his shop situated at opposite to Jaya Lakshmi Super Market, Pillayar Koil Street, Anna Nagar West, Chennai by selling Coffee, Tea and Snacks till alternative accommodation is provided.

5. Per contra, it is the submission of the Learned Standing Counsel for the 2nd Respondent / Corporation of Chennai that the Petitioner has a bunk shop situated opposite to Jaya Lakshmi Super Market, Pillayar Koil Street, Anna Nagar West, Chennai belonging to the Tamilnadu Housing Board and that he is not running the bunk shop for well over a year. In this connection, the Learned Counsel refers to the order dated 03.09.2015 passed by this Court in a batch of Writ Petition Nos.18677 of 2014 etc., which runs as under:

“.....6. Since aforesaid is the only controversy raised, it is conceded that any action against the petitioner would necessarily have to await the decision of the constitution of the Committee, its policy and thereafter consideration by the Committee and thus there would have no threat in the mean time. This however does not mean give a license to persons to keep on setting up bunk shops and no protection would be available to such cases. We also make it clear that the existence in the mean time of the bunk shops already in place does not also mean that they will not comply with the norms applicable depending on the activity they are carrying on in the bunk shops – it cannot be a license to do what they please. When example of this keep any endeavour to sell goods which are prohibited or where eatables are involved and norms are not met and hygiene etc., In such situation

also, the Corporation can take necessary action. In case of difficulty, liberty to move in W.P.No.4962 of 2013.

7. The petitioners are also not entitled to either increase the size of their bunk shops or to spread beyond the periphery of the bunk still their cases are considered....”

6. The Learned Counsel for the 2nd Respondent submits that the Government of Tamilnadu had passed Government Order vide G.O.[4D] No.5 Municipal Administration and Water Supply [M.C.I] Department dated 05.10.2016 approving the recommendation sent by the Commissioner, Greater Chennai Corporation for formation of the Vending Committee. In fact, the Vending Committee will identify the Hawkers. Apart from that, the Hawkers is to be enumerated.

7. The Learned Counsel for the 3rd Respondent / Tamilnadu Housing Board, Nandanam submits that the place in which the Bunk Shop of the Petitioner is situated is in the land belonging to the Tamilnadu Housing Board.

8. By way of reply, the Learned Counsel for the Petitioner submits that the Petitioner in his representation dated 23.08.2016 had

mentioned that he was not issued with any licence by the 2nd Respondent / Corporation of Chennai and if the officials of the 2nd Respondent forcibly evict him at any time, then, he will be put to hardship and inconvenience etc.,

9. Continuing further, the Learned Counsel for the Petitioner points out that the Petitioner was a physically challenged person and he had managed to set up bunk stall in the road side platform Opposite to Jaya Lakshmi Super Market, Pillayarkoil Street, Anna Nagar West, Chennai and selling tea, biscuits and snacks and thereby eking out his livelihood and that his entire family is depending on his meager income from the said bunk shop.

10. Countering the plea of the Petitioner, the Learned Standing Counsel for the 2nd Respondent / Greater Chennai Corporation comes out with an argument that the Petitioner is an encroacher and as such, he is not entitled to run Bunk stall in the road side platform situated opposite to Jaya Lakshmi Super Market, Pillayarkoil Street, Anna Nagar West, Chennai and to sell tea biscuits etc.,

11. It is to be borne in mind that Business is only a right to do or continue to do something which, in the absence of licence, such a right might be not a lawful one. After all, 'Licence' is only a privilege, which is neither a Heritable nor Transferable one. A 'Licence' is a right simply transferred between the 'Grantor and the Tenancy', in the considered opinion of this Court.

12. One cannot ignore an important fact that a 'Licence' is very much required to run a coffee or tea shop, a restaurant or refreshment room or any place to keep any lodging house or for consuming of any drink or food of any place where food is prepared or sold for sale.

13. It is to be remembered that **Section 379-A of the Chennai City Municipal Corporation Act, 1919 'Consequences of failure to obtain licences, etc., or breach of the same'** enjoins that if under this Act, or any Rule, Bye-law, the licence or permission of the Council [Standing Committee] or Commissioner or registration in the office of the Corporation is necessary for the doing of any act and if such act is done without such licence or permission or registration or in manner inconsistent with the terms of any such licence or permission, then the

Commissioner may by notice require the person so doing such act to alter, remove or as far as practicable restore to its original state the whole or any part of any property, movable or immovable, public or private, affected thereby within a time to be specified in the notice. Also that, as per Section 379-A[b], the Commissioner or any officer duly authorized by him may also enter into any building or land, where such act is done and take all such steps to prevent the continuance of the said such act.

14. Considering the fact that the Petitioner had addressed a representation dated 23.08.2016 to the 1st and 2nd Respondents seeking licence to run the bunk shop in the road side platform, this Court is of the considered view that the Petitioner cannot run the bunk shop in the road side platform opposite to Jaya Lakshmi Super Market, Pillayarkoil Street, Anna Nagar West, Chennai and to sell tea biscuits etc., without obtaining the requisite licence from the 2nd Respondent / Appropriate authority concerned. Furthermore, the factum of the Petitioner not running the bunk shop for more than a year is not seriously disputed on behalf of the Petitioner. However, this Court taking note of the fact that the Petitioner is a physically challenged person and he depends on his

paltry income from the bunk shop in question, this Court, at this stage, simpliciter without expressing opinion on the merits of the matter one way or the other and also not delving deep into the same, directs the 2nd Respondent / the Commissioner, Greater Chennai Corporation to dispose of the representation of the Petitioner dated 23.08.2016 within a period of three weeks from the date of receipt of copy of this Order. If the 2nd Respondent comes to a conclusion that the Petitioner is entitled to get the relief before the Vending Committee concerned, then, it is for them to take a call in this regard, ofcourse after providing necessary opportunity to the Petitioner by adhering to the Principles of Natural Justice. Till such time, the Petitioner is directed not to carry on his business at the bunk shop without obtaining any proper licence.

With the above said observations and directions, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

(M.V.J.)

(R.P.A.J.)

26.11.2018

Speaking order / Non speaking order

Index :Yes / No

Internet :Yes / No

ssd

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