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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No. 21772 of 2021
and WMP No.22350 of 2021

S.Balaji

...Petitioner

-vs-

1.The Commissioner
Greater Chennai Corporation
Ribbon Building, Chennai - 600 003.

2.The Zonal Officer,
Zone - V, Greater Corporation,
No.61, Basin Bridge Road,
Chennai - 600 001.

3.The Chairperson,
Town Vending Committee for Bunk Shop,
Zone - V, Division-61, Ward-14,
Greater Chennai Corporation,
Ribbon Building, Chennai - 600 003.

4.The State Commissioner,
O/o the State Commissioner of Disabled,
No.15/1, Model School Road,
Thousand Light,
Chennai - 600 006.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order Ma.A.5/Na.Ka. No.9753/2021 dated 20.09.2021 issued by the 2nd respondent and quash the same and consequently forbearing the respondents No.1 to 3 disturbing the petitioner's Bunk Shop which is situated at No.4/149, Monteith Road, Egmore, Chennai- 600 008.

For Petitioner : Mr.P.Vijendran

For Respondents : Mrs.P.T.Ramadevi
Standing Counsel for R1 to R3

Mr.L.Chandrakumar for Anbu Nilayam
Physically Challenged Self Employed
Welfare Association



O R D E R

Challenging the impugned order of the 2nd respondent, dated 20.09.2021 in Ma.A.5/Na.Ka. No.9753/2021 and for a consequential direction to forbear the respondents Nos.1 to 3 from disturbing the petitioner's Bunk Shop, which is situated at No.4/149, Monteith Road, Egmore, Chennai- 600 008, the petitioner is before this Court with this writ petition.

2. That the case of the petitioner is that, the petitioner is running a bunk shop / street vending business selling sandwich at Monteith Road, Egmore, Chennai. He has been running the shop since for many years and the petitioner claimed to be a physically challenged person and his disability is 70%, which is locomotive in nature. A certificate to that effect has been given by the District Differently Abled and Welfare Officer.

3. The petitioner claimed that, he has got an electricity service connection for the said bunk shop and he got a license under the Food Safety Act 2006. He claimed to have been running the shop from 1983 onwards.

4. When that being so, due to the Street Vending Act i.e., Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (In short 'the Act'), the street vending committee had been constituted in each zone by the respondent Corporation and whoever wants to get a permission to have the street vending business / bunk shop in any area within the respondent Municipal Corporation, have to make an application to the street vending committee. Such Application filed before the Committee has to be considered, as to whether, since already various areas, streets and roads have been declared by the Street Vending Committee, either as vending zone or non-vending zone, accordingly, if it is a vending zone, recommendation for giving permission to a particular applicant can be decided by the Committee, based on which, permission would be granted by the respondent Corporation.

5. In this context, when application has been made by the petitioner to the respondent, ie., the committee, for getting permission from the committee/respondent Corporation to continue to run the bunk shop/ street vending business of the petitioner at Monteith Road, Egmore, Chennai, the same, having been considered, was rejected by the Committee vide proceedings dated 30.07.2021, which has been communicated by the said Committee to the petitioner on 20.09.2021. Challenging the same, the present writ petition has been filed.



6. Mr.P.Vijendran, the learned counsel for the petitioner, would submit that, the only reason stated by the Committee for rejecting the street vending application of the petitioner is that, the street where the petitioner sought permission at Monteith Road, Egmore, Chennai, since has been declared as non vending zone, the request of the petitioner cannot be considered and accordingly, it was rejected. However, the learned counsel for the petitioner in this regard would point out that, insofar as the Monteith road is concerned, though it is claimed by the Committee that it is a non vending zone, the respondent Corporation had already permitted atleast five such street vending business/bunk shops in the very same street very nearer or next to the bunk shop of the petitioner. Though they are doing their business as on today, the present rejection made against the petitioner alone is nothing but an arbitrary exercise of power, as it is discriminatory.

7. Therefore, the learned counsel for the petitioner seeks indulgence of this Court against the impugned order to give a direction to the respondents to permit the petitioner to continue to run the bunk shop/street vending business at the Monteith road that is the place or location wherein the petitioner was already doing his business for more than 20 years.

8. Per contra, the learned standing counsel appearing on behalf of the respondent Corporation, on instructions, would submit that, insofar as the declaration of a particular street or road or area of the Corporation limit as vending zone or non vending zone is concerned, ie., under the purview of the committee as constituted in this regard under the provisions of the Act. Accordingly, the Monteith road, having already been considered to be declared to be a non vending zone, therefore, permission sought for by the petitioner to run the bunk shop in the Monteith road, since has been declared as a non vending zone, cannot be considered and therefore, it was rejected, of course, correctly by the authorities.

9. When this stand was taken by the learned standing counsel appearing for the respondent Corporation, this Court had posed a pointed query to the respondents' counsel that if the said Monteith road has already been declared as a non vending zone, where the complaint made by the petitioner that atleast five other bunk shops/street vending business had already been permitted in the street, whether has been permitted by the respondent Corporation, if not, why such businesses were permitted to continue and what steps have been taken to evict those people on par with the petitioner.

10. In response to the same, the learned counsel for the respondents, on instructions, would submit that, in fact those other bunk shops, since were located in the street i.e., the Monteith Road, where there has been declaration by the



Committee that, it is a non-vending zone, consequent upon the same, though they have to vacate the bunk shops, they could not be vacated, as on behalf of the association of street vendors, where those bunk shops claimed to be the members, had already approached this Court by filing W.P.Nos.32329 of 2019 and 2516 of 2020. In those writ petitions, some of the provisions of the Act and consequential resolution or declaration made by the Street Vending Committee, declaring the particular area or street as non-vending zone have been challenged. Since those writ petitions are pending before this Court, during the pendency of the writ petitions, the respondent Corporation did not want to or wish to take any coercive action to evict them. Therefore, in that pretext, since they have been continuing, the same gesture cannot be shown to the petitioner, as he sought permission to permit him or to allow the bunk shop in the street and such kind of positive permission cannot be granted knowing well that the street concerned, since has already been declared as a non-vending zone.

11. I have considered the submissions made by the learned counsel appearing on both sides and perused the materials placed before this Court.

12. Even though no other private parties or respondents in this writ petition, the learned counsel representing the street vendors association, who triggered the two writ petitions referred to above, which are filed challenging some provisions of the Act and the resolution passed by the Committee and are pending before the Division Bench of this Court, would submit that, in the said writ petitions, where some clarifications sought for by this Court in the earlier occasion as to why the other bunk shops are being run without having any permission shall not be evicted, preempting the same, the respondent corporation and their men recently had directed these five or other bunk shops, which are already functioning at Monteith road, to close down. Accordingly, the shops are closed. Therefore, he wanted to implead those bunk shop owners or the association, wherein, their members to be impleaded as one of the party respondent in this Writ petition to have an effective adjudication of the issue raised in this writ petition.

13. I have considered all the submissions made by the learned counsel appearing for both the parties and perused the materials placed before this Court.

14. Insofar as the present issue raised in this writ petition, where the rejection order made by the respondents in granting permission to the petitioner sought for by him to continue to run the bunk shop, which he is already being run in the place called Monteith road, is correct or not, in this context, it is an admitted case that the said road is declared as non-vending zone and that declaration, subsequently, is



pending before the Division Bench of this Court. Now, the stand taken by the respondent corporation on other bunk shop owners are concerned, they can continue the business till the disposal of the case by the Division Bench of this Court.

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15. In this context, if at all the respondent Corporation decides to permit the other shop owners to continue, the present petitioner, who has also been running the shop for several years and merely he has made an application to the committee as per the provisions of the law and such application, since has been rejected, he cannot be put in a disadvantageous position by evicting him from conducting the business, whereas, the other persons, who are similarly placed in the very same non-vending zone are permitted to run the shop.

16. In that case, the action on the part of the respondents in permitting the other five persons for whatever reason and not permitting the petitioner, in view of the declaration, having been made declaring that the particular zone as non-vending zone, is per se discriminatory among the persons who are similarly placed.

17. Therefore, this Court feels atleast for the present, what is the status quo being maintained by other shop holders in the same Monteith road, shall be maintained in respect of the present petitioner atleast till the final decisions are made by the Division Bench in the pending writ petitions.

18. In that view of the matter, this writ petition is disposed of with the following orders:

That the respondents are hereby directed to permit the petitioner to continue his bunk shop in the Monteith road and such permission shall be valid only till the disposal is given by this Court in the pending writ petitions i.e., in W.P.Nos.32329 of 2019 and 2516 of 2020;

(ii) In view of the aforestated direction, the impugned order shall be kept in abeyance. It is made clear that, once final decision is made by the Division Bench of this Court in the pending writ petitions referred to above, depending upon the outcome of the decision to be made by the Division Bench, the fate of the impugned order, which is directed to be kept in abeyance, can be decided ;

(iii) In view of the above, the bunk shops of the other five people for whom the learned counsel has made his representation before this Court, even though they are not party before this Court in this Writ Petition, their shops are also permitted to continue till the disposal of the writ petitions.



19. With these observations and directions, this writ petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

rap/RR

To

- 1.The Commissioner,
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- 2.The Zonal Officer,
Zone - V, Greater Corporation,
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O/o the State Commissioner of Disabled,
No.15/1, Model School Road,
Thousand Light,
Chennai - 600 006.

+lcc to Mr.P.Vijendran, Advocate SR. No.66987
+lcc to Mr.L.Chandrakumar, Advocate SR. No.66457
+lcc to M/s.P.T.Ramadevi, Advocate SR. No.66262

W.P. No. 21772 of 2021

SJ (CO)
PR (15/02/2022)