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W.P. No. 29822 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 29822 of 2023
and
W.M.P. No. 29426 of 2023**

R.Nagarajan

... Petitioner

-VS-

1. The Commissioner,
Chennai Corporation,
Chennai.
2. The Assistant Engineer,
117th Division, 9th Zone,
Chennai Corporation,
Chennai – 600 017.
3. The Commissioner of Police,
Chennai City,
Chennai.
4. The Inspector of Police,
West Mambalam Police Station,
T. Nagar,
Chennai – 600 017.
5. C.Joseph Vijay Chandrasekhar
Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, forbearing the First and Second



W.P. No. 29822 of 2023

Respondents from evicting the Petitioner from his business place in Road side, Tanikachalam Road, opposite to the Mathaya Restaurant, T.Nagar, Chennai Corporation, Ward – 136, Chennai – 600 017 without following due process of law.

For Petitioner : Mr. A.Rawther Naina Mohammed

For Respondents : Mrs. P.T.Ramadevi,
Standing Counsel (for R1 & R2)

Mr. S.Rajkumar,
Additional Public Prosecutor
(for R3 & R4)

Mr. S.Kumaresan (for R5)

ORDER

Heard Mr. A.Rather Naina Mohamed, Learned Counsel for the Petitioner, Mrs. P.T.Ramadevi, Learned Standing Counsel appearing for the First and Second Respondents, Mr. S.Rajkumar, Learned Additional Public Prosecutor appearing for the Third and Fourth Respondents and Mr. S.Kumaresan, Learned Counsel for the Fifth Respondent and perused the materials placed on record, apart from the pleadings of the parties.



W.P. No. 29822 of 2023

2. The Petitioner, who has filed this Writ Petition with street vendor identity card bearing UID No. 09_117_233_0420_0009, claims that the First and Second Respondents have to be restrained from preventing him to carry on street vending at Tanikachalam Road, Ward – 136, T.Nagar, Chennai, without due process of law.

3. It beyond any cavil that the permission to carry on street vending is governed by the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, and it is only those persons, whose names have been enlisted during survey, could be permitted to do street vending in the allocated locations in the City of Chennai.

4. Learned Standing Counsel appearing for the First and Second Respondents, on instructions from the Assistant Engineer, Division 117, Zone 9, Greater Chennai Corporation, states that on verification of the said identity card produced by the Petitioner, it has been found to be bogus and that the name of the Petitioner does not find place in the enumerated list of street vendors during the survey conducted in that area.



W.P. No. 29822 of 2023

5. In such circumstances, the Respondent cannot be faulted for taking action against the Petitioner, if he does not have a valid identity card for carrying on street vending in accordance with the procedure prescribed under the Act. In this context, reference has to be made to the decision of the Hon'ble Supreme Court of India in **Director of Settlements, A.P. -vs- M.R. Apparao** [(2002) 4 SCC 638], where it has been observed as follows:-

"17. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which



W.P. No. 29822 of 2023

WEB COPY

*appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (**Kalyan Singh v. State of U.P.** [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."*

In view of the said legal position, the question of granting the relief sought by the Petitioner does not arise.

6. It is needless to add here that the Respondents are not precluded for taking appropriate action under criminal law against the Petitioner for having produced bogus identity card for street vending before this Court, apart from



W.P. No. 29822 of 2023

suitable measures to prohibit him from carrying on street vending without satisfying the prescribed requirements of law.

In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

01.11.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

ns1/vjt



W.P. No. 29822 of 2023

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WEB COPY



W.P. No. 29822 of 2023

P.D. AUDIKESAVALU, J.

nsI/vjt

W.P. No. 29822 of 2023

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