

(2016) 03 MAD CK 0147

In the Madras High Court

Case No : R.P. No. 267 of 2015 in W.P. No. 32622 of 2015

Singaravelar Olympic Muthal Broadway Corner Varai
Salaiyora Siru Kadai Vyaparigal Nala Sangam

APPELLANT

Vs

Dr. K.R. Ramaswamy @ Traffic Ramaswamy and others

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014
— Section 22

Citation : (2016) AIR(Madras) 96

Hon'ble Judges : Sanjay Kishan Kaul, C.J. and T.S. Sivagnanam, J.

Bench : Division Bench

Advocate : D. Nagasaila, Advocate and K. Harishankar, Advocate, for the Appellant; K.R. Ramasamy, Advocate and Party-in-Person and P.H. Aravind Pandian AAG Assisted by S.T.S. Murthi G.P. and V.R. Kamalanathan AGP, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—This Review petition, at the instance of an association registered under the provisions of the Societies Registration Act, said to consisting of 276 members who are hawkers, seeks for review of the order and direction issued in W.P. No.32622 of 2015, dated 13.10.2015.

2. We have heard Ms. D. Nagasaila, learned counsel for the petitioner, Mr. K.R. Ramasamy, party-in-person, for the Writ Petitioner, Mr. P.H. Aravind Pandian, learned Additional Advocate General assisted by Mr. S.T.S. Murthi, learned Government Pleader and Mr. V.R. Kamalanathan, learned Additional Government Pleader for the respondents 2, 3, 5 & 6 and Mr. K.S. Soundararajan, learned Standing counsel for the fourth respondent Corporation and Mr. K. Harishankar, for the seventh respondent.

3. The first respondent/Writ Petitioner filed the Writ Petition praying for issuance

of a Writ of Mandamus to direct the respondents to consider his representation, dated 08.10.2015 to save the pedestrians and vehicle drivers in NSC Bose Road, who are facing risks on account of illegal hawkers.

4. The Writ Petitioner contended that NSC Bose Road has been declared as no hawking zone, where hawkers were removed and rehabilitated and the process of re-occupying the pavements have begun and unless it is nipped in the bud, it would result in same situation as prior to the rehabilitation of the hawkers. Photographs were placed to show how the position was prior to the said date and thereafter.

5. We agreed with the submissions of the Writ Petitioner/first respondent that there is no question of hawking in a no hawking zone, especially when the hawkers have been rehabilitated. We further observed that the persons currently occupying the space are not entitled to do so whether they were earlier hawkers or new hawkers. With these observations, direction was issued to the Commissioner, Corporation of Chennai and the Additional Commissioner of Police, Chennai City Traffic to take necessary action to ensure that the area is cleared of all encroachments and is maintained as a no-hawking area. We also observed that it is the duty of the respondent Corporation and they ought to have monitored the area so that the necessity of the Writ Petitioner approaching this Court would not have arisen. A time frame was fixed for implementation of the order. The above order and direction is sought to be reviewed in this Review Petition.

6. The learned counsel appearing for the Review Petitioner contended that the order under Review has been passed without taking into consideration the earlier directions/orders of this Court in W.P. No.4895 of 1995, etc., dated 22.02.2001, directing the respondents to refer the cases of hawkers on NSC Bose Road to the Hawking Zone Committee. Further, it is submitted that 276 members of the petitioner association have been hawking for generations on NSC Bose Road from Govindappan Naickan Street to Broadway corner and their rights are to be protected as NSC Bose Road is historically a hawking zone. Further, it is submitted that the Parliament has enacted the Street Vendor (Protection of Livelihood and Regulation of Street Vending), Act 2014, which protects the rights of urban street vendors and to regulate street vending activities and for matter connected therewith and in terms of Section 22 of the Act, Town Vending Committees have to be constituted which is yet to be done by the Chennai Corporation. Further, the petitioner association has filed the Writ Petition before this Court in W.P. No.31171 of 2014, for implementation of the Street Vendors Act by the Government of Tamil Nadu and the said Writ Petition is pending. It is submitted that since the members of the petitioner association are all hawkers in NSC Bose Road, on account of the order passed in the Writ Petition, they are unable to seek for permission to vend their articles in the NSC Bose road area and therefore, the order has to be reviewed.

7. The learned Additional Advocate General referred to the order passed by the

Division Bench and submitted that all the hawkers in NSC Bose road area were enumerated and they have been given alternate space for carrying on their activities and therefore, the question of entertaining the request made by the petitioners does not arise. In this regard, the observations made by this Court in W.P. No.1049 of 2006 was referred to.

8. The learned counsel for the seventh respondent namely Rattan and China Bazaar Merchant's Association submitted that all the hawkers in the NSC Bose Road area have been relocated and 794 persons have been allotted specified area and the beneficiaries are those, who have been suggested by their association. However, after about one year, they once again came back to the pavements outside their shops in utter disregard to the orders passed by the Hon'ble Supreme Court and this Court. Further, it is submitted that if the members of the petitioner association are to be permitted to occupy the pavements opposite the petitioner's shops, it would amount to giving a go-by to the orders passed by the Hon'ble Supreme Court and this Court.

9. The case before this Court in respect of the hawkers in the NSC Bose road area has had a chequered history. Ultimately, the First Bench of this Court in W.A.No.1049 of 2006, passed an order on 17.11.2006, by which the hawking in NSC Bose Road area was regulated. It is not in dispute that 794 hawkers were identified by their association and all of them have been allotted specified site for carrying on their hawking. Present attempt appears to be a fresh attempt by the members of the petitioner association stating that they also have been hawking in NSC Bose Road area and their plea has to be considered and the order passed in this Writ Petition is an impediment for considering their case.

10. It is not known as to what action the members of the petitioner association had taken since 2006, when the order was passed, regulating the hawking in NSC Bose road area. In effect one portion of the area was declared as no hawking zone, in other area it was regulated and a specified area was allotted as hawking zone and thus, hawkers, who were in NSC Bose road, were given alternate accommodation. The present attempt of the petitioner appears to be a reopen a settled issue, which has been considered by the Hon'ble Supreme Court also. Therefore, on the grounds raised by the petitioner, we are not inclined to review the order passed in the Writ Petition.

11. Further, the petitioner has not been able to point out as to what is the error which is apparent on the face of the order. In fact, the order is in consonance and in tune with the earlier orders passed and in particular, the order passed in Contempt Application No.586 of 1992, dated 03.11.1993. The petitioner seeks for review on the ground that the Central Government has recently enacted the Street Vendors Protection Act and owing to such enactment, they seek for certain rights for the street vendors and to implement the provisions of the Act, they would state that this order in the Writ Petition is an impediment. However, this can hardly be a ground for reviewing the order in the Writ Petition.

12. For all the above reasons, the petitioner has not made out any grounds to review the order passed in the Writ Petition. Accordingly, the Review Petition is dismissed. However, this will not prevent the petitioner association from pursuing their remedy in the pending Writ Petition in W.P. No. 31171 of 2014 or by approaching the Hawking Committee, if so advised. No costs.