NC: 2024:KHC:3179
WP No. 27971 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 27971 OF 2023 (GM-POLICE)

BETWEEN:

M/S. ALL INDIA STREET VENDORS PUBLIC
AND CHARITABLE TRUST
AND ALSO CALLED AS AISVPCT (R)
HAVING REGISTED OFFICE
AT SHOP NO.1/A
COLD STORE, C BLOCK
SRI JAYACHAMA RAJENDRA
WHOLESALE YARD MARKET
KALASIPALYA
BENGALURU – 560 002.

REPRESENTED BY ITS MANANG TRUSTEE/
AUTHORIZED PERSON
MR. MOHAMMED JAVEED
S/O NAWAB JAN
AGED ABOUT 45 YEARS
R/AT NO.33, 2ND FLOOR
4TH CROSS, M.D.BLOCK
OPP.: MASJID A MEHRAJ
CHAMARAJPET
BENGALURU SOUTH
BENGALURU – 560 018.

...PETITIONER

(BY SRI HUSSAIN MUEEN FAROOQ, ADVOCATE)

AND:

1. THE COMMISSIONER OF POLICE
   INFANTRY ROAD
   BENGALURU – 560 001.

2. THE COMMISSIONER
   BRUHAT BENGALURU
   MAHANAGARA PALIKE
   HUDSON CIRCLE
   BENGALURU – 560 001.

…RESPONDENTS

(BY SRI MANJUNATH K., HCGP FOR R-1;
SRI B.L.SANJEEV, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTION TO R2 AND HIS SUBORDINATES NOT TO OBSTRUCT THE BUSINESS OF STREET VENDORS (TRUSTEES OF THE PETITIONER); DIRECT THE R1 TO CONSIDER THE COMPLAINT OF THE PETITIONER ANNEXURE-C AND TO PROVIDE POLICE PROTECTION AND TO TAKE ALL PRECA UTIONARY MEASURES TO AVOID ANY UNTOWARD INCIDENT.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner – Trust is before this Court seeking a direction by issuance of a writ in the nature of *mandamus*

directing the respondent No.2 not to evict, disturb or harass the peaceful business of the members of the petitioner-Trust.

2. Heard Sri. Hussain Mueen Farooq, learned counsel for petitioner, Sri. Manjunath, learned High Court Government Pleader appearing for respondent No.1 and Sri B.L.Sanjeev, learned counsel appearing for respondent No.2.

3. The petitioner claims to be a registered Trust of street vendors. The members of the Trust are eking out their livelihood by earning from the business of street vending. It is the case of the petitioner – Trust that they are protected under the Street vendors (Protection of Livelihood and Regulation of Street Vending Act, 2014 ('the Act' for short). The petitioner also claims that the members are carrying out the business of street vending since 30 years and are in possession of the valid license from the concerned authorities. The petitioner-Trust has also approached the concerned Court in O.S.No.4605 of 2017 and obtained temporary injunction. According to the petitioner - Trust, a survey is to be conducted and the licenses of the members of the petitioner – Trust may be verified. The

certificates of vending has to be allotted to the street vendors by the BBMP every 5 years. Since no survey is undertaken by the BBMP, it is its case that they cannot be evicted or dispossessed from their business of vending on the street.

4. Learned counsel for petitioner would submit that a direction be issued to conduct a survey or issue necessary license to the members of the petitioner – Trust under the Act, so that in future, they would not face such problems from the hands of police, who are wanting to throw the members of the petitioner away from the place of vending and would also reiterate the averments in the petition. He would also submit that the issue in the *lis* stands covered by the order of this Court passed in W.P.No.27454/2023 disposed on 17.01.2024.

5. The order passed by this Court in W.P.No.27454/2023 disposed on 17.01.2024, reads as follows:

> *"5. Learned counsel, Sri. B.S. Satyananda who represents the BBMP would submit that no prayer is sought against them, but survey has been conducted in the year 2019 itself and the places are identified and it does not show the name of the petitioner. Therefore, it appears that the police are wanting to take action. Learned counsel would submit that, if an application is made to the Town Vending*

Committee, appropriate action would be taken by the Town Vending Committee.

6. Learned HCGP would submit that since there is no mention of the name of the petitioner as licensee under the Act, action was sought to be taken.

7. The afore-narrated facts are not in dispute. The vending of the petitioner on a street of the city is not in dispute. The petitioner claims to be a street vendor and he is entitled to protection under the Act. Therefore, it becomes necessary to consider certain provisions of the Act. Chapter II of the Act deals with regulation of street vending. Sections 3 and 4 of the Act deals with issuance of certificate of vending. They read as follows:

> ***"3. Survey of street vendors and protection from eviction or relocation**.—(1) The Town Vending Committee shall, within such period and in such manner as may be specified in the scheme, conduct a survey of all existing street vendors, within the area under its jursidiction, and subsequent survey shall be carried out at least once in every five years.*
>
> *(2) The Town Vending Committee shall ensure that all existing street vendors, identified in the survey, are accommondated in the vending zones subject to a norm conforming to two and half per cent. of the population of the ward or zone or town or city, as the case may be, in accordance with the plan for street vending and the holding capacity of the vending zones.*
>
> *(3) No street vendor shall be evicted or, as the case may be, relocated till the survey specified under sub-section (1) has been completed and the certificate of vending is issued to all street vendors.*
>
> ***4. Issue of certificate of vending**.—(1) Every street vendor, identified under the survey carried out under sub-section (1) of Section 3, who has completed the age of fourteen years or such age as may be prescribed by the appropriate Government, shall be issued a certificate of vending by the Town Vending Committee, subject to such terms and conditions and within the period specified in the scheme including the restrictions specified in the plan for street vending:*
>
> *Provided that a person, whether or not included under the survey under sub-section (1) of Section 3, who has been issued a certificate of vending before the commencement of this Act, whether known as licence or any other form of permission (whether as a stationary vendor or a mobile*

vendor or under any other category) shall be deemed to be a street vendor for that category for the period for which he has been issued such certificate of vending.

(2) Where, in the intervening period between two surveys, any person seeks to vend, the Town Vending Committee may grant a certificate of vending to such person, subject to the scheme, the plan for street vending and the holding capacity of the vending zones.

(3) Where the number of street vendors identified under sub-section (1) or the number of persons seeking to vend under sub-section (2) are more than the holding capacity of the vending zone and exceeds the number of persons to be accommodated in that vending zone, the Town Vending Committee shall carry out a draw of lots for issuing the certificate of vending for that vending zone and the remaining persons shall be accommodated in any adjoining vending zone to avoid relocation."

Section 3 of the Act mandates that survey of street vendors and protection from eviction or relocation has to be done by the Town Vending Committee within such period as specified under the scheme. After such survey is conducted, a certificate would be issued for street vending and those persons who be protected under the Act.

9. The conditions for issuance of certificate of vending is dealt with under Section 5 of the Act and it reads as follows:

***"5. Conditions for issue of certificate of vending**.— (1) Every street vendor shall give an undertaking to the Town Vending Committee prior to the issue of a certificate of vending under Section 4, that—*

(a) he shall carry on the business of street vending himself or through any of his family member;

(b) he has no other means of livelihood:

(c) he shall not transfer in any manner whatsoever, including rent, the certificate of vending or the place specified therein to any other person.

(2) Where a street vendor to whom a certificate of vending is issued dies or suffers from any permanent disability or is ill, one of his family member in following order of priority, may vend in his place, till the validity of the certificate of vending—

(a) spouse of the street vendor;

(b) dependent child of the street vendor:

Provided that where a dispute arises as to who is entitled to vend in the place of the vendor, the matter shall be decided by the committee under Section 20."

10. It transpires that in the year 2019, a survey is conducted by the Town Vending Committee as obtaining under Section 3 of the Act, at that point in time, the petitioner was not vending on any street, therefore, his name does not figure in the survey and a certificate is not issued on the score that his name did not figure.

11. Therefore, the petitioner now, shall submit an application to the Town Vending Committee within the next 4 weeks and the Town Vending Committee of the BBMP would pass necessary orders as obtaining under Section 4 of the Act after assessment under Sections 5 and 6 of the Act. Till the time the Town Vending Committee would pass appropriate orders on the application so made by the petitioner, the respondents-police shall not cause any hindrance or disturb the vending business of the petitioner except in accordance with law."

6. In the light of the afore-quoted order, the members of the petitioner – Trust, shall submit application to the Town Vending Committee within the next 4 weeks and the Town Vending Committee of the BBMP would pass necessary orders as obtaining under Section 4 of the Act after assessment under Sections 5 and 6 of the Act. Till the time the Town Vending Committee would pass appropriate orders on the application so made by the members of the petitioner - Trust, the respondents-police shall not cause any hindrance or disturb the

vending business of the members of the petitioner – Trust except in accordance with law.

7. With the aforesaid observations, the petition stands disposed.

Sd/-
JUDGE

BKP
List No.: 1 Sl No.: 45