

Mahadevi Vs Sub Divisional Magistrate/Revenue Divisional Officer

Court: High Court Of Kerala

Date of Decision: Feb. 11, 2025

Acts Referred: Kerala High Court Act, 1958 " Section 5

Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 " Section 2(1)(l), 2(1)(n), 3, 3(2), 4(1), 6, 13, 18, 20, 22, 27, 36, 38

Hon'ble Judges: Nitin Jamdar, CJ; S. Manu, J

Bench: Division Bench

Advocate: P.Sivaraj, Megha M.S. S.,Sreekumar, V. Tekchand

Final Decision: Disposed Of

Judgement

Nitin Jamdar, C.J.

1. The Appellants are street vendors operating a small street vending business on four-wheeler carts near the District Hospital on the Kollam Victoria

Åçâ,¬" District Hospital Road. Street vending in the State of Kerala is regulated by the Street Vendors (Protection of Livelihood and Regulation of Street

Vending) Act, 2014 ("the Act of 2014") and the Kerala Street Vendors (Protection of Livelihood, Regulation of Street Vending and Licensing)

Scheme, 2019 ("the Scheme").

2. In 2016, when Appellant No. 1 faced eviction from her place of business, she filed W.P.(C) No. 38273 of 2016 before this Court, seeking a

direction to restrain the Respondent Åçâ,¬" Corporation from evicting her. The writ petition was disposed of by judgment dated 13 December 2016 with a

direction to the Respondent Åçâ,¬" Corporation to finalise the list of vendors prepared by it. In 2020, Appellant No. 2 also faced eviction, and filed W.P.

(C) No. 29194 of 2020, in which an interim order was passed by the learned Single Judge on 29 December 2020 directing the Respondents therein not

to forcibly evict him.

3. Notice of eviction (Exhibit-P6) was issued to the Appellants on 13 August 2024 citing the report of the Kerala State Disaster Management

Authority (KSDMA). The Appellants filed W.P.(C) No. 29961 of 2024 before the learned Single Judge challenging the said notice and seeking a

direction restraining the Respondents from evicting them unless warranted by circumstances, and after providing a suitable alternative site. Before the

learned Single Judge, the State submitted that the Appellants are trespassers and are using LPG gas cylinders for cooking near a hospital housing an

oxygen plant, which poses a safety risk and causes inconvenience. Considering the submissions of the Respondents, the learned Single Judge

dismissed the writ petition by judgment dated 29 November 2024. The Appellants have now filed this appeal under Section 5 of the Kerala High Court

Act, 1958, challenging the judgment of the learned Single Judge in W.P.(C) No. 29961 of 2024, dated 29 November 2024.

4. Heard Mr. P. Sivaraj, learned counsel appearing for the Appellants, Mr. S. Sreekumar (Kollam), learned counsel appearing for Respondent No. 2,

and Mr. V. Tekchand, learned Senior Government Pleader.

5. The Appellants contend that they cannot be treated as trespassers and they possess rights under the law. They contend that, as per the provisions

of the Act of 2014, a Town Vending Committee has to be constituted to determine vending zones, however, the Respondent "Kollam Corporation has

neither constituted such a committee nor designated any vending zones. Although a survey was conducted, no final list of vendors has been prepared,

and no licenses have been issued to street vendors to date. The Appellants rely on the order dated 13 December 2016 passed by the learned Single

Judge in W.P.(C) No. 38273 of 2016, filed by Appellant No. 1. In that case, the statement of the learned counsel for the Kollam Corporation that

Appellant No. 1 was included in the list prepared by the Town Vending Committee was recorded. It is contended that though the learned Single Judge

disposed of the petition in December 2016 with a direction to finalise the list, despite the passage of time, no such list has been finalised. The

Appellants submit that without complying with this direction, the Respondents seek to remove the Appellants based on the order of the Sub Divisional

Magistrate dated 13 August 2024. The Appellants contend that even on safety grounds, they have been singled out for eviction. They contend that the

claim regarding their proximity to an oxygen plant is factually incorrect. They rely on a Fire and Safety Report, and contended that two other shops,

which do not belong to the Appellants, are within six metres of the plant, whereas the business of the Appellants is situated 30 metres away. In

essence, the Appellants submit that their eviction violates the provisions of the Act of 2014, and no emergent situation warrants their immediate

removal. The Respondents rely on the KSDMA report dated 13 August 2024.

6. The Appellants are being removed on the ground that they pose a threat to the oxygen plant of a hospital. Before the learned Single Judge, the Sub

Divisional Magistrate submitted a statement justifying the eviction, asserting that the action complied with the safety protocols issued by the KSDMA.

However, the implications and rights arising from the Act of 2014 and the Scheme have not been referred at all.

7. The Appellants are street vendors. The Parliament has enacted the Street Vendors (Protection of Livelihood and Regulation of Street Vending)

Act, 2014 which protects the rights of urban street vendors and regulate street vending activities, including the procedure for their relocation or

removal. The Act of 2014, as its Statement of Objects would show, recognises street vendors as a crucial part of the urban economy, providing self-

employment and aiding poverty alleviation. Street vendors are those who are unable to get regular employment in the formal sector on account of their

low level of education and skills. For them, street vending provides a source of self-employment and thus acts as a measure of urban poverty

alleviation without major Government intervention. Street vending also has a prominent place in the urban supply chain and is an integral part of the

economic growth process within urban areas. The Act of 2014 aims to ensure a harassment-free environment for the street vendors, and regulate

street vending.

8. Section 2(1)(l) of the Act of 2014 defines a street vendor as anyone selling goods or services in public or private spaces, whether stationary or

mobile, including hawkers, peddlers, and squatters. Section 2(1)(n) defines a vending zone as an area, a place, or a location designated as such by the

local authority, according to the recommendations of the Town Vending Committee. Chapter II of the Act of 2014 regulates the street vending

activity. Section 3 postulates a survey of street vendors and protection from eviction or relocation. The Town Vending Committee, as specified in the

Scheme, has to survey all existing street vendors. Subsequent surveys have to be carried out at least once in every five years. Under sub-section (2)

of Section 3, the Town Vending Committee has to ensure that all existing street vendors identified in the survey are accommodated in the vending

zones subject to the norms. Sub-section (3) states that 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. Section 4 states that the Town Vending

Committee shall issue every street vendor identified under the survey a certificate of vending. Categories of certificate of vending and issue of identity

cards are provided under Section 6. The criteria and methodology for issuance of certificate, vending fee, validity and renewal of certificate of vending

are also provided under Chapter II. Section 13 under Chapter III of the Act of 2014 states that every street vendor who possesses a certificate of

vending shall, in case of his relocation under Section 18, be entitled to a new site or area, as the case may be, for carrying out his vending activities as

may be determined by the local authority, in consultation with the Town Vending Committee. A Dispute Redressal Mechanism is to be constituted

under Section 20 of Chapter V. A Town Vending Committee is to be constituted by the appropriate Government under Section 22 of Chapter VII.

The Town Vending Committee would consist of a Municipal Commissioner and nominated members, including representatives of the association of

street vendors, market associations, traders associations, Non-Governmental organisations, community-based organisations, resident welfare

associations and banks. Section 27 mandates that no street vendor who carries out street vending activity lawfully in terms of a certificate shall be

harassed by the Police authorities.

9. Section 38 empowers the appropriate Government to frame a scheme within six months from the date of coming into force of the Rules framed

under Section 36 after due consultations with the local authority and the Town Vending Committee by notification. Accordingly, Kerala Street

Vendors (Protection of Livelihood, Regulation of Street Vending and Licensing) Scheme is framed in the year 2019.

10. The above-mentioned statutory provisions show that the Legislature, recognizing the vulnerable position of street vendors, has conferred certain

rights while regulating their activities, including prescribing the manner of their relocation. The Act of 2014 mandates forming a Town Vending

Committee, a street vending plan every five years, and framing of a regulatory scheme. The Act safeguards street vendors' livelihood and social

security by mandating their registration and issuing certificates and identity cards.

11. The memo filed by the Municipal Corporation before the learned Single Judge did not refer to the Act of 2014. Therefore, when the appeal came

up on board on 9 December 2024, noting the main contention of the Appellants with respect to the provisions of the Act of 2014, we called upon the

Respondent "Municipal Corporation to demonstrate adherence to the Scheme and the Act of 2014. It was not clear whether any survey was carried out,

which places had been earmarked as vending zones in the city, and whether the place, where the Appellants are proposed to be relocated is a vending

zone.

12. On 18 December 2024, the decision of the Town Vending Committee dated 23 November 2024 taken after the filing of this appeal, was placed on

record. The affidavit states that the "reconstituted" Town Vending Committee was convened on 23 November 2024. The minutes are titled the "first

reconstituted Town Vending Committee". The minutes themselves state that the Town Vending Committee was constituted on 23 November 2024.

Decision No. 7 of the Town Vending Committee to notify the prohibited area on August 2023 was mentioned in the minutes, but no such decision is

shown to us and neither the date of the decision is specified. That being the position, the reference to an undated meeting in August 2023 of the Town

Vending Committee is questionable. In the decision of 23 November 2024, it was stated that to rehabilitate street vendors, a list of 85 zones was given

to the sub-committee to determine whether these areas were suitable for vending zones. The sub-committee had to study the list by conducting a field

survey. The learned counsel for the Respondent " Corporation had to accept that the steps contemplated under the Act of 2014 and the Scheme

have not been taken.

13. It is clear that even till November 2024, the vending zones were not finalised, and the Municipal Corporation has failed to adhere to the Act of

2014 and the Scheme. The District Collector has instructed the Respondent " Corporation to evict street vendors from the Kollam Victoria " ,

District Hospital Road and has directed not to include these roads in the vending zone. It was decided to shift the vendors who are included in the list

approved by the Corporation Council, Town Vending Committee. This list, as stated earlier, included the Appellants. The Appellants could not be

relocated because the vending zones were not finalised, and the survey was incomplete. In the decision taken on 23 November 2024, the Committee

was reconstituted, and places suggested in the minutes were to be inspected by the sub-committee to decide the vending zones. Without vending zones

being demarcated, the vendors who are in the list could not be sent to another area as it will create problems at that location.

14. The position is that until November, 2024, Kollam Municipal Corporation failed to effectively implement the Scheme under the Act of 2014. Even

today, the learned counsel for the Kollam Corporation is seeking time on the grounds that the survey is incomplete. He, however, states that the

survey will be completed shortly.

15. Therefore, we find that the action of the Respondents in seeking to remove the Appellants, who were included in the list as far back in the year

2016, purportedly to implement the safety protocols of the KSDMA, is, in the facts and circumstances of the case, in complete violation of the Act of

2014 and the Scheme. The provision of Section 3(3) of the Act of 2014 needs to be noted. It states as under:-

"(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."

Further, under Section 38 of the Act of 2014, the State of Kerala has framed the Kerala Street Vendors (Protection of Livelihood, Regulation of

Street Vending and Licensing) Scheme, 2019. Relocation of street vendors, principles of relocation, and manner and method of eviction of vendors,

seizure and disposal of goods are provided under paragraphs (14) to (16). Under paragraph (14), it is stated that the relocation shall be done with the

concurrence of the Town Vending Committee concerned. Under paragraph (15), relocation may be resorted only in exceptional situations when

exigencies of public purposes warranting the use of location or place for projects of public purposes necessitate it.

16. Undoubtedly, there may be cases where there is a need for immediate action for the purpose of disaster management. It could be argued that, in

certain grave and emergent situations, it may be necessary to remove street vendors. But it cannot be used as a ruse to bypass the statutory rights

under the Act of 2014 and the Scheme. Such action will have to be reconciled with the provisions of the Act of 2014 and the Scheme which

contemplates relocation. If the Appellants had to be relocated on an urgent basis, the relocation had to be in another vending zone. This could not have

been done due to the failure of the Respondent "Kollam Corporation to finalise the vending zones.

17. It is not that the Appellants arrived at the spot overnight, and the next day, the authorities perceived a threat. Appellant No.1 is included in the list

of street vendors maintained by the Kollam Corporation bearing No. '046 Thamarakkulam 00894 Mahadevi'. Appellant No. 2 is also included in the list

of street vendors maintained by the Respondent Kollam Corporation bearing No. '046 Thamarakkulam 0844 Sureshkumar (Manikkuttan)'. They filed

writ petitions as far back as in 2016, and the Corporation made a statement that they were included in the list of vendors. The Appellants also contend

that the oxygen plant in the hospital was only installed in 2021. Though the Appellants have been carrying on vending business for years, it is sometime

in August 2024, the Sub Divisional Magistrate seems to have realised that the presence of the Appellants near the hospital would be a threat. In this

fact situation, the Appellants contend that the report and the action of the Sub Divisional Magistrate are only to bypass the provisions of the Act of

2014 and the Scheme. It cannot be that the Corporation, which is mandated to implement the Act of 2014 and the Scheme, fails and neglects to

implement the basic provisions and then taken measures to forcibly remove the Appellants based on the order of Respondent No. 1. In the present

case, the factual situation does not indicate any such grave urgency for forcible eviction, without even attempting to finalise the vending zones and to

relocate the Appellants legally to permissible zones. In this case, there is no application of mind by the Respondents to the Act of 2014 at all. The

Respondents have proceeded as if the Act of 2014 and the Scheme do not exist.

18. Since this failure on the part of the Respondent "Kollam Corporation affected not only the Appellants but also the larger public interest, the matter was

adjourned from time to time to enable the Corporation to complete the steps under the Act of 2014. The learned counsel for the Respondent Åçâ,¬

Corporation states that all actions necessary under the Act of 2014 and the Scheme are now on the verge of being completed. Thus, it is unnecessary

to keep the appeal pending, as the Corporation can proceed to take action as per law.

19. As a result, the impugned judgment dated 29 November 2024 is set aside. The Writ Petition is allowed, and the notice of eviction (Exhibit- P6)

issued to the Appellants on 13 August 2024 is quashed and set aside. It is, however, open to the Respondent Åçâ,¬" Corporation to proceed to take steps

against the Appellants as per the provisions of the Act of 2014 and the Scheme of 2019.

20. The writ appeal is disposed of in the above terms.