

W.P. No.1024/2011**30.11.2012**

Shri Prateek Maheshwari, learned counsel for the petitioner.

Shri R. Jain, learned counsel for respondents no.1 and 2.

Shri Umesh Gajankush, learned counsel for the respondent no.3.

Heard finally with consent.

ORDER

1/ This order will govern the disposal of W.P. No.1024/11, 1025/11, 1026/11, 1027/11, 1028/11, 1030/11, 1032/11, 1034/11, 1036/11, 1038/11, 1039/11, 1040/11, 1041/11 & 1043/11 since it has been stated by learned counsel for the parties that all these writ petitions involve the same issue on the similar fact situation.

2/ For convenience facts have been noted from W.P. No.1024/2011.

3/ This writ petition has been filed by the petitioner seeking a direction to the respondents not to remove the petitioner from the bus stand premises by coercive means.

4/ The case of the petitioner is that he is a street peddler/hawker, who is involved in carrying on business of selling consumer goods including fruits and other eatables etc. at bus stand, Jhabua for past 20 years. His family is dependent on the said business. The petitioner has further pleaded that he is registered with the Municipal Corporation and has been provided with the identity card and is also making payment of tax imposed by the Municipal Corporation for the said purpose. The grievance of the petitioner is that the respondent-Municipal Corporation is taking steps to forcibly stop the petitioner from carrying on his hawker activity.

5/ Learned counsel for the respondent-Municipal Corporation has submitted that since the petitioners are creating obstruction by keeping their Thela stationary at one place near the

bus stand instead of doing the hawker activity by visiting different places, as a consequence steps are being taken to remove them.

6/ Learned counsel appearing for the petitioner has drawn the attention of this Court to the judgment of the Supreme Court in the matter of **Sodan Singh Vs. New Delhi Municipal Committee reported in 1989(4) SCC 155**, wherein the Supreme Court has observed that the street trading is a fundamental right which is subject to the reasonable restrictions under Article 19(6). It has further been observed that there is no justification to deny the citizens of their right to earn livelihood by using the public street for the purpose of trade and business, but at the same time it has also been stated that the demand that the hawkers must be permitted on every road in the city, cannot be allowed. The decision to permit the hawkers to operate in the particular area of the city is required to be taken after considering all the relevant circumstances including the need of the public and the convenience and inconvenience resulting from the activities of the hawkers.

7/ At this stage, learned counsel for the petitioner has made a prayer that the petitioner may be permitted to file a representation to the respondent no.3-Chief Municipal Corporation and a direction be issued to the respondent no.3 to decide the said representation keeping in view the judgment of the Supreme Court as noted above.

8/ Learned counsel for the respondents have no objection to such a limited direction.

9/ In view of the submissions made above, present writ petition is disposed of with the liberty to the petitioner to file a detailed representation to the respondent no.3 within a period of 4 weeks from the date of receipt of certified copy of this order. If such a representation is filed by the petitioner, the respondent no.3 will consider and decide the same in accordance with law keeping in view the judgment of the Supreme Court in the matter of **Sodan Singh** (supra), within a period of three months from the date of receipt of such a representation.

10/ Till the representation is decided, the respondents will not

take any coercive action against the petitioners.

11/ The writ petitions are accordingly disposed of.

12/ Signed order be kept in the file of W.P. No.1024/2011 and a copy whereof be placed in the file of W.P. No.1024/11, 1025/11, 1026/11, 1027/11, 1028/11, 1030/11, 1032/11, 1034/11, 1036/11, 1038/11, 1039/11, 1040/11, 1041/11 & 1043/11.

(Prakash Shrivastava)
Judge

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