

PETITIONER:
N. JAGADEESAN ETC.

Vs.

RESPONDENT:
DISTRICT COLLECTOR, NORTH ARCOT AND ORS.

DATE OF JUDGMENT: 21/02/1997

BENCH:
B.P. JEEVAN REDDY, K.S. PARIPOORNAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P. JEEVAN REDDY, J.

Leave granted in the Special leave Petition.

A common question arises in these writ petitions and civil appeals.

The National Association of Education Self-Employed Youth [NAESEY] is the petitioner in Writ Petition (C) No.1000 of 1987. The appellants in Civil Appeal No.1710 of 1987 and Civil Appeal No._____ of 1997 [arising from Special Leave Petition (C) No.20689 of 1993] and the writ petitioner in Writ Petition (C) No.365 of 1987 are members of this Association. It is stated that this Association was formed under the inspiration and guidance of Dr. Malcolm S.Adisheshaiah, the then Vice-Chancellor of the Madras University, and with the help of Madras University Employment Guidance Bureau. The members of this Association have installed bunks/kiosks within the premises of hospitals and medical colleges and on the road margins in the cities of Madras, Vellore and Tiruppur in the State of Tamil Nadu. Complaining that they are sought to be evicted from their premises otherwise than in accordance with law, one of the members of the Association, N. Jagadeesan, approached the Madras High Court by way of a writ petition. It was dismissed. The writ appeal preferred by him was also dismissed against which Civil Appeal No. 1710 of 1987 is preferred. A writ petition filed by the Association [Writ Petition (C) No. 12916 of 1987] was also dismissed similarly against which Special Leave Petition (C) No. 20689 of 1993 is preferred. The Association has filed two writ petitions under Article 32 of the Constitution, viz., Writ Petition (C) Nos. 1000 of 1987 and 365 of 1987. One of its members, Tmt. Tamilselvi and others have filed Writ Petition (C) No.677 of 1995 directly in this Court. Counters have been filed on behalf of the respondents, according to which the position boils down to this:

(1) Insofar as the kiosks located within the premises of hospitals and medical institutions in the State are concerned, it is stated that Health and Family Welfare Department of the Government of Tamil Nadu has directed the removal of the said bunks/kiosks on the ground that they

are posing a hazard to the health and well being of the patients and others visiting the hospitals and the institutions. It is stated that these bunks and kiosks are creating unhygienic conditions by littering the place and that the food items provided by them are also being consumed by the in-patients and other patients visiting the hospitals which is proving to be deleterious to their health and treatment. It is also stated that several persons are gathering around these bunks/kiosks which is interfering with the smooth and peaceful working of the hospitals and other medical institutions.

(2) So far as the bunks/kiosks located on the street-margins are concerned, it is stated that only the bunks/kiosks in three main thoroughfare in Madras [specified in the counter-affidavit] and one thoroughfare each in Vellore and Tiruppur are only being removed because they are proving a traffic hazard. It is stated that these thoroughfares are carrying very high volume of multimodal traffic ranging from bullock carts to fast moving vehicles and that having regard to the increasing volume of traffic, it has become necessary to remove these bunks/kiosks and re-locate them elsewhere. This removal is also necessary, it is stated, for widening the roads has reduced the width of the footpath and the existence of bunks/kiosks on such reduced footpath margins is causing further obstruction in the free movement of the people. It is clearly stated in the counter-affidavits filed on behalf of the Government of Tamil Nadu that the bunks/kiosks from all the thoroughfare/roads are not being removed but only bunks/kiosks from certain extremely busy roads/thoroughfares, as specified in the said affidavits, are being removed. It is also stated that so far as other roads are concerned only one or two bunks/kiosks may require to be removed depending upon the exigencies of the situation. Otherwise there has been no removal or attempt to remove the bunks/kiosks in other road margins or thoroughfare. It is further stated in Para 8 of the common counter, sworn to by N. Radhakrishnan, Additional Secretary to the Government of Tamil Nadu, that "in respect of places where the kiosks/bunks are existing, apart from the 3 places mentioned above and also in respect of any other place which may be suitable for locating the kiosks/bunks, permission would be granted by the concerned department considering the need and other relevant circumstances". It is, of course, clarified that "such permission would not also amount to grant of any unfettered right for the grantee, since it would be purely temporary and subject to removal if the premises is required for other public purpose". Another statement contained in the said affidavit is to the following effect: "there has been no removal or attempt to remove bunks/kiosks with a view to allow any other person to locate the said bunks/kiosks with a view to allow any other person to locate the said bunks/kiosks in the said place". The above statements in the counter-affidavit are recorded herewith.

We are of the opinion that the appellant-petitioners can have no legitimate grievance against the action taken to remove their bunks/kiosks inasmuch as the removal is confined only to (i) hospitals and medical institutions and (2) road margins of main thoroughfares, viz., three specified thoroughfares in Madras city and one each in Vellore and Tiruppur. The reasons given by the State for removing them are reasonable and acceptable. It is also specifically averred by the State that they are not removing any bunk with a view to allow some other person to install a bunk in that place. The removal is only for the purpose of

removal of health hazard or in the interests of smooth and unobstructed flow of traffic. Indeed, the Government has offered to consider the applications, if any, made by the evicted persons for locating them on other road margins or premises, as the case may be .

Sri R.Venkataramani, learned counsel for the appellant, has placed strong reliance upon the Constitution Bench decision of this Court in *Sodan Singh v. New Delhi Municipal Committee* [1989 (3) S.C.R.1038]. It is true that the said judgment does recognise that a member of a public is entitled to legitimate user of the road other than actually passing or re-passing through it. But this is clarified by the statement that such user shall not create an unreasonable obstruction which may inconvenience other persons having similar right to pass. It is also pointed out in the said judgment that what constitutes public nuisance is a question of fact to be decided in each case having regard to all the relevant circumstances. In our opinion, by seeking to remove the bunks and kiosks located within the hospital premises or within the premises of other medical institutions or their removal from the road margins of important and busy thoroughfares in the aforesaid three cities in Tamil Nadu, the respondents are not acting in any manner inconsistent with the propositions enunciated in the said judgment. We are not able to say that the reasons assigned are neither relevant nor germane nor is it possible to say that reasons given are only a make-believe.

It shall, of course, be open to the persons who are evicted to apply to the appropriate authorities for re-location in other appropriate areas/roads margins and we are sure that the concerned authorities will consider their representations and pass orders thereon without any avoidable delay.

The writ petitions and appeals are accordingly dismissed with the above observations. No costs.