

Sumedh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUO MOTU PUBLIC INTEREST LITIGATION NO.1 OF 2023**

WITH

INTERIM APPLICATION NO. 621 OF 2024

AND

INTERIM APPLICATION NO. 666 OF 2024

AND

INTERIM APPLICATION NO. 782 OF 2024

AND

INTERIM APPLICATION (L) NO. 7056 OF 2024

AND

INTERIM APPLICATION NO. 621 OF 2024

IN

SUO MOTU PUBLIC INTEREST LITIGATION NO. 1 OF 2023

High Court On Its Own Motion

...Petitioner

Versus

State of Maharashtra

...Respondent

WITH

WRIT PETITION NO. 630 OF 2023

Pankaj Kumar H Agrawal & Anr

...Petitioners

Versus

The State of Maharashtra & Anr

...Respondents

SUMEDH
NAMDEO
SONAWANE

Digitally signed by
SUMEDH NAMDEO
SONAWANE

Date: 2024.07.01
19:16:12 +0530

- Mr Sharan Jagtiani, Senior Advocate, with N Vinod & Yash Kataria, i/b S Mahomedbhai & Co, for the Applicant in IA/621/2024.**
- Mr Utkarsha Wadekar, i/b Ashok Saraogi, for the Petitioner.**
- Mr Amar Gharte, with Taiyaba Kazi in IA/7821/2024.**
- Ms Aishwarya Dangle, with Amar Gharte, in IA/666/2024.**
- Mr SU Kamdar, Senior Advocate, with Oorja Dhond, i/b SK Sonawane, for the Respondent-BMC in SMPIL/1/2023.**
- Ms PH Kantharia, GP, with Abhay L Patki, Addl. GP & Rita Joshi, AGP, for the Respondent-State in SMP/1/2023.**
- Ms PH Kantharia, GP, with Vrushali Kabre, AGP, for the Respondent-State in IA/666/2024.**
- Ms PH Kantharia, GP, with Fatima Lakdawala, AGP, for the Respondent-State in IA/782/2024.**
- Ms PH Kantharia, GP, with Suraj Gupte, AGP, for the Respondent-State in IA/621/2024.**
- Ms PH Kantharia, GP, with A Pawar, AGP, for the Respondent-State in IAL/7056/2024.**
- Ms PH Kantharia, GP, with Vishal Thadani, Addl. GP & Poonam Mittal, AGP, for the Respondent-State in WP/630/2023.**

**CORAM M.S. Sonak &
Kamal Khata, JJ.**

DATED: 24th June 2024

PC:-

1. This Suo Motu Petition was listed to monitor the actions of the State, the BMC, and the Police regarding various complaints against the alleged “hawkers menace.”
2. On 16th April 2024, this Court delved into the various provisions of The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014 (“**Street Vendors Act**”

2014”) and called upon the Brihanmumbai Municipal Corporation (“BMC”) to evolve a solution.

3. The BMC was directed to monitor all street vending licenses by creating and maintaining a database with biometric or other authentication and identification of the vendors. We left it to the BMC to consider these suggestions and make an appropriate submission to the State Government.

4. Three months have passed since, and Mr Kamdar, representing the BMC today, once again seeks time. He says that the election of the Town Vending Committee (“TVC”) has yet to be held, and a committee has to be formed.

5. We heard various counsel for intervenors.

6. The intervenors submit that the issue is that illegal/unlicensed street vendors multiply daily. They continue to be a nuisance or inconvenience to the public. The BMC seldom removes them, and even after they remove them, they come back in just a couple of minutes. The ongoing issue has yet to be redressed.

7. The intervenors are not wrong. The Petition came to be filed in 2022. It’s been almost two years that this Court has been monitoring it. It’s an ongoing daily problem for the public. The State and the BMC cannot take their own sweet time on one pretext or the other. As stated in the BMC’s affidavit dated 14th March 2024, the 2014 record suggests there were around 10,360 licensed

hawkers. 22,027 who were eligible. 32,415 have been finalised in the meeting held on 26th October 2023. Thus, the unlicensed hawkers are multiple times more than the licensed ones. The BMC claims to have acted against 1,77,204 and collected a substantial amount as fines. This speaks volumes of the problem at hand.

8. By an order dated 22nd December 2014, this Court, in the case of *Jai Hindustan Hawkers Union vs State of Maharashtra*¹ reiterated the directions given by the Apex Court for licensed hawkers, which are as follows:

- (a) The hawkers will not carry on business on the street.
- (b) The hawkers shall leave enough space for the pedestrians so that they can walk on the footpath.
- (c) In case of emergency, enough space will be made available on the road for the passage of ambulances, police vehicles, fire brigade, etc.
- (d) Hawkers will ensure that pedestrians and others can easily walk on the footpath without obstructions.
- (e) It is clarified that as directed by the Apex Court, the hawkers can carry on their business in a stall (open pitch) measuring 1 × 1 sq. mts.
- (f) The State has already passed an Act known as “The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014,” and the directions given by the Apex Court have been

1 2014 SCC OnLine Bom 2501

incorporated into this Act. Street vendors shall comply with the conditions mentioned in the First Schedule of the said Act.

(g) Liberty is granted to the State to apply if necessary.

9. Unfortunately, though the rules, regulations, and directions of the Apex Court are in place, the authorities are not very serious about implementation. No authorities or their officials are seriously monitoring the situation on the ground level and ensuring compliance with the above directions of the Apex Court. There is no ready survey to distinguish between licensed and unlicensed hawkers. Therefore, there is no way that anyone, including public members, can easily distinguish between licensed and unlicensed hawkers.

10. When any contempt proceedings are filed against BMC, all that the BMC states is that some drive was initiated in some places, and fines have been collected from the unlicensed hawkers. The unlicensed hawkers, or even the licensed hawkers not complying with the terms and conditions of their license, are used to paying the fines but persisting with their illegal hawking with impunity. Assuming that the licensed hawkers are complying with the directions, rules, and regulations, we still have the problem of scores of unlicensed hawkers who do not care for any law and order. The statistics show that this problem of unauthorised hawkers has reached alarming proportions.

11. The learned Counsel for the intervenors submitted that even after a drive across the city, it is evident that none of the above directions issued by the Apex Court have been seriously complied with. As a result, the hawkers and street vendors have virtually taken over the street lanes and bye lanes. There is no place for people to walk on the footpaths. There is the problem of haphazard parking. The pedestrians are thus forced to navigate between the unauthorised hawkers and the haphazardly parked vehicles, to commute. The monsoons and the failing drainage or sewage infrastructure compound this problem even further. Merely because the members of the public are tolerant or possibly fed up with complaining any more to the civic authorities does not reduce the magnitude of this problem or their immense sufferings.

12. Almost ten years have elapsed since the 2014 Act was enacted. The Act proposes to strike a balance between the interests of the hawkers and the public so that the licensed hawkers can undertake their trade without causing too much inconvenience to the public. The public cannot be made to wait endlessly and keep tolerating this intolerable situation. Enacting a law but not implementing it seriously is worse than not enacting it. Such inaction or selective action breeds contempt for such laws.

13. When repeated pleas to the civic or police authorities are repeatedly ignored, some civic-minded citizens approach the Courts to direct the authorities to comply with the law and offer some relief. Some come to Court with the hope that something will be done. The Courts, including the Apex Court, have issued directions. Still,

the implementation continues to be a casualty. The law enacted by the legislature and the Court orders address the concerns of the hawkers and the members of the public who must rely on the hawkers for their purchases. It is also not as if the civic-minded persons who approach the Courts are against all the hawkers or have no empathy towards them. However, once the enacted law and the court directions have addressed the legitimate concerns of both these classes, the will of the legislature and the court orders cannot be frustrated by the executive adopting a lethargic approach or pleading an abject surrender.

14. The 2014 enactment and the decision of the Apex Court in *Dharam Chand vs NDMC*² clarifies that the hawkers do not have any right to insist on undertaking hawking at any particular place that appeals to their whim. Such hawking can always be undertaken in designated hawking zones after obtaining licenses from the prescribed authorities and by adhering to the conditions of such licenses. To ensure proper compliance, the civic authorities must evolve some scheme or method to identify licensed hawkers properly. The authorities must offer the licensed hawkers adequate security against the encroachments by the unlicensed hawkers. But the civic authorities must deal firmly with those who hawk without any licenses, in breach of the licenses, or in the non-hawking zones.

15. The record, unfortunately, bears out that the State and the authorities have miserably failed. Apart from the BMC, which bears a primary duty, the Police authorities are responsible for assisting

2 (2015) 10 SCC 612

the BMC in the implementation of the laws and Court directives. Once a hawker or street vendor is removed from the place, it would be the duty of the Police to keep the place free from hawkers or street vendors (unless they are licensed). The law is not only for the BMC but also for the Police. A judgment passed by the Court must not be required to be read out to each police officer for its implementation. They must know it. It is law, and they are the guardians of it. They have a duty to implement the law and Court directives. The police and the BMC must act in tandem and cooperate with each other.

16. Mr Kamdar for BMC submitted that the workforce is often beaten up by hawkers and street vendors, and consequently, police complaints are filed, and action is taken against those involved in violence and obstruction. He submitted that such action is not enough. In short, without saying as much, Mr. Kamdar hinted that the municipal workforce tasked with the implementation was scared or helpless. This, to our mind, is an abject surrender to the forces of lawlessness.

17. Besides, if this is really the fate of the municipal or police authorities, we can imagine the plight of the complaining pedestrians or the lawful shopkeepers. The unauthorised hawkers are sending out a message not to even try to mess with them because their arms are longer and even more powerful than the law. If this position continues, the rule of law will be a serious casualty.

18. It does not stop there. The complainants must constantly follow up with the Police as well as the BMC. The complainant is put through far more trouble than those who breach the law with impunity. As stated by most intervenors, the hawkers or street vendors return within a few minutes of a clean-up drive. Civic-minded citizens are then frustrated. Such citizens would not be wrong to think, “Who has the time to follow up? Keep complaining daily? Why should we care? Let it be the way it is.” This is exactly the sentiment on which the lawbreakers thrive.

19. The issue of hawkers and street vendors is not recent and has been the subject matter of several Court decisions. This issue was addressed and recognised by the Apex Court in the case of *Bombay Hawkers' Union v. Bombay Municipal Corpn.*,³ wherein the then Chief Justice of India Y.V. CHANDRACHUD, in his opening paragraph observed as under:

“These writ petitions are filed by and on behalf of a large number of hawkers who carry on the trade of hawking their wares in Greater Bombay. They sell almost everything under the sun, from hairpins to hot food and vegetables to video cassettes. They hawk their wares standing or squatting on public streets, which constitutes a serious impediment to the free movement of pedestrian and vehicular traffic. Standing, of course, is safer than squatting because, it ensures easy mobility at the sight of Municipal or police officers. Mobile hawkers decorated with a hundred ball pens, like war-medals, is quite a common sight in Bombay. Constraints of modern times have created ingenious methods of trading. **Some of the streets in**

3 (1985) 3 SCC 528 at page 528

Bombay are so incredibly flooded with merchandise sold by hawkers that it is impossible for the pedestrians to walk on those streets. The Bombay Municipal Corporation has been making herculean efforts to clear the streets of these and other obstructions but, those efforts have met with intense opposition from several quarters, not unexpectedly, even from those who wield considerable political influence. In the ultimate analysis, it is the ballot-box that matters. This tug-of-war or the game of hide-and-seek between the Corporation and the hawkers led recently to a serious incident in which an officer of the Corporation engaged in the task of demolishing unauthorised constructions put up on public streets, was shot at. He survived but, such is the magnitude of the problem.”

(emphasis supplied)

20. Recently, one such intervenor, Mr Atul Vora, who took up the cause, was beaten up. It was published in the newspapers. There were no police to protect him. Similarly, not too long ago, a shop owner at Kandivali (West) Mumbai was killed by hawkers or street vendors who opposed their blocking of entry and exit to his shop. This, too, was widely published in newspapers. Who is to protect a citizen complaining about the illegalities? The State, BMC, and the Police, by their inaction, at least indirectly encourage such lawlessness. This compromises the rights and liberties of the citizenry, who complain and eventually become victims of brutal force.

21. We are informed that these illegal hawkers and street vendors are supported by their sympathisers or protectors who help them

vend their wares. They are often informed as to when action is likely to be taken. So, no sooner the BMC and its officers take the rounds, these unauthorised hawkers and street vendors hide their merchandise in and around the buildings to keep them out of sight of the officers. Some are caught, and they are fined, too. But obviously, their earnings are far more lucrative than the fines imposed. Besides, the residents or occupiers of these buildings that are used for the hiding of wares of these illegal hawkers do not complain out of fear or other extraneous considerations. This Court noted this in a matter that was listed for the removal of hawkers from Hill Road Bandra. Some members of the Society, we are informed, used to help these unlicensed street vendors secure their wares when the BMC took rounds to remove them. It is, therefore, incumbent for the Police to take action against these unlicensed hawkers and street vendors and their sympathisers or protectors who support them.

22. Mr Kamdar submits that once the hawker's policy is implemented, the BMC will allot hawking pitches. The policy is not formulated as yet. Even elections to the vending committees are pending. We direct that at least these be completed by the next date.

23. The Counsel for the intervenors pointed out how roads and footpaths are cleared of encroachments during VIP movements. Even potholes are filled in overnight. They submitted that it was not as if the State and the Municipal authorities lacked the means to enforce the law and Court directives. All this makes us wonder whether it is not the means but the will to enforce the law that is

lacking. Do not the law-abiding citizens with whose money these VIPs function deserve the same treatment? Isn't it their right to insist that laws are obeyed and, if not voluntarily obeyed, enforced by the executive arm?

24. The Bench of this Court headed by Oka J (as his lordship then was) in its judgment delivered in yet another Suo Motu Petition held as under:

“We summarize our conclusions as under :-

A] It is a right of the citizens which is a part of Article 21 of the Constitution of India to have streets and footways in a reasonable condition. **The citizens have right to use public streets and footways without any obstruction;**

B] The basic object of constructing the streets is to allow passage of vehicles. **The basic object of making footways which are part of the streets is to allow the citizens to walk and travel from one place to another. If obstructions are created on the streets and footways in such a manner that the same prevent the citizens from beneficially or reasonably enjoying their right of passage through the streets and footways, surely it will amount to infringement of their fundamental rights under Article 21 of the Constitution of India to have streets in a reasonable condition.** If poor or bad condition of the streets or footways prevents the citizens from reasonably enjoying their right of passage through the streets or footways, it will be a violation of the said fundamental right

by the authorities which are under a legal obligation to maintain the streets and footways in a reasonable condition;

C] As this right vests in the citizens, there is a corresponding obligation of the concerned authorities to ensure that all possible steps are taken to see that the citizens are not deprived of their right to use the streets and footways in effective manner. For that reason, it is the obligation of the said authorities to create appropriate Grievance Redress Mechanism so that the citizens can complain about the violation of their rights. It is the right of the citizens to ensure the municipal and other authorities promptly deal with the complaints by taking effective steps. They have a right to know about the steps taken for upholding and protecting their rights;

D] If there is an injury caused to a citizen due to poor condition of streets as a result of negligence on the part of the Municipal and other Authorities, he has a right to seek compensation from the State or local Authorities, as the case may be, which are responsible for maintaining streets. In case of loss of life on account of poor condition of streets due to negligence on the part of the Authorities, the legal representatives of the deceased can seek compensation from the concerned Authorities in accordance with law.”

(Emphasis supplied)

25. Justice must not only be done but be seen to be done for the citizens. The Courts cannot be mere spectators but must also ensure the implementation of their orders to uphold the Constitution and the law. The Apex Court, in the case of *Bidi Supply Co v Union of India*⁴ stated:

“32. In a democracy functioning under the Rule of Law it is not enough to do justice or to do the right thing; justice must be seen to be done and a satisfaction and sense of security engendered in the minds of the people at large in place of a vague uneasiness that Star Chambers are arising in this land. We have received a rich heritage from a very variegated past. But it is a treasure which can only be kept at the cost of ceaseless and watchful guarding. There is no room for complacency, for in the absence of constant vigilance we run the risk of losing it. “It can happen here.””

(Emphasis supplied)

26. This Court, by its order dated 3rd May 2019 in PIL No 78 of 2013, directed the Commissioner of Police, Mumbai, to issue an office order directing all beat marshals to keep an eye on the pavements in the area and inform the police assistance to ensure demolition of temporary structures. We are unsure if this direction was complied.

27. Considering the above, we, therefore, pass the following order:

4 1956 SCC OnLine SC 7

- (a) The Commissioner of Police must file an affidavit by 15th July 2024 with regard to:
- (i) The steps taken so far in the past two years (namely 1st June 2022 to 31st May 2024) in keeping the streets and bye lanes free of encroachments including removal of illegal and unlicensed hawkers or street vendors and restraining them from hawking on the streets other than the hawking zones that are designated.
 - (ii) What actions were taken, if any, on the multiple FIRs filed against illegal and unlicensed hawkers and street vendors who breached the rule of law in the past two years, namely from 1 June 2022 to 31 May 2024?
 - (iii) The steps taken, if any, are to create a database and identify the hawkers and street vendors (legal and illegal, licensed or unlicensed) in the city and share it with both BMC and the State to bring about a solution. If no such exercise is carried out, then state

whether it is feasible to undertake this exercise and the timeline therefor.

- (b) The BMC must file an affidavit by 15th July 2024 with regard to :
- (i) the steps taken so far in the past two years (namely 1st June 2022 to 31st May 2024) for the removal of hawkers and restraining them from hawking on the streets other than the hawking zones designated.
 - (ii) The steps taken during the above period to ensure that the hawking business is conducted on an area of 1 Mt x 1 Mt and carried on only on the extreme sides of the carriageway, in such a manner that access to shops and residences is not blocked and pedestrian and vehicular traffic is not obstructed.
 - (iii) to give a plan of action within which they will issue licenses to those eligible and an action plan to remove those who are ineligible.

- (iv) Whether or not they can create a database and identify the hawkers and street vendors (legal and illegal, licensed or unlicensed) in the city and share it with the police and the other State authorities so that unlicensed hawkers are easily identifiable and action is possible to remove them.
 - (v) Whether or not they can create an online portal or a mobile app to report complaints against illegal hawking and street vending;
 - (vi) To survey and identify all lanes and bye lanes where hawking and street vending are being carried on within a specified timeline.
 - (vii) What immediate steps and actions are taken or can be taken to remove hawkers or street vendors (licensed or unlicensed) from all areas other than the areas designated as hawking zones?
- (c) The State, BMC, and Police are directed to furnish details of Hawker's Union/s within a week from today. The Registry must implead some of the representative unions as respondents and issue notices to them as

soon as possible. The hawkers are the important stakeholders concerned with the issues that arise in this petition.

- (d) The State is also directed to file an affidavit stating its plan of action along with timelines to address the above issues arising in this petition.

28. All concerned authorities are to earmark the most congested areas or streets where complaints of illegal hawking or street vending emanate, implement the orders of the Supreme Court for at least a month, and point out by placing on affidavit the various problems faced and the solutions thereto. The concerned authorities need to check the illegalities and not look out for the identities of complainants, as they are often targeted and victimised by the wrongdoers. The authorities must remember that in such matters, the message is more important than the messenger.

29. These directions are issued given the various authorities' failure to implement the 2014 legislation and the multiple orders made by the Apex Court and this Court on the issues arising in this petition.

30. List the matter on 22nd July 2024 for further consideration.

(Kamal Khata, J)

(M. S. Sonak, J)