

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUO MOTU PETITION NO.1 OF 2023
WITH
INTERIM APPLICATION NO.621 OF 2024
IN
SUO MOTU PETITION NO.1 OF 2023
WITH
INTERIM APPLICATION (L) NO.23233 OF 2024
IN
SUO MOTU PETITION NO.1 OF 2023
WITH
INTERIM APPLICATION (L) NO.22809 OF 2024
IN
SUO MOTU PETITION NO.1 OF 2023
WITH
INTERIM APPLICATION (L) NO.22832 OF 2024
IN
SUO MOTU PETITION NO.1 OF 2023
WITH
INTERIM APPLICATION (L) NO.21142 OF 2024
IN
SUO MOTU PETITION NO.1 OF 2023
WITH
INTERIM APPLICATION NO.782 OF 2024
IN
SUO MOTU PETITION NO.1 OF 2023
WITH
INTERIM APPLICATION NO.666 OF 2024
IN
SUO MOTU PETITION NO.1 OF 2023
WITH
INTERIM APPLICATION (L) NO.7056 OF 2024
IN
SUO MOTU PETITION NO.1 OF 2023
WITH

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**WRIT PETITION NO.766 OF 2021
WITH
WRIT PETITION NO.654 OF 2023
WITH
INTERIM APPLICATION NO.621 OF 2024
IN
SUO MOTU PETITION NO.1 OF 2023
WITH
CONTEMPT PETITION NO.2 OF 2024
IN
PUBLIC INTEREST LITIGATION NO.60 OF 2023**

High Court on its Own Motion

... Petitioner.

V/s.

State of Maharashtra

... Respondents.

Mr. Janak Dwarkadas, Senior Advocate, a/w Mr. Sharan Jagtiani, Senior Advocate, Adv. Naushad Engineer, Senior Advocate, Adv. Namrata Vinod & Adv. Yash Kataria i/by S. Mahomedbhai & Co. for the Applicants in IA/621/2024.

Adv. Taiyaba T. Kazi i/by Adv. Amar Gharte for the Applicant in IA/782/2024 and IA/666/2024.

Mr. Mihir Desai, Senior Advocate, a/w Ms. Pritha Paul for the Petitioner in WP/654/2023.

Ms. Gayatri Singh, Senior Advocate a/w Adv. Kaustubh Gidh for the Applicant in IAL/22809/2024 and IAL/22832/2024.

Mr. S.M. Seegaria for the Petitioner in CONPW/2/2024.

Ms. Chaitalee Deochate i/by Adv. Komal Punjabi for the Respondent-BMC in all other connected Writ Petitions.

Mr. Manoj Shirsat, a/w Mr. Yogendra M.Koli and Mr. Akshay Kumar for the Petitioner in WP/766/2021.

Ms. Taiyaba Kazi a/w Adv. Amar Gharte for the Applicant in IA/782/2024 and IA/666/2024.

Ms. Gayatri Singh, Senior Advocate, a/w Adv. Kaustubh Gidh for Respondent Nos.5,11 and 12 in SMP/1/2023.

Mr. Anil Singh, Senior Advocate, a/w Adv. Oorja Dhond i/by Adv. Komal Punjabi for the Respondent No.2-BMC in SMP/1/2023.

Ms. P.H. Kantharia, G.P., a/w Mr. Manish Upadhye, AGP for the Respondent-State in PIL/60/2023.

Ms. P.H. Kantharia, G.P, a/w Ms. Varsha Sawant, AGP for the Respondent-State in WP/654/2023.

Ms. P.H. Kantharia, G.P, a/w Adv. Anupamaa Pawar for the Respondent-State in IAL/7056/2024.

Ms. P.H. Kantharia, G.P, a/w Ms. Vrushali Kabre, AGP for the Respondent-State in IA/666/2024.

Ms. P.H. Kantharia, GP a/w Ms. Fatima Lakdawala, AGP for the Respondent-State in IA/782/2024.

Ms. P.H. Kantharia, G.P a/w Adv. Suraj Gupte, AGP for the Respondent State in IA/621/2024.

Ms. P.H. Kantharia, G.P a/w Abhay L. Patki, GP, Ms. Rita Joshi, AGP for the Respondent-State in SMP/1/2023.

Adv. Kaustubh Gidh for Respondent No. 14 in WP/2798/2018.

Mr. Anoop Patil, a/w Ms. Oorja Dhond & Ms. Komal Punjabi for the Respondent-BMC in CONPW/2/2024.

Ms. P.H. Kantharia, G.P a/w Ms. Vrushali Kabre, AGP for the Respondent-State in IA/666/2024.

Mr. Vishwanath Chavan, PSI, DCP Operation, CP office, Mumbai, present.

Ms. D.A. Kekalekar, API, MRA Marg Police station, present.

Mr. Vijay Adsul, Deputy Sudt. (License), present.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

DATE : 12th December 2024.

PC.:-

1) Mr. Singh, learned Senior counsel appearing for BMC submitted that in furtherance of Order dated 23rd October, 2024 and 12th November, 2024 the concerned officers of BMC are adopting necessary steps to prevent illegal hawkers from site No.1 of the chart which is at page no. 755 of the convenience compilation.

2) Smt. Kantharia, learned Government Pleader on instructions submitted that the police are providing necessary protection to the officers of BMC.

3) Mr. Dwarkadas learned Senior counsel appearing the Bombay Bar Association submitted that to some extent the directions issued vide Order dated 23rd October, 2024 are being complied with by the concerned authorities.

3.1) He stated that, on a daily basis upto 2pm the hawkers were prevented and thereafter they freely conduct their activities. He thus submitted that both the authorities are unable to control the menace of the hawkers as intended and recorded in its Orders by this Court.

3.2) He submitted that, it has become very difficult even to pass through the passages or enter the concerned buildings including his own building which were to be kept clear of hawkers (as it is a no-hawking zone) as one of the test sites recorded in the previous Order. Not only there is no place to walk but the food stalls who often cook food and the customers wash their hands into the Storm Water Drain ('SWD') lids making the surrounding filthy, dirty and unhygienic.

3.3) He tendered a compilation of 21 photographs taken between 25th November, 2024 and 11th December, 2024. Perusal of photographs indicates that on various dates, the hawkers have been conducting their business on the street and on the footpaths and passage ways of buildings.

3.4) Our attention was drawn to photographs at page Nos.14 and 15, which prima facie indicates that a person has put up/placed a stall bordering the footpath and on the street obstructing not only the flow of

traffic on the street but even the pedestrians walk on the footpaths and passage ways. He further submitted that it was not as if the authorities were incapable of keeping the area hawker free when needed. He drew our attention to photographs at pages 5 to 10 which showed that the area was totally hawker free when the dignitaries were to visit the city, i.e. on 5th December, 2024.

4) Peeved by this inaction and blatant disregard and disrespect to the Court Orders and directions, we requested, Smt. Kantharia learned Government Pleader to direct Ms. D.A. Kekalekar, API, MRA Marg Police Station present in Court to visit the said spot (that is right across the street of the High Court) shown that in the photographs at page nos.14 and 15. After visiting the spot, Ms. D.A. Kekalekar through the Government Pleader submitted that, the person and the stall was not there.

4.1) However, dealing with the photographs the G.P. submitted that, when the police go to the said stalls, they have been shown licenses by the concerned hawkers and therefore the police don't take any action against the concerned person. She further submitted that during the hawkers' removal drives, the BMC officers themselves acknowledge the hawkers having license and therefore they are not removed. She tendered one such purported license. Upon the purported license being shown to Mr. Singh (for BMC) he on instructions promptly responded to state that, the said document was not a license. Mr. Singh submitted that they had given

details of all licensed hawkers to the police. Faced with this delima, Ms. Kantharia submitted that they will now educate the officers to read and differentiate valid license from a fake one.

4.2) Smt. Kantharia on instructions further submitted that police authorities will extend their full cooperation to the BMC officers for preventing the illegal hawkers from conducting their business at all 20 sites stated in our Order dated 12th November, 2024. We accept the said statement.

5) Mr. Singh, learned Senior Advocate appearing for Respondent BMC submitted that on or before next occasion he will file a brief Affidavit placing on record the details of licenses issued to authorised/licensed hawkers at site no.1 for the benefit of the intervenors, amicus and the State police.

6) The directions issued in paragraph 16 of Order dated 23rd October, 2024 and paragraph 1 of our Order dated 12th November, 2024 to continue until further Orders.

7) At the request of Smt. Kantharia, list the matter on 15th January, 2025.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)