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REPORTABLE

**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

Mr Amit G Dubey, i/b AM Saraogi, for the Petitioner in
WP/630/2023.

Mr SU Kamdar, Senior Advocate, with Oorja Dhond, Kunal
Waghmare, Rupali Adhate, i/b SK Sonawane, for Respondent No
2-MCGM.

Mr SU Kamdar, Senior Advocate, with Oorja Dhond i/b SK
Sonawane, for the Respondent-BMC in SMPIL/1/2023.

Mr Sharan Jagtiani, Senior Counsel, with Namrata Vinod, Yash
Kataria & Nikita Jadhav, i/b S Mahomedbhai & Co, for the
Applicant in IA/621/2024.

Mr Dhaval Sethia, i/b Sujith Suresh, for the Applicant in
IA/666/2024.

Mr Amar A Gharte, for the Applicant in IA/782/2024.

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 Suraj Gupte, AGP, for the Respondent-
State in IA/621/2024.

Ms PH Kantharia, GP, with Anupamaa Pawar, AGP, for the
Respondent-State in IA(L)/7056/2024.

Ms PH Kantharia, GP with Fatima Lakdawala, AGP, for the
Respondent-State in IA/782/2024.

Ms PH Kantharia, GP with Vrushali Kabre, AGP, for the
Respondent-State in IA/666/2024.

Ms PH Kantharia, GP with Vishal Thadani, Addl GP & Ms
Poonam Mital, AGP, for the Respondent-State in
WP/630/2023.

Mr Vijay Adsul, Deputy Superintendent of Licence, BMC-Present.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 16th April 2024

PC:-

1. This *Suo Motu* Writ Petition began in peculiar circumstances. We had before us a Writ Petition where the Petitioners complained that unlicensed street vendors had blocked access to the Petitioners' shop. We addressed that problem and then ordered the institution of this *Suo Motu* Petition.

2. There are before us Intervention Applications by individuals and organizations. Of course, the principal party concerned with this is the Brihanmumbai Municipal Corporation ("**BMC**").

3. Mr Kamdar learned Senior Counsel for the BMC has taken detailed instructions over several occasions. There are several Affidavits in Reply. These have been carefully put together to indicate several distinct aspects. *First*, an identification of the nature of the problem that the BMC encounters and which we will explain in a greater detail a little later. *Second*, the kind of action that the BMC is required to take. *Third*, the problems that the BMC encounters while taking these actions. *Fourth*, the general frame of the existing policy.

4. The field is not entirely unregulated. There is the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 ("**Street Vending Act**"). In today's order we will be considering some of its provisions. Our attention has also been drawn to orders of the Court and in particular an order of 3rd May 2019.¹

¹ *Mrs S G P Barnes v The Commissioner of BMC & Ors*, Order dated 3rd May 2019 in PIL No 78 of 2013, 2019:BHC-OS:9583-DB.

5. Before we proceed, it is important that we outline precisely what our concerns are and perhaps even more precisely, what they are not. A fundamental question that arises in this Petition is “*who is this city for?*” We pose it like this because there is in this city, as a consequence of topography and geography, extremely limited land space. There are rival contestants for this space. There are many users who demand a share in this space. There are pedestrians. There are vehicle owners. There are shopkeepers and merchants who require clear access and frontage; and there are the street vendors.

6. What we are not concerned with in this Petition is a distinct aspect, that of what we will describe as unauthorised encampment on a public space or a public road or a public footpath. That is the subject matter of entirely distinct jurisprudence. We are concerned here with *vending*, i.e., a commercial activity on a public space, road or footpath.

7. Further, we are also not concerned with what are described in a more formal sense as street vending zones or hawking zones. These are areas that are specifically earmarked by the BMC, specially for the use of street vendors. ‘Fashion Street’, a north-south stretch of road on the broad sidewalks of Mahatma Gandhi Road in South Mumbai is perhaps the most immediate and well-known example. In these zones, pitches are identified and there is a licensing system in place.

8. We are not concerned with these licensed zones precisely because they are licensed and adequately covered by the statute.

9. Mr Kamdar points out that the BMC's problem is one of constant struggle. It is almost a tidal affair with a constant ebb and flow: unlicensed street vendors occupy public spaces. The BMC removes them using police protection. The area is cleared (more often than not for a visiting VVIP). The street vendors come back, often the very next day, and the cycle continues.

10. Mr Kamdar points out that there are incidents where the BMC officers themselves have been threatened and physically assaulted. Of course, the BMC does initiate police actions but, as Mr Kamdar says, there is a limit to how many police complaints the BMC can reasonably be expected to pursue.

11. It is in this context that we note the 3rd May 2019 order of the First Court in PIL No 78 of 2013. The Division Bench noted that when once encroachers were removed from the footpath they returned after a few days and said that the only solution was to hold the police authorities of the jurisdictionally competent local police station responsible for keeping the footpaths clear, having structures demolished and not permitting these to come back. The Commissioner of Police was directed to issue an office order to all Beat Marshals.

12. But all street vendors are not equal. There is a kind of flattening that happens when all street vendors are collectively

lumped under one label. There are street vendors who provide goods and services to the people of the city and nobody is asking the corner chanawala, vadapavwala or banana vendor whether he is licensed or unlicensed. Some of these vendors provide for the daily needs of individuals and households for they vend vegetables, fruits, flowers, etc.

13. The Street Vending Act has certain provisions that are interesting but, in our view, have probably been overlooked in wider discussions. Section 2(d) of the Street Vending Act has a definition of “mobile vendors”. This means a street vendor who carries out vending activities in a designated area by moving from one place to another vending goods and services (not, as we pointed out to Mr Kamdar, a vendor of mobile phones or mobile phone covers.) Section 6 allows the issuance of a certificate *inter alia* to a mobile vendor.

14. But the inclusion of this definition raises a possibility that has, it seems, been completely unexplored in this city. That is the possibility of framing a policy that allows itinerant vendors with no fixed pitch, yet licensed, to be allowed to vend their goods and offer their services in designated locations but for highly regulated time periods. This could be for specified hours on specific dates. Cities all over the world have adopted such schemes and during those hours the area is entirely pedestrianised for safety and to regulate traffic. Those regulations are known in advance. Sometimes this takes the form of what is called a pop-up market or a market for a particular day of the week. The advantage of this is that no one can claim a

right to that space. There may be a right to vend under a license during those times but it is the space that can be used that, to put it more graphically, rotates from area to area. This is a form of licensing.

15. That is to our mind contemplated by the 2014 Act but does not yet seem to have translated to a policy. We said earlier that not all street vendors are equal and by this, we mean that it would be entirely legitimate for the BMC to identify what kinds or classes of goods and services may be allowed to be licensed for mobile vendors. The protocols for designating days and hours would also necessarily be designed by the BMC keeping in mind the space available in that locality and the needs of that locality. A residential neighbourhood, for instance, may require a greater focus on household items and consumables and perhaps wares for children. In a commercial zone, the considerations may be somewhat different.

16. This might serve a dual purpose. It would keep the area itself clear on most days while regulating the use on specified days and at specified hours. Most modern cities around the world from London to New York and cities in South America and Europe have some variant or the other of such a scheme.

17. What this would do is that it would clearly identify those who fall outside the licensing regime entirely. If they are not part of the hawking zones that are identified and licensed for those zones and

are also not mobile or itinerant vendors and licensed as such, they can claim no right to a particular space.

18. We believe this is something that the BMC should consider because it would enable the BMC to then identify where, when and who should be permitted and for what period of time. We note also that many of our public spaces, including Marine Drive on weekends, are in fact being used for common public purposes for regulated periods after which that activity ceases. There is no logical reason why such a system of protocol cannot be applied to temporary street vending or mobile vending. Undoubtedly this would require a policy and what is suitable for South Mumbai may not be suitable for other parts of Mumbai but it would be for the BMC to frame this policy with input from all stakeholders not just on a citywide basis but on a ward by ward or locality by locality basis.

19. Above all one aspect remains clear and is in accord with the Division Bench order. Public footpaths and public roads cannot be allowed to be taken over by unlicensed vending on a permanent basis. Apart from anything else, this will create a conflict within Article 21 itself and within Article 14 of the Constitution. It is to our minds inconceivable that an unlicensed street vendor can claim *permanency* on a public street and that this can be permitted, thus impacting the Article 21 and Article 14 rights of pedestrians and other rate paying citizens or ratepayers. We do not see how the Article 19 right claimed by an unlicensed vendor on a public space can translate into a right to the land at the cost of other users of that

public space. Article 19 itself will tell us that the right to a livelihood can always be regulated in accordance with law. Those restrictions are well specified. There is no absolute prohibition on a restriction except that all the rights in Article 19 can only be restricted in accordance with Articles 19(2) to 19(6). Article 19(1)(g) can be subjected to a restraint in accordance with Article 19(6). This includes the interests of the general public. When, therefore, an unlicensed street vendor begins to claim permanency and a protection from removal in a public space, what is being advocated is the deprivation of fundamental rights that equally vest in others to the use of that public space. A regulation in the public interest of a public space is always within the powers of a Municipal Corporation or the instrumentality of the State in question. It is inconceivable that anybody could say that this piece of earth in Mumbai which is public land is under my occupation and none may remove me from it.

20. The public interest involved is indeed very wide. There may be an argument to be made against more facilities for motorists (the Coastal Road notwithstanding) but there is no doubt that the right to pedestrian use of footpaths cannot be compromised.

21. Apart from a right to use the footpaths freely, this is also a safety issue. There is a cascading effect here. Once there is unlicensed occupation of a footpath, and we see this across the length and the breadth of the city, the pedestrian has only one place to go and that is the motorable carriageway. Now motorcars cannot be expected, at least as yet, to fly and they have only one space to

use, namely that very carriageway. So, because of the unlicensed occupation of the public footpath by an unlicensed vendor, a pedestrian bristling with Articles 14, 19 and 21 rights is in the middle of a carriageway where he risks a collision with a motorist (with decidedly fewer rights).

22. What we are commending is a fresh approach that gives heft to the ‘mobile vendors’ concept, one that removes *the allotment of public land for a street vending pitch* from the equation altogether. This would contemplate allowing street vendors to use only temporarily and under strict monitoring, control and supervision, an area and, after the time is over, to return the public land to its original purpose.

23. The BMC will continue to have its problem of being assaulted. That comes with the territory and there is not much anyone can do about it, except to ensure that police protection is always available where required. But, and this is the point, we believe it would be necessary for the BMC to structure an alternative that is viable if not optimal even as it goes about its routine affairs of removing unlicensed street vendors from public spaces and public footpaths. As we noted, the alternative policy might serve the purpose of balancing competing interests and competing equities as well.

24. Mr Kamdar points out that Section 3(3) in Chapter II of the Street Vending Act has an interesting provision. This will have to be

read with the definition of a “street vendor” in section 2(l). Section 2(l) and Section 3 read thus:

“2(l) “street vendor” means a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the General public in a street lane, side walk, footpath, pavement, public park, or any other public place or private area from a temporary built up structure or by moving from place to place and includes hawker, peddler, squatter, and all other synonymous terms which may be local or region specific; and the words “street vending” with their grammatical variations and cognate expressions, shall be construed accordingly;

3.(1) The Town Vending Committee shall, within such period and in such manner as may be specified in the scheme, conduct a survey of all existing street vendors, within the area under its jurisdiction, and subsequent survey shall be carried out at least once in every five years.

(2) The Town Vending Committee shall ensure that all existing street vendors, identified in the survey, are accommodated in the vending zones subject to a norm conforming to two and half per cent of the population of the ward or zone or town or city, as the case may be, in accordance with the plan for street vending and the holding capacity of the vending zones.

(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.”

25. We would be inclined to accept the interpretation that the street vendor mentioned in Section 3(3) cannot possibly be a street vendor who is outside the frame of the Act, i.e., one who is

unlicensed or unauthorized on a public street or thoroughfare that is not a designated hawking zone. If Section 3(3) is read at such a broad level it would run counter to several other statutes, including the Mumbai Municipal Corporation Act, 1888 and the Division Bench order that we referred to earlier anyway. Section 3(3) is confined in its operation because it mentions a survey and is therefore limited to those who are being surveyed or are immediately proposed to be surveyed.

26. Mr Kamdar points out also that Section 14 in Chapter III of the Act has interesting provisions. But the whole of Chapter III, Sections 12 to 17, needs to be reproduced:

“12. (1) Every street vendor shall have the right to carry on the business of street vending activities in accordance with the terms and conditions mentioned in the certificate of vending.

(2) Notwithstanding anything contained in sub-section (1), where any area or space, as the case may be, has been earmarked as no-vending zone, no street vendor shall carry out any vending activities in that zone.

13. Every street vendor, who possesses a certificate of vending, shall, in case of his relocation under section 18, be entitled for 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.

14. Where a street vendor occupies space on a timesharing basis, he shall remove his goods and wares every day at the end of the time-sharing period allowed to him.

15. Every street vendor shall maintain cleanliness and public hygiene in the vending zones and the adjoining areas.

16. Every street vendor shall maintain civic amenities and public property in the vending zone in good condition and not damage or destroy or cause any damage or destruction to the same.

17. Every street vendor shall pay such periodic maintenance charges for the civic amenities and facilities provided in the vending zones as may be determined by the local authority.”

(Emphasis added)

27. Section 12(2) clearly contemplates what we will call ‘no-fly zones’. No vending is permitted in these areas. Any vending would be illegal and subject to immediate removal. Those zones would have to be identified. A certificate would be required to carry on vending activities.

28. Section 14 then contemplates occupying space on a time-sharing basis but also specifically contemplates removal of goods and wares every day at the end of the time-sharing period allowed to be removed. Time in this case does not only mean hours, it can also mean specified hours only for designated days of the week. Section 17 then requires as a condition of licensing, the payment of maintenance charges.

29. What we are advocating here is for the BMC to consider and frame as a policy (and we will not frame that policy ourselves because obviously we cannot), is some form of a command and control approach within the frame of the statute *but distinct from the*

creation of designated hawking zones. At the cost of repetition, a hawking zone may have permanency for the utilization of space and for the demarcation of areas. A mobile zone has no such permanency. It is by definition temporary. The zone itself moves from place to place, and with the zone should move the vendors who are licensed in those zones for those hours.

30. Lastly, all street vending licensing must be properly monitored. This requires the creation and maintenance of a database with biometric or other authentication and identification of the vendor. All licensing must be strictly subject to compliance with the terms of the license and all rules and regulations. With a database in place, a violator should face action designed in a structured form (ranging from a fine for one offence, or degree of offence to a suspension or cancellation for more serious offences).

31. As to the immediate issues raised by some of the Interveners regarding specific areas, and clearance of sites, we are not imposing any further conditions on the BMC such as giving advance notice to remove unlicensed and unauthorized vendors.

32. We leave it to the BMC to consider these suggestions and to make an appropriate submission to the State Government.

33. Mr Kamdar for the BMC and Mr Jagtiani for the Bombay Bar Association both request that the matter be kept pending.

34. For the present, we list the matter for directions on 24th June 2024.

(Kamal Khata, J)

(G. S. Patel, J)