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**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 (L) NO. 23874 OF 2024
AND
INTERIM APPLICATION (L) NO. 23233 OF 2024
AND
INTERIM APPLICATION (L) NO.22809 OF 2024
AND
INTERIM APPLICATION (L) NO.22832 OF 2024
AND
INTERIM APPLICATION (L) NO.21142 OF 2024
AND
INTERIM APPLICATION NO.782 OF 2024
AND
INTERIM APPLICATION NO.666 OF 2024
AND
INTERIM APPLICATION (L) NO.7056 OF 2024
IN
SUO MOTU PUBLIC INTEREST LITIGATION NO.1 OF 2023**

High Court on its Own Motion ...Petitioner
Versus
State of Maharashtra and ors. ...Respondents

**WITH
WRIT PETITION NO.630 OF 2023**

Pankaj Kumar H Agrawal & Anr. ...Petitioners
Versus
The State of Maharashtra & Anr. ...Respondents

**WITH
CONTEMPT PETITION NO.31 OF 2024
IN
WRIT PETITION NO.2798 OF 2018**

Atul Ramanlal Vora ...Petitioner
Versus
Municipal Corporation of Greater Mumbai ...Respondents

**WITH
WRIT PETITION (L) NO.15416 OF 2024**

Colaba Causeway Tourism Hawkers Stall Union ...Petitioners
Through its President
Mr Mohammed Ismail G R Shaikh
Versus
State of Maharashtra & ors. ...Respondents

Mr Jamshed Mistry - Amicus.
Mr Dipesh Siroya, for the Petitioner in CP No.31 of 2024.

- Mr Yogendra M. Koli**, *i/b. Mr Mohammed Ashraf, for the Petitioner in WP No.766 of 2021 (not on board).*
- Ms Utkarsha Wadekar**, *i/b. Mr A. M. Saraogi, for the Petitioner in WP No.630 of 2023.*
- Mr Ankit Lohia**, *a/w Ms Pooja Batra i/b Mrs Zainab Shaikh, Mr R Shaikh, for the Petitioner in WP (L) No.15416 of 2024.*
- Mr Sharan Jagtiani**, *Senior Advocate a/w Mr Naushad Engineer, Ms Namrata Vinod, Mr Mukul Taly i/b S Mohammedbhai & Co. for the Applicant in IA No.621 of 2024 (BBA).*
- Ms Kranti L C**, *a/w Mr Kaustubh Gidh, Mr. Vikrant Baravkar, for Applicant in IA(L) No.22809 of 2024 and IA(L) No.22832 of 2024.*
- Ms Nawaz Dordi**, *for Applicant in IA(L) No.23233 of 2023.*
- Mr Amar Gharte**, *a/w Ms Taiyaba Kazi, for Applicant in IA No.666 of 2024.*
- Ms Taiyaba Kazi**, *i/b. Mr Amar Gharte, for the Applicant in IA No.782 of 2024.*
- Mr Anil Singh**, *Senior Advocate a/w Ms Oorja Dhond, Mr Adarsh Vyas i/b. Mr S. K. Sonawane, for the Respondent – BMC in SMP No.1 of 2023.*
- Ms Priyanka Sonawane**, *i/b. Mr S. K. Sonawane, for the Respondent – BMC in WP(L) No.15416 of 2024 in CP No.31 of 2024 in WP No.2798 of 2018.*
- Ms Nawaz Dordi**, *a/w Mr Hamza Lakdawala, for Respondent No. 9 in SMP No.1 of 2023.*
- Mr Ravi Prakash Jadhav**, *for proposed intervenor- D N Road Hawkers Association-proposed.*
- Ms Kranti L C**, *a/w Mr Kaustubh Gidh, Mr. Vikrant Baravkar, for Respondent Nos.11 and 12 in SMP No.1 of 2023.*
- Ms Gayatri Singh**, *Senior Advocate, a/w Mr Kranti L C, Mr. Kaustubh Gidh, for Respondent No.5 in SMP No.1 of 2023.*
- Ms P H Kantharia**, *GP with Abhay Patki, Addl.GP and Ms. Rita Joshi, AGP, for the Respondent – State in SMP No.1 of 2023.*
- Ms P H Kantharia**, *GP with Ms Vrushali Kabre, AGP for the Respondent – State in IA No.666 of 2024.*
- Ms P H Kantharia**, *GP with Ms Fatima Lakdawala, AGP for the Respondent – State in IA No.782 of 2024.*
- Ms P H Kantharia**, *GP with Mr Suraj Gupte, AGP for the Respondent*

– State in IA No.621 of 2024.

Ms P H Kantharia, GP with Ms. Anupama Pawar, AGP for the Respondent – State in IA(L) No.7056 of 2024.

Ms P H Kantharia, GP with Mr Vishal Thadani, Addl. GP and Ms Poonam Mittal, AGP for the Respondent – State in WP No.630 of 2023.

Ms P H Kantharia, GP for the Respondent – State in CP No.31 of 2024.

Mr Vishal Khanavkar, AGP for the Respondent – State in WP (L) No.15416 of 2024.

Mr Ravindra Jadhav, State Mission Manager, Directorate of Municipal Corporation-present.

Mr M K Bhagwan, PSI, Colaba Police Station-present.

Mr Prashant Marde, Asst. Commissioner of Police-present.

Mr Vijay Adsul, Deputy Superintendent of License-BMC-present.

**CORAM M.S. Sonak &
Kamal Khata, JJ.**
DATED: 1st August 2024

PC:-

1. Heard learned counsel for the parties.
2. In the case of **Indian Council for Enviro-Legal Action vs. Union of India and others**¹, the Hon’ble Supreme Court made the following observations, which aptly apply in the present context of the non-implementation of the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (“said Act”).

“Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of

¹ (1996) 5 SCC 281

law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.”

3. The said Act entered force on 5th March 2014, but we are sorry to state that its provisions have not been properly implemented. As a result, neither the street vendors nor the residents of the area are able to live in peace and security.

4. Section 38 of the said Act had mandated the appropriate government to frame a scheme within six months from the date of commencement of the said Act, after due consultation with the local authority and Town Vending Committee. Such a scheme was required to specify all or any of the matters provided in the Second Schedule to the said Act. A perusal of the Second Schedule would indicate that the same is quite exhaustive and deals with several aspects of street vending and allied matters.

5. As of today, there is no such scheme in place in so far as the areas within the jurisdiction of the Brihanmumbai Municipal Corporation (“BMC”) are concerned. In the affidavits filed on behalf of the State Government and the BMC, the attempt is to cite certain bureaucratic difficulties which could have been easily overcome had there been a will to implement the provisions of the said Act. The affidavits also blame each other for the abject failure to comply with the provisions of the said Act or to formulate a scheme in terms of Section 38 of the said Act.

6. A Division Bench of this Court in **Azad Hawkers Union and others vs. Union of India and others and connected matters**² issued several directions in the context of the implementation of the provisions of the said Act. The Division Bench declared the Government Resolution dated 9th January 2017 cannot be considered a scheme under Section 38 of the said Act. However, the Division Bench clarified that there should be no impediment in the same being construed as a general guideline to frame a scheme under Section 38 of the said Act after consultation with the local authority and Town Vending Committee.

7. The above decision was delivered on 1st November 2017. Implicit in the directions was the expectation that within a reasonable time, the State Government would formulate a scheme under Section 38 of the said Act after consultation with the local authority and the Town Vending Committees. However, though almost seven years have lapsed, there is no scheme as contemplated by Section 38 of the said Act in the areas within the BMC's jurisdiction.

² 2017 SCC OnLine Bom 10261 : (2017) 6 Bom CR 481

8. Section 38 of the said Act requires the State Government to frame the scheme after due consultation with the local authority and the Town Vending Committee. The affidavit filed by Mr Anil Kate, Superintendent of Licence at the BMC, states that steps have been taken to constitute the Town Vending Committees and that the process will be completed by the end of August 2024. This statement is accepted as a statement made on behalf of the BMC, and the process of constituting the Town Vending Committees must be completed by the end of August 2024. At this stage, there is no question of going into the challenges to this election process, which is yet to conclude.

9. Mr Anil Singh, learned Senior Advocate for the BMC submitted that a draft scheme is already under preparation. Mrs P. H. Kantharia, learned Government Pleader submitted that no sooner the Town Vending Committees are in place, the scheme under Section 38 in so far as the areas within the jurisdiction of the BMC are concerned would be finalised at the earliest. Now that the Town Vending Committees are assured to be in place by the end of August 2024, we direct the State Government to formulate and finalise the scheme as contemplated under Section 38 of the said Act in consultation with the BMC and the Town Vending Committee as expeditiously as possible and in any event not later than 30th September 2024.

10. The Principal Secretary, Urban Development Department of the Government of Maharashtra will now be responsible for complying with the mandate of Section 38 of the said Act in so far as the areas within the jurisdiction of the BMC are concerned. It is necessary to have one such officer responsible because we find that there is an increased tendency only to cite difficulties or apportion

blame when, in fact, it is the executive's duty to overcome such difficulties and strictly comply with the legislature's mandate. Under no circumstances should the formulation of the scheme be delayed beyond 30th September 2024.

11. If the Principal Secretary encounters any difficulties or impediments from any quarters, it shall be his responsibility to move this Court by stating clearly on affidavit the names of the persons or the authorities responsible for creating such impediments. If the Principal Secretary does not do this, it will be presumed that despite there being no impediments or difficulties, this Principal Secretary has failed to comply with the statutory mandate, not to mention the several Court orders directing the executive only to implement the legislative mandate.

12. Several issues arise in this matter, which we propose to address in turn. However, we think that having a scheme as contemplated by Section 38 of the said Act is the minimum necessity to address this issue of street vendors, and there should not be any further delay on the part of the State Government or the BMC in formulating such a scheme.

13. Further, we note that in the affidavit filed by Mr Anil Kate, Superintendent of Licence, BMC, there is a reference to compliance with certain directions issued by this Court in paragraph 28 of the order dated 24th June 2024.

14. Paragraph 4 (viii) of the Superintendent's affidavit reads as follows :

“With reference to the directions given by this Hon’ble Court in paragraph no.28 of the Order dated 24.06.2024, on 27.06.2024 at 4.00 pm, a joint meeting was held in the presence of Ld. Municipal Commissioner when the Joint Commissioner of Police (Law and Order) was also present. Thereafter, 20 most congested areas or streets where complaints of illegal hawking emanate were earmarked and jointly finalized. The said spots are kept under continues supervision during peak hours when the hawking is likely to be done. Corporation has deployed encroachment removal vans and staff to maintain the said spots ‘hawkers free’. However, it has been observed that in respect of these spot regular and continuous vigilance is required, in order to prevent recurrence. Hereto annexed and marked as “Exhibit-H” is a list of 20 earmarked areas. Hereto annexed and marked as “Exhibit-I” are photographs of some of the spots mentioned in the list which have been taken during action and post-action.”

15. Mr Anil Singh submitted that the BMC had identified 20 most congested areas or streets, and in the joint meeting held in the presence of the Municipal Commissioner and the Joint Commissioner of Police, a decision was taken to keep these areas or streets under continuous supervision during peak hawking hours. The affidavit states that the BMC has deployed encroachment removal vans and staff to monitor the hawking in these areas. Mr Anil Singh assured the Court that for the present, at least these 20 earmarked areas would be continuously monitored as a test case, and a report would be submitted to this Court regarding the results of such monitoring.

16. The report in the above terms should be filed in this Court by 29th August 2024 after serving a copy on the learned advocates.

17. Needless to say that the earlier directions have to be scrupulously complied with and are not in any manner diluted by this order.

18. We list this matter along with Writ Petition No.766 of 2021 for further consideration on 2nd September 2024.

19. The Principal Secretary is granted the liberty to apply.

(Kamal Khata, J)

(M.S. Sonak, J)