

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

High Court on its Own Motion

... Petitioner.

V/s.

State of Maharashtra & Ors.

... Respondents.

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
WRIT PETITION NO.654 OF 2021
WITH
WRIT PETITION NO.3167 OF 2021
WITH
WRIT PETITION NO.4278 OF 2022
WITH
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
WITH
WRIT PETITION (L) NO.15416 OF 2024
WITH
WRIT PETITION NO.2961 OF 2022
WITH
WRIT PETITION NO.630 OF 2023
WITH
CONTEMPT PETITION NO.31 OF 2024
IN
WRIT PETITION NO. 2798 OF 2018**

Mr. Choudhari Moin i/by A.A. Siddiqui & Associates for the Petitioner in WP/654/2024, WP/3167/2021, WP/4278/2024 and WP/2961/2024.

Mr. Jamshed Mistry i/by Adv. Aman Gharte for the Petitioner in CONPW/31/2024.

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

Mr. Ankit Lohia i/by Adv. Zainab R. Shaikh, Adv. Rafiullah Shaikh for the Petitioner in WPL/15416/2024.

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

Ms. Aishwarya Dangle a/w Adv. Amar Gharte for the Applicant in

IA/666/2024.

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

Ms. Pritha Paul for the Petitioner in WP/654/2023.

Ms. Utkarsha Wadekar i/by Adv. Ashok Saraogi for the Petitioner in WP/31751/2022.

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

Mr. Kaustubh Gidh for Respondents Nos.5, 11 & 12 in SMP/1/2023, for the Petitioner in IAL/22809/2024, IAL/22832/2024 and for Respondent No.14 in WP/2798/2018.

Ms. Dhruti Kapadia a/w Adv. Oorja Dhond for the Respondent-BMC in WP/2961/2022.

Mr. Anoop Patil a/w Adv. Oorja Dhond i/by Adv. Komal Punjabi for the Respondent-BMC in CP/2/2024.

Mr. Anil Singh, Senior Advocate a/w Adv. Oorja Dhond i/by Adv. Komal Punjabi for the Respondent-BMC in SMP/1/2023.

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

Mr. Juzer U. a/w Adv. Sofia U. for the Respondent in SMP/1/2023.

Ms. Dhruti Kapadia a/w Adv. S.V. Tondwalkar i/by Adv. Komal Panjabi for the Respondent-BMC in WP/630/2023, WP/15416/2024, CP/21/2024, WP/3167/2021, WP/4278/2022, WP/2798/2018, WP/654/2023, WP/2961/2022.

Mr. Sayed Sarfuddin, R/South-Present.

Ms. P.H. Kantharia, GP a/w Adv. Abhay L. Patki, Addl. GP, Adv. Fatima Lakdawala, AGP for the Respondent-State in SMP/1/2023.

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

Mr. Abhay L Patki, Addl. GP for the Respondent-State in WP/654/2021 and WP/3167/23021.

Ms. Lavina Kripalani, AGP for the Respondent-State in WP/4278/2022.

Ms. Varsha Sawant, AGP for the Respondent-State in WP/654/2023.

Ms. Vrushali Kabre, AGP for the Respondent-State in WPL/15416/2024.

Mr. Manish Upadhye, AGP for the Respondent-State in WP/630/2023.

Ms. P.H. Kantharia, GP a/w Adv. Vishal Thadani, Addl. GP for the Respondent-State in WP/630/2023.

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

DATE : 23rd October 2024.

P.C.:-

- 1) Updating us about the present status regarding the menace by the unauthorized hawkers in the city. Mr. Mistry, amicus curie submitted that the elections for the Town Vending Committee have been conducted. The menace however remains uncontrolled.
- 2) Mr. Jagtiani highlighted two primary concerns. The first pertains to finding a long-term solution by establishing the Town Vending Committee which was under progress. The second issue involves the immediate nuisance caused by illegal hawkers, which continue to affect the public daily until a long-term solution was arrived at and implemented.
- 3) Mr. Jagtiani submitted that he filed an Affidavit in response to the one filed by the BMC, which claimed that actions had been taken. However, he argued that these actions were merely superficial. He pointed to photographs evincing that, goods were not removed and confiscated but rather covered in hard packages and left at the site and within minutes of the officers and police leaving the illegal hawking resumed, demonstrating utter defiance and blatant disregard for law.
- 4) He contended that the solution to the problem was laid down by the Court by its order dated 3rd May 2019 in the case of SGP Barnes v Commissioner of BMC & Ors that held as under:

“3. It appears to be a case of cat and mouse

game between encroachers and the Municipal Authorities. As and when encroachers from the footpath are removed, the encroachers returned after a few days.

4. The only solution to the problem is to make S.H.O. of the concerned police station within the jurisdiction where the road is situated to ensure that once the footpaths are cleared of the temporary structures by demolishing the same, no temporary structure is re-erected. WE are given to understand that the police department has Beat Marshals who are provided with motorcycles and tasked with duty to inform the police control room if any violation of law is noted and police intervention required immediately.

5. We direct the Commissioner of Police, Mumbai to issue office order directing all Beat Marshals to keep an eye on the pavements in the area of their beat and if any encroachment is noted, information be immediately given for police assistance so that the encroachee is not able to re-erect the temporary structures. The Corporation is directed to once again ensure that temporary structures erected by the encroachees on the pavement on the road in question are demolished.”

5) Mr. Singh, representing the BMC, submitted that, there is no intentional default or non-compliance on the part of BMC. He emphasized that the officers fulfilled their duty by removing the hawkers. It was now

the responsibility of the police authorities to ensure that the hawkers did not return at the same location.

6) Ms. Kantharia acknowledged that, it is true that no sooner the Police left or even went to another location, the hawkers would return. However, she emphasised that this should not be seen as a failure on the part of the officers to perform their duties.

7) After hearing the Counsel in the morning session, we thought it fit to find out the ground reality taking into consideration the grievances made by the learned counsel. We directed the concerned Officer who is present in Court instructing Mr. Singh to personally visit the road starting from Flora Fountain and till Horniman Circle, to ascertain whether in fact there are unauthorized hawkers on the street or not. We had permitted two juniors of Mr. Jagtiani to assist the said Officer and report post lunch session. The matter was therefore kept back and called out for hearing again in the second session.

8) In the second session, Mr. Jagtiani tenders across the bar various photographs clearly indicating that, the hawkers are occupying various streets and by lanes of a part of the site mentioned at Serial No.1 at page 755 of the compilation handed over by Mr. Mistry which stated the 20 sites, which the BMC had offered to keep clear of unauthorised hawkers since the previous order till the next date.

9) Today, we have heard all the counsel for reasonable time.

Various suggestions advanced by learned counsels were considered.

10) It is utterly painful and troubling to note that despite passing various Orders over a period of years and bulky pleadings filed by the State Agencies, the ultimate result is that, the unauthorized hawkers still continue to show their remarkable existence not only in the entire city/state but disturbingly even on all the 20 sites assured to be hawker free by BMC.

11) Record clearly indicates that though solemn statements were made from time to time by the Officers of the BMC and recorded by the Court in its various orders, they have not complied with it. As a matter of fact, the unauthorized hawkers continue to mark their remarkable presence at these sites.

12) It is abundantly clear from what is presented before us today that, the BMC is unable to control the menace of unauthorized hawkers. Citizens are, therefore, before the Court, seeking relief for something that would be taken for granted in most countries: streets and lanes free from hawkers.

13) With a view to grant a final opportunity to all concerned, we, have suggested to Mr. Singh that the site listed as serial No.1 i.e. CSMT upto Bombay High Court, as mentioned in the BMC's 'Action Plan against unauthorized hawkers' -- be kept completely unauthorised hawker-free until the next date of hearing.

14) In view thereof and after having deliberation with all the

learned counsel appearing for the respective parties, we deem it appropriate to direct the Deputy Superintendent, License Department, to monitor and implement the various Orders passed by this Court from time to time and to see that no unauthorized hawkers occupies the streets and footpaths/walking areas between CSMT and the Bombay High Court.

15) Mr. Singh, expressed concerns about physical retaliation by the unauthorised hawkers or their supporters against their Officers, upon the Officers taking such strict action against the said unauthorized hawkers.

16) We, therefore, direct the Additional Commissioner of Police having territorial jurisdiction over Azad Maidan Police Station and M.R.A. Marg Police Station to provide necessary and requisite number of Police Personnel (if necessary, armed) as may deem appropriate by the Deputy Superintendent License Department for complying with the present and earlier directions, including removal of unauthorized hawkers. On the experimental basis the said drive to continue until the next date from tomorrow.

17) Stand over to 12th November 2024.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)