





*“6. Once any such representation/complaint is made to the appropriate authority of the MCGM, it shall take action for removal of unauthorized hawkers and other encroachments from the pavements in the area as described in the PIL petition. The action on the representation to be preferred by the petitioners under this order shall be taken by the authority concerned with promptness.”*

3. Stating that the petitioners waited for 3 months for compliance of the directions issued by this Court in Public Interest Litigation No. 60 of 2023, the learned counsel for the petitioners would submit that the petitioners constrained by inaction on the part of the Authorities of the MCGM have filed this contempt case. The learned counsel for the petitioners further states that encroachment by the hawkers is a fact admitted by the State-respondents in the proceedings of Public Interest Litigation No. 60 of 2023 but the Authorities of the MCGM failed to take any action and comply with the directions issued by this Court vide order dated 21<sup>st</sup> December 2023. Portraying the difficulties faced by the inhabitants, the learned counsel for the petitioners states that such encroachments by the hawkers have created difficulties for the residents of the locality and they are facing serious difficulties even in moving out of their houses.

4. On a glance at the order dated 21<sup>st</sup> December 2023, we gather that the said order was passed by this Court without taking any reply affidavit from the respondents therein. As we read paragraph no. 5, it seems that the petitioners had approached this Court without approaching the appropriate Authority of the MCGM inasmuch as this Court permitted the petitioners to make representation/complaint before the appropriate Authority of the MCGM. This is clear on a plain reading of paragraph no. 5 of the order dated 21<sup>st</sup> December 2023 which reads as follows: -

*“5. Having regard to the nature of grievance raised in this PIL petition, we permit the petitioners to make an exhaustive*



*representation/complaint to the appropriate authority of the MCGM within a fortnight from today taking all the pleas which may be available to the petitioners and enclosing therewith all the documents on which the petitioners intend to rely.”*

5. In this factual background, the Authority of the MCGM can take action as per the directions issued by this Court only after following due process in law. In “*Sopan Sukhdeo Sable & Ors. v. Assistant Charity Commissioner & Ors.*” (2004) 3 SCC 137, the Hon’ble Supreme Court observed that even the encroachers have a right in law. They cannot be removed without following due process in law. This is also bearing in our mind that the petitioners have not even indicated since when the hawkers have made illegal encroachments over the 1<sup>st</sup> Lane to 16<sup>th</sup> Lane at S. P. Road. A person having possession over a piece of land, may be illegal possession, acquires certain rights in law and he cannot be summarily removed without following the due process in law.

6. Having regard to the aforementioned considerations, we are not inclined to entertain Contempt Petition No. 2 of 2024 which is dismissed.

JAYANT  
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**[GAUTAM A. ANKHAD, J.]**

**[CHIEF JUSTICE]**