

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (Lodging) No. 134 OF 2014.

Malad Pheriwala Sanghatana .. Petitioner.

Versus

Municipal Corporation of Gr Mumbai & Anr .. Respondents.

Mr Diwakar A. Dwivedi for the Petitioner.

Ms Uma Palsuledesai a/w Mr D.A. Nalawade,
Govt. Pleader for Respondent-State.

Mr M.M. Malvankar for the Respondent No.1.

CORAM : V.M.KANADE & A.R. JOSHI, JJ.

DATE : 17th March, 2015.

P.C.

1. Heard learned Counsel appearing on behalf of the petitioner and the learned Counsel appearing on behalf of respondents.

2. The petitioner is a union having Registration No. ALC/Office/17/1966, Its office situate at Shop No. 24/25, Harirar Shopping Centre, Ishwarlal Parikh Marg, Malad (W) Mumbai – 400 064. The members of the petitioner are carrying on their hawking business at Ishwarlal Parikh Marg and Sainath Cross Road Malad West, Mumbai for more than two decades. It is submitted that the Apex Court in its order dated 9th September, 2013 directed the State Government and the Municipal Corporation to permit the existing

hawkers to carry on their business till the finalization of the Scheme of the year 2009. Yet the police are not allowing the members of the petitioner union to carry on their business. The learned Government Pleader appearing on behalf of the State submits that the State has received a report from the Intelligence Agency that there is a threat perception of terrorist attack in the said place. It is submitted by the learned Counsel appearing for the Municipal Corporation that in view of that threat perception all these hawkers from the said areas shall be removed. It is further submitted by the learned Counsel appearing on behalf of the State that said threat perception still continue and it will be difficult to say how long threat perception will continue there.

3. Our attention is invited to the judgment of the Apex Court, in the case of - **Maharashtra Ekta Hawkers Union and another Vs. Municipal Corporation, Gr. Mumbai and Ors., Appellants Vs. Municipal Corporation, Gr Mumbai & Ors., Respondents** [(2014) 1 SCC 490], more particularly clause (xv) of paragraph 16 thereof, which reads as under :-

“(xv) All the existing street vendors / hawkers operating across the country shall be allowed to operate till the exercise of registration and creation of vending / hawking zones is completed in terms of the 2009 Policy. Once that exercise is completed, they shall be entitled to operate only in accordance

with the orders / directions of the concerned Town Planning Committee”.

4. The learned Counsel appearing on behalf of the petitioner has submitted that, therefore, the Apex Court has clearly held that the existing hawkers are entitled to carry on business till the Policy framed by the Supreme Court is not converted into an Act and thereafter procedure which has been mentioned in the judgment of the Supreme Court has not been followed by the Authorities.

5. Taking into consideration the directions given by the Apex Court, and at the same time keeping in mind the threat perception, we are of the view that fine balance will have to be struck between these two conflicting interests. There cannot be any manner of doubt that if there is threat perception, Police and the Municipal Corporation has to impose reasonable restrictions. However, at the same time, on these grounds the hawkers cannot be denied their limited right of carrying on their business. We are of the view that their issue can be resolved by directing the Corporation to permit the members of the Petitioner union and the existing hawkers to carry on their business at Ishwarlal Parikh Marg and Sainath Cross Road, Malad (West), Mumbai, on the following terms and conditions :

- (i) The hawkers will not carry on business on the street.

- (ii) The hawkers shall leave enough space for the pedestrians, so that they can walk on the foot-path.
 - (iii) In case of emergency, enough space will be made available on the road for passage of ambulance, police vehicles and fire brigade, etc.
 - (iv) Hawkers will ensure that there is no obstruction on the foot-path for the pedestrians and others, so that they can easily walk on the foot-path.
 - (v) It is clarified that as directed by the Apex Court, the hawkers can carry on their business in a stall (open pitch) ad measuring 1 x 1 sq. meter.
 - (vi) The State has already passed an Act, known as “The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014” and the directions which are given by the Apex Court have been incorporated in this Act. Street vendors shall comply with the conditions, which are mentioned in the First Schedule of the said Act.
 - (vii) Liberty is granted to the State to apply, if necessary.
6. Writ Petition is disposed of in the above terms.

(A.R. JOSHI, J)

(V.M.KANADE,J)