Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 103 OF 2015.

Mahila Vikas Samaj Kalyan Kendra .. Petitioners.

Versus

Arti Co-op Hsg. Society Ltd & Ors. .. Respondents.

Mr Diwakar A. Dwivedi for the Petitioners.

Mr M.M. Malvankar for the Respondent No.4.

Mr D.A. Nalawade, Govt. Pleader for Respondent No.5.

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 respondent Nos. 4 and 5.

2. The petitioner is a union having Registration No. G.B.B.S.D. Maharashtra State. The members of the petitioner are carrying on their hawking business at Amrit Nagar Road No.6, Amrit Nagar Circle to ONGC Colony, Ghatkopar (West), Mumbai 400 086 since more than ten years. It is submitted that the Apex Court in its order dated 9th September, 2013 directed the Urban Development Department of the

Government of Maharashtra to take steps to declare certain areas as hawkers zone. It is submitted that pursuant to the directions given by the Supreme Court, the Urban Development Department issued a Circular dated 21st October, 2013 and in the said Circular provision was made to declare the hawkers zone and to permit the hawkers to carry on business of hawking to the existing hawkers. It is further submitted that till the implementation of the scheme the Apex Court directed the Municipal Corporation, Greater Mumbai to allow the existing hawkers to operate till the exercise of registration and creation of vending zone in terms of 2009 Act.

3. It is submitted therefore that the respondents should not obstruct the petitioners from carrying on business since more than ten years and are therefore existing hawkers.

4. 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".

5. From the said observations, it is clear that the Apex Court has permitted the existing hawkers to carry on their business till such time as the Policy framed by the Supreme Court is not converted into an Act and the procedure mentioned in the Supreme Court order has not been followed by the Authority. Thereafter, now, an Act has been passed by the State of Maharashtra. However, the procedure for implementation of the Act has not been completed so far. Taking into consideration the aforesaid fact, we are of the view that the members of the petitioner union who are existing hawkers i.e. who are carrying on business more than ten years as hawkers, shall be permitted to carry on their business at the said site and the respondents shall not cause any obstruction to them. Though the notice was issued to respondent Nos. 1 to 3, they have not appeared before us. We, therefore, allow the petition in terms of prayer clause (a) and (b).

6. It is clarified that the members of the petitioner union who are existing hawkers fall within the definition of hawkers would

be permitted to carry on their business until the finalization of the scheme by the State Government under the Act. With these directions the writ petition is disposed of.

(A.R. JOSHI, J) **(V.M.KANADE,J)**