

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2575 OF 2016
WITH
CIVIL APPLICATION NO. 1489 OF 2016

Shramik Janata Feriwala Sanghatana and anr. .. Petitioners
Vs.

The State of Maharashtra through
the principal Secretary, .. Respondents

Mr.S.S.Pakale, Senior Advocate i/b Mr.S.M.Katkar, for the
Petitioner.

Mr.Sandeep V. Marne, for Respondents No. 2 to 4.

Ms.M.P. Thakur, AGP for Respondents No. 1, 3 & 5.

Mr.Dilip P. Devadiga a/w Mr.Joseph Reddy, for Applicant in Civil
Application No. 1489 of 2016.

CORAM : SHANTANU.S.KEMKAR &
M.S.KARNIK, JJ.
DATE : 12th JULY , 2016

PC. :

. Heard parties through their Counsel.

2. On 01/04/2016, this Court passed the following
order.

“If the Petitioners establish that they are existing hawkers,
then they may be permitted to carry on hawking business in
the area, where the hawking business was being conducted

by them, as set out in Exhibit A to the petition. Learned counsel appearing for the Respondent Corporation seeks time to take instructions in this regard. S. O. to 15.4.2016. In the meantime, no coercive steps shall be taken against the Petitioners, if they are in a position to establish that they are “Street Vendors” within the meaning of the Street Vendors (Protection of Livelihood and Regulation of Street Vending Act (7 of 2014).”

3. Today, when the matter came up for hearing, the learned Counsel appearing for the Municipal Corporation has submitted that in the absence of framing of the scheme and implementation of the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending Act (7 of 2014) [for short 'Act'], it is not possible for the Corporation to implement the provisions of the Act.

4. We find that the Division Bench of this Court in the case of **Vile Parle Kelvani Mandal and ors. Vs. Municipal Corporation of Greater Mumbai and ors., 2015 (6) ABR 609**, has issued following directions.

56. Hence, we dispose of the Petitions by passing the following order:

(i) We hold that with effect from 1st May, 2014 the directions issued by the Apex Court from time to time in

Civil Appeal Nos.4156-4157 of 2002 (Maharashtra Ekta Hawkers Union and others vs. Municipal Corporation of Greater Mumbai and others) shall cease to apply and all existing street vendors as on 1st May, 2014 who are covered by the definition of clause (l) of Section 2 of the Street Vendors Act are entitled to protection against eviction and relocation as provided under Sub-section (3) of Section 3 thereof. No Street Vendors who were carrying on business as on 1st May, 2014 and who are covered by the definition of Street Vendor under clause (l) of Section 2 shall be evicted or relocated by the Mumbai Municipal Corporation till the survey as specified under Sub-Section (1) of Section 3 of the Street vendors Act is carried out and the certificates of vending are issued to all Street Vendors in accordance with Sub-section (1) of Section 4 by the Town Vending Committee. This protection is applicable only to those Street Vendors who were carrying on business as on 1st May 2014;

(ii) Those Street Vendors who have started street vending after the said date shall be evicted by the Mumbai Municipal Corporation in accordance with law. The action of eviction shall be initiated as expeditiously as possible;

(iii) We declare that a Street Vendor who is engaged in cooking or preparation of food items in a street, lane, side walk, footpath, pavement, public park or any other public place or private place either from a temporary built structure or by moving from place to place is not covered by the definition of street vendor under clause (l) of Section 2 of the Street Vendors Act and consequently such a vendor shall not be entitled to protection under Sub-section (3) of Section 3 so long as he is indulging in cooking or preparation of food items;

(iv) We, therefore, direct the Mumbai Municipal Corporation to initiate action of eviction in accordance with law against Street Vendors who are engaged in preparation/cooking of food items in street, lane, side walk, footpath, pavement, public park or any other public place or private area either from a temporary built structure or by moving from place to place and who do not stop cooking or making food within the time specified in a notice served to them. Action of eviction shall be initiated by the Mumbai

Municipal Corporation after following due process of law against such Street Vendors immediately on expiry of a period of two months from today;

(v) We direct the Municipal Corporation to ensure that when such action of eviction is proposed, caveats shall be filed in appropriate Courts and the Municipal Corporation shall take prompt steps to contest the proceeding if filed for challenging the action of eviction. We direct the Municipal Corporation to create a tracking system for all such litigations so that the same are promptly attended to;

(vi) We direct the Traffic Police to take necessary action in accordance with law for preventing indiscriminate parking of vehicles by the customers of the stalls on the said Gulmohar road and nearby streets. Sufficient Traffic Police shall be deployed on the said roads during the rush hours;

(vii) We direct the Principal Secretary of the Urban Development Department of the State Government to file affidavit setting out the outer limit within which the following actions shall be completed by the State Government :-

(a) Formulation of the scheme for street vendors under sub-section (1) of Section 38 of the Street Vendors Act;

(b) Framing of the Rules in accordance with Section 36 of the Street Vendors Act; and

(c) Constitution of Town Vending Committees in each local authority;

(viii) The aforesaid affidavit shall be filed within a period of one month from today. Before setting out the outer limit, the State Government shall make a note that the time provided to the State Government under the Street Vendors Act has expired long back;

(ix) We direct the Mumbai Municipal Corporation to file an affidavit setting out the outer limit within which the plan for street vending shall be prepared from the date on which the Town Vending Committee is constituted for the said local authority. Such affidavit shall be filed within the

period of six weeks from today. The compliance affidavit reporting compliance with the directions issued in terms of clauses (ii) and (iv) shall be filed on or before 31st January, 2016;

(x) For considering the compliance affidavits to be filed by the State Government and the Municipal Corporation, the Petition shall be listed on 21 st December, 2015;

(xi) We direct the Mumbai Municipal Corporation to take steps for implementation of order dated 21 st January, 2002 in Writ Petition No.1799 of 2001 immediately on expiry of a period of two months from today. Affidavit of compliance on this aspect shall be filed on or before 31st January, 2016;

(xii) The suits listed in paragraph 51 above pending in the City Civil Court at Dindoshi shall be disposed of as expeditiously as possible and in any event within a period of one year from. This direction be communicated by the Registrar (Judicial-I) to concerned Court;

(xiii) Rule issued in the above Petitions is made partly absolute on above terms. There will be no order as to costs;

(xiv) All Chamber Summons and Notice of Motion, if any, are disposed of accordingly.”

5. Keeping in view the controversy involved in this Petition, we find that till the State Government implements the provisions of the said Act and comes out with the scheme, the directions contained in the said order passed in the case of **Vile Parle Kelvani Mandal** (*supra*) shall apply mutadis mutandis to this case also. As a result, we dispose of this Petition by

directing the Navi Mumbai Municipal Corporation to comply with the directions contained in paragraph 56 as extracted hereinabove in the case of **Vile Parle Kelvani Mandal** (*supra*). Needless to say that directions will be applicable only to those street vendors who were carrying on business as on 01/05/2014.

6. Learned Counsel for the petitioners submits that the petitioners have tendered documents before the Corporation showing therein that petitioners are existing street vendors and are carrying on business prior to 01/05/2014. Let the said documents be examined by the Corporation and thereafter as observed above the decision be taken. It is open for the petitioners or to any other street vendor claiming to be carrying on business prior to 01/05/2014 to submit relevant documents within two weeks before the Competent Authority of the Corporation if not already submitted. The Corporation shall decide the claim within two months from the date of submission of documents.

7. We also hope and trust that the State Government will come forward with compliance of the order passed by this Court in the case of **Vile Parle Kelvani Mandal** (*supra*) as per the directions contained in paragraph 56 as expeditiously as possible.

8. The ad-interim order passed on 01/04/2016 will remain operative till the decision as aforesaid is taken by the Corporation.

9. Petition is disposed of. In view of the disposal of the Petition, Civil Application No. 1489 of 2016 does not survive and the same is also disposed of accordingly.

(M.S.KARNIK, J.)

(SHANTANU.S.KEMKAR, J.)