

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 710 of 2008

* Ankush s/o Deorao Fatangade,
Age 65 years,
Occupation : Business,
R/o Ramnagar, N-2, CIDCO,
Aurangabad,
Taluka & District Aurangabad. .. **Petitioner.**

Versus

- 1) The State of Maharashtra,
Through Secretary,
Urban Housing Department,
Mantralaya, Mumbai.
- 2) The Administrator,
City & Industrial Development
Corporation, Aurangabad. .. **Respondents.**

Shri. M.R. Andhale, Advocate, for petitioner.

Shri. Y.G. Gujarathi, Assistant Government Pleader, for
respondent No.1.

Shri. A.S. Bajaj, Advocate, for respondent No.2.

**Coram: R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

Date : 23 AUGUST 2017

ORAL JUDGMENT (Per R.D. Dhanuka, J.):

1) By this petition filed under Article 226 of the Constitution of India the petitioner seeks a declaration that the detention of two *Taparis* of the petitioner by respondent No.2 is illegal and unconstitutional and seeks further direction against respondent Nos.1 and 2 to pay compensation of Rs. one lakh for wrongful detention of the *Tapari* shop and income loss per day caused to the business of the petitioner.

2) Learned counsel for the petitioner invited our attention to the judgment of the Supreme Court in the case of **Maharashtra Ekta Hawkers Union & Anr. v. Municipal Corporation, Greater Mumbai & Others, 2013(6) ALL MR 480 (S.C.)** and would submit that the State Government as well as respondent No.2 shall frame a policy to protect the rights of hawkers and shall permit the small hawkers like the petitioner to carry on business on the streets.

3) Mr. Bajaj learned counsel for respondent No.2, on the other hand submits that in the year 2005 a drive

for removal of encroachment was undertaken. On 18 February 2005 while undertaking such drive a Pan *Tapari* of the petitioner on four-wheeler cart was found touching the wall of Bank of Maharashtra and thus the petitioner was asked to remove the said pan *Tapari*. The petitioner instead of removing the said *Tapari* made an attempt to make assault on the then Administrator of the respondent No.2. Said Pan *Tapari* was thus seized. Respondent No.2 has denied that the said Pan *Tapari* was seized with material as alleged and claimed by the petitioner. It is the case of the respondent No.2 that since the petitioner was encroacher in violation of the provisions of the Maharashtra Regional and Town Planning Act and had taken law into his hand, the respondent No.2 in exercise of statutory obligation had seized the said *Tapari*.

4) In so far as the judgment of the Supreme Court in the case of **Maharashtra Ekta Hawkers Union & Anr.** (supra) relied upon by the petitioner is concerned, it is submitted by the learned counsel that various directions were given by the Supreme Court to implement the policy of 2009 framed by the State Government. He submits that

the said judgment would not assist the case of the petitioner since the petitioner has filed this petition in 2008 alleging the seizure of Pan *Tapari* in the year 2005. There is no rejoinder filed by the petitioner to the said affidavit-in-reply.

5) The petitioner has not prayed for framing of similar policy or for implementation of policy, if any, framed by the State Government. The petitioner has stopped his business after seizure of the pan *Tapari* by the respondent No.2.

6) In our view no case is thus made out by the petitioner for any relief as prayed by the petitioner in this writ petition. The petition is devoid of merit and is therefore dismissed. Rule is discharged. No order as to cost.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(R.D. DHANUKA, J.)

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