

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO. 8832 OF 2017

WITH

CIVIL APPLICATION (ST) NO. 8834 OF 2017

Shantaram Bhau Gamne

...Appellant

Versus

Municipal Corporation of Greater Mumbai & Ors

...Respondents

Ms VV Thorat, i/b Sandeep S Sharma, for the Appellant.

Mrs Madhuri More, for the Respondent-MCGM.

CORAM: G.S. PATEL, J

DATED: 8th June 2017

PC:-

1. The Appeal is directed against an order dated 24th March 2017 declining the Plaintiff ad-interim relief on the limited ground, it seems, that there cannot be more hawking license per family. The order fails to recognise that the Plaintiff's father, Bahu Nana Gamne, held a hawking license since the year 1950. The Plaintiff/Appellant's mother, Bhagubai, held a separate license. That license is still in existence.

2. Bhau GAMne, the Plaintiff's father, died in 2003. The Plaintiff applied to the Defendants for transfer of the license to his name. He paid the necessary fees. An inspection report was prepared on 26th September 2003. The license was transferred. He

has regularly paid his license fees. He has an electricity connection at the stall.

3. This state of affairs continued for the next ten years until 2013, when the MCGM sought to contend that under some new policy, the details of which are not on record, there could be only one hawking license per family. Whether any such policy exists or has the force of law is uncertain at this stage. It is difficult to see how even if there be such policy, it could have the kind of retrospective effect to result in an invalidation, apparently at random, of one of several licenses previously legitimately held in the family from a time pre-dating any such policy. Indeed this raises the question of why the Plaintiff but not his mother was “selected” for a license cancellation, though that would have been equally suspect.

4. In my view, the learned Single Judge ought to have appreciated that without this material being properly addressed, it was not appropriate to allow such complete disturbance of the status quo as has existed for the last 60 years from the time of the Plaintiff’s father. The Appeal will have to be allowed.

5. The ad-interim order of 24th March 2017 is quashed and set aside.

6. I am also unable to understand how the learned Single Judge could have disposed of the draft Notice of Motion at the ad-interim stage. The Notice of Motion is filed by the Plaintiff is restored to file. It will be listed before the Trial Court in the week of 22nd June

2017. The Trial Court will issue directions for filing of the Replies and Rejoinders and fix the date for final hearing of the Motion. The Motion will be disposed of at the earliest possible. I am not, however, fixing any peremptory date for disposal of the Motion.

7. In the meantime, there will be an order in terms of prayer clauses (a) and (b) of the Appellant's Civil Application (St.) No. 8834 of 2017, which read as follows:

- "(a) that pending hearing and final disposal of the above suit, this Hon'ble Court be pleased to grant temporary injunction restraining the Defendants, their servants, agents, representative and/or person or persons claiming through or under them from taking any action pursuant to the said Notice issued by the Defendant dated 8th March 2011 being Exhibit L hereto;
- (b) That pending the hearing and final disposal of the suit, the Defendants be directed to accept the license fees from the Plaintiff."

8. The Appeal is disposed of in these terms. There will be no order as to costs.

9. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)