

2(1) of the Street Vendors Act and were carrying on their business as on 1st May, 2014 on streets declared as hawking zone, this Hon'ble Court be pleased to pass an appropriate order of injunction and stay thereby restraining the Respondent Nos.1 and 3 from evicting and/or relocating and/or taking any coercive action against the members of the Petitioners under the impugned law;

(b) That this Hon'ble Court be pleased to hold and declare that the provisions of Section 102 of the Maharashtra Police Act, 1951 is void to the extent where it is inconsistent with the provision of Section 3(3) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014;

(c) That this Hon'ble Court be pleased to hold and declare that the provisions of Section 313, 313A, 314 of the Mumbai Municipal Corporation Act, 1888 are void to the extent where it is inconsistent with the provisions of Section 3(3) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014;”

2. The learned Advocate for the Petitioner at the outset stated that he is not pressing for the prayer clauses (b) and (c). We have therefore, focused only on prayer clause (a). In this clause, the Petitioner has prayed for a declaration that its members are covered by the definition of Clause (l) of Section 2(1) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014; and were carrying on their businesses as on 1st May, 2014 on streets which are declared as hawking zone. Consequential injunction is prayed for.

3. It is undisputed that in relation to such prayers, the litigation had reached Bombay High Court over years. The learned Advocate for the Petitioner drew our attention to a detailed Judgment of the Division Bench of this Court in the case of Shri Vile Parle Kelvani Mandal & Ors. V/s. Municipal Corporation of Greater Mumbai & Ors.¹. In such Judgment, the Court extensively considered various issues concerning the street vendors in light of the Street Vendors (Protection of Livelihood and Regulation of Street Vendors) Act, 2014 (hereinafter referred to as the said “Act of 2014”) and the effect of the said Act on various directions issued by the Supreme Court in the case of Maharashtra Ekta Hawkers Union V/s. Municipal Corporation of Greater Mumbai. The Division Bench was of the opinion that certain directions issued in the said litigation by the Supreme Court were to apply till the framing of the legislation and that therefore, with framing of the said Act of 2014, these directions would cease to apply. In this respect, the Court held as under :

“50. Now we turn to the argument canvassed in Writ Petition No.224 of 2011 based on the direction contained in the order of the Apex Court dated 9th December, 2003 which lays down that hawking is not permitted from any place of educational institutions or hospitals or place of worship within a distance of 100 meters. The contention is that as the said direction has not been disturbed while passing final judgment and order dated 9th December, 2013, no hawking can be permitted within the said prohibited distance of 100 meters. All the orders which were passed from

1 2015 SCC Online Bom. 5546

time to time in Civil Appeal Nos.4156-2157 of 2002 merged into final Judgment and order dated 9th September, 2013. Paragraph 17 of the final Judgment and order dated 9th September, 2013 specifically provides that the directions contained in the said Judgment and order shall remain operative only till the appropriate legislation is enacted by the competent legislature and is brought into force. Accordingly, the Street Vendors Act has been brought into force with effect from 1st May, 2014. Therefore, the directions issued under the order dated 9th September, 2013 including the directions issued from time to time during the pendency of the Appeals are not operative with effect from 1st May, 2014. Therefore, we are unable to accept the contention that the condition imposed by the directions contained in clause 3 of paragraph 14 of the order dated 9th September, 2013 continues to operate after the Street Vendors Act, came into force. While implementing the provisions of the Street Vendors Act by prescribing no vending zones such restrictions such as ban on vending within a distance of an educational institution etc., can be always imposed. All the existing street vendors who are covered by the definition under clause (l) of Section 2 of the Street Vendors Act, are entitled to protection under Sub-Section (3) of Section 3 with effect from 1st May, 2014.”

4. With this conclusion, the Court has given the following final directions :

“60. 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 67 of 70 68 wp-224.11, pil-36.10 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. Our attention was drawn to a subsequent Judgment of the Division Bench of this Court in case of *Azad Hawkers Union and Ors. V/s. Union of India and Ors. (Writ Petition No.652 of 2017 decided on 1st November, 2017)*. In this judgment, once again various issues concerning the hawkers in the City of Mumbai came up for consideration before the Division Bench. A reference was made to an earlier decision in the case of Shri Vile Parle Kelvani Mandal (*supra*). In the Judgment, the said decision was noticed, referred and cited at various places. Eventually, the Division Bench in the said case of Azad Hawkers Union and Ors., observed as under :

*“74. That leads us to the last question, as to whether after coming into force of the said Act, non-vending zones, which were recognized earlier have ceased to exist or not and as to whether hawkers would be entitled to carry on their vending activities on any streets, even if they fall in the part of non-hawking / non-vending zones recognized earlier. We may gainfully refer to the following observations of the Division Bench of this Court in Vile Parle Kelvani Mandal (*supra*).*

“50. "50 [Section 33](#) gives overriding effect to the provisions of the Street Vendors Act over the provisions of any other law for the time being in force or any other instrument having effect by virtue of any other law. However, [Section 33](#) does not override the orders of the Court which were passed earlier and therefore, the said orders can be implemented notwithstanding the applicability of the Act. Therefore, order dated 21st

January, 2002 passed in Writ Petition No.1799 of 2001 can be always implemented subject to prohibitory orders passed by the City Civil Court or any other Court of law. The said order has become final as even the vendors who are fully aware of the order have not challenged the same." (Emphasis supplied) It could thus be seen that Division Bench of this Court has itself observed that, though [Section 33](#) gives overriding effect to the provisions of the said Act, it does not override orders of the Court which have been passed earlier and that the said orders can be implemented notwithstanding the applicability of the Act."

77. It could further be seen that right from the first judgment in Bombay Hawkers Union (supra), the Apex Court has consistently recognized the concept of hawking zones and non-hawking zones. Not only that, in 2009 Ekta Judgment, Their Lordships of the Apex Court have clearly specified that total roads as hawking zone shall remain only 221. We are therefore of the considered view that insofar as area coming under the jurisdiction of MCGM is concerned, till new vending and non-vending zones are earmarked and notified by local authorities, in consultation with the duly constituted TVCs, the hawking activity can be continued, only in areas which are identified as hawking zones, as approved by the Apex Court and, in no case, such activity can be permitted in non-hawking zone."

6. Finally, the bunch of Petitions were disposed of with the following order :

"86] In the result the following order :-

ORDER

- (i) The first survey of all street vendors, who existed on 01/05/2014, as provided in sub-section (1) of [Section 3](#) of the said Act, shall be conducted*

by TVCs, which are constituted as per Policy of 2009 as directed by the Hon'ble Supreme Court in 2013 Ekta judgment.

(ii) Wherever such surveys are conducted after 01/05/2014 by TVCs, as constituted under 2009 Policy, they shall be construed to be the first surveys as contemplated under sub-section (1) of [Section 3](#) of the said Act.

(iii) All Municipal Corporations and Municipal where TVCs are not yet established as per 2009 Policy, are directed to constitute TVCs as per 2009 Policy, having due representation to the various stake holders, including the representatives of the street vendors as provided under the said policy within a period of six weeks from today.

(iv) In such Municipal Corporations or Municipal Councils where no survey is conducted after 01/05/2014, the survey of street vendors, as provided under sub-section (1) of [Section 3](#) of the said Act, shall be conducted adopting the MCGM procedure within a period of three months from the date on which TVCs as per 2009 Policy are constituted.

(v) The street vendors who are found eligible as per survey conducted under clauses (i), (ii) and (iv) above, shall form electorate for conducting first elections of the members from the category earmarked in clause (d) of sub-section (2) of [Section 22](#).

(vi) The challenge to the validity of Rule 15 is rejected. However, it is directed that Municipal Commissioners and the Chief Officers, as the case may be, shall publish voters' list of registered street vendors on the basis of survey conducted under clauses (i), (ii) & (iv) hereinabove.

(vii) It is held and declared that Government Resolution dated 09/01/2017 vide which a scheme is framed purportedly under [section 38](#) of the said Act, cannot be treated as scheme as contemplated under [Section 38](#) of the said Act. However, there should be no impediment in the same

being construed as general guide line to frame scheme under [Section 38](#) of the said Act, after consultation with the local authority and the Town Vending Committee.

(viii) The Government Resolution dated 09/01/2017, which provides for constitution of TVCs without there being representation to the members from category mentioned in clause (d) of sub-section (2) of [Section 22](#), is held to be ultravires to the said Act and therefore quashed and set aside.

(ix) The contention of the Petitioners that after coming into force of the said Act, there are no non- hawking zones and that the hawkers are entitled to carry on their vending activities on all the roads in cities is rejected.

(x) It is held and declared that insofar as area falling under MCGM is concerned till the vending and non-vending zones are duly notified in accordance with the said Act, the hawking activities would be permitted only on roads which have been approved as hawking zones in 2009 Ekta Judgment of the Apex Court.

(xi) In the areas, other than the areas falling under the jurisdiction of the MCGM, if the hawking and non-hawking zones are already notified earlier, either under executive order or judicial order then till the vending and non-vending zones are duly notified in accordance with the said Act, hawking activities will only be permitted in hawking zones and no hawking activities shall be permitted in non-hawking zones.

(xii) It is further directed that in view of the direction issued by the Hon'ble Supreme Court in 2004 Ekta Judgment, which is duly reiterated by the Hon'ble Supreme Court in 2009 Ekta Judgment, no hawking would be permitted within 100 metres from any place of worship, holy shrine, educational institutions and hospitals or within 150 metres from

any municipal or other markets or from any railway station. It is also directed that no hawking would be permitted on footbridges and overbridges.

(xiii) It is clarified that outside places of worship hawkers can be permitted to sell only such items as are required by the devotees for offering to the deity or for placing in the place of worship e.g. flowers, sandalwood, candles, agarbattis, coconuts etc.

(xiv) Rule is partly made absolute in the aforesaid terms with no order as to costs.

(xv) In view of the disposal of all the above Petitions, all interlocutory applications, Notices of Motion, Chamber Summons taken out therein also stand disposed off.”

7. Thus, all issues which the Petitioner seeks to raise in the present Petitions, having been extensively examined by the Division Bench earlier, no further inquiry is necessary or even permissible. The learned Advocate for the Petitioner however, vehemently contended that the subsequent decision of this Court in the case of Azad Hawkers Union and Ors., was rendered *per incuriam*. In his opinion, this is so because the decision is running contrary to the earlier decision of this Court in the case of Shri Vile Parle Kelvani Mandal (supra) as well as it is contrary to the observations and directions of the Supreme Court in the case of Maharashtra Ekta Hawkers Union V/s. Municipal Corporation of Greater Mumbai (supra). In our opinion, the Division Bench in the case of Azad Hawkers Union and Ors., was not oblivious to the above two

decisions, either of this Court or of the Supreme Court. In fact, as noted, the decision of this Court in the case of Shri Vile Parle Kelvani Mandal (supra) was extensively discussed. This clearly is not an instance of the judgment of the Division Bench being rendered in ignorance of the earlier binding judgment of this court or of Supreme Court.

8. We are bound by the judicial discipline and binding precedents.

9. The learned Advocate for the Petitioners then attempted to contend that the decision of this Court in case of Azad Hawkers Union and Ors., needs a Reference to a larger Bench since it is running contrary to the earlier judgment of Division Bench of this Court. Here again, we are not persuaded to accept such a suggestion. We do not find any direct conflict between the two decisions, so far as the Petitioner's grievances are concerned. Both the decisions operate in separate fields. In the result, the Writ Petitions are dismissed.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)