

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 263 OF 2020

Santosh Ganesh Bhagat and Ors.

... Petitioners

Versus

Nashik Municipal Corporation through
Commissioner and others

... Respondents

Mr. Sandip S. Shinde i/b Ergo Juris for the Petitioners.

Ms. Sairuchita Chowdhary i/b J. Shekhar & Co. for Respondent No.1.

Mrs. M.P. Thakur, A.G.P. for Respondent-State.

Mr. R.V. Game Commissioner of Nashik Municipal Corporation, present.

**CORAM : S.J. KATHAWALLA AND
R.I. CHAGLA JJ.**

DATED : 20th FEBRUARY, 2020.

P.C. :-

1. The Educational Institutions - Kilbil St. Joseph High School, Don Bosco Salesial Institute, Don Bosco High School, Maria Vihar Students Hostel, Divyadan dan and Salesian Training Centre are all located at the Don Bosco Road area, Nashik City.

2. The Petitioners are the parents of the students studying in the above educational institutions. The grievance of the Petitioners is that some

time in or around June, 2018 the hawkers started selling junk food by parking their food vehicles within 20 meters from the educational institutions. The entire area is littered with the waste which would decay and emanate foul smell, affecting the health of the students. The Petitioners are also stressed, since the area is regularly visited by anti-social elements to have junk food resulting in several undesirable incidents. The Petitioners repeatedly made representation to the Corporation from 2018 onwards pointing out the problems. However, the Corporation failed to take any steps to redress their grievance. The Petitioners are therefore constrained to file the present Petition seeking the following reliefs :

“A) That this Hon’ble Court by issuing a writ of Mandamus or any appropriate writ direct the respondents herein to immediately vacate hawkers from the road i.e. Don Bosco Road connecting Collage Road to Gangapur Road and the road connecting Don Bosco Road to Thatte Nagar Hawker.

B) Direct the respondent no.2 & 3 to immediately take action to patrol the said area and stop the anti social elements from harassing the students using the said roads, so also to stop the illegal parking being done on the said road.”

3 On an earlier occasion, the Advocate appearing for Nashik Municipal Corporation submitted that allowing hawkers to sell food on Don Bosco Road connecting Collage Road to Gangapur Road and the road connecting Don Bosco Road to Thatte Nagar is a temporary arrangement. When we asked the Advocate to point out the provision under which such temporary permission can be granted/obtained, the Advocate fairly conceded that there is no provision under which such temporary permission can be granted to the hawkers to sell junk food near schools/educational institutions. The Advocate for the Petitioners also showed us the receipt issued by the Corporation to such hawkers acknowledging receipt of a daily fee from them which in the receipt is termed as an 'encroachment fee'. We, therefore, pointed out to the Advocate for the Nashik Municipal Corporation that the Corporation is legalizing encroachment by charging the hawkers an encroachment fee and issuing a receipt acknowledging the same. This being a very serious issue, we directed the Municipal Commissioner of Nashik Municipal Corporation to remain present in Court on 20th February, 2020 i.e. today.

4. Today, Mr. R.V.Game, Commissioner of Nashik Municipal Corporation is present in Court. He has tendered his Affidavit dated 20th

February, 2020. We have gone through the said Affidavit, wherein he has stated that the temporary permission to carry out hawking activities on the Don Bosco Road was illegally given by the then Divisional Officer Mr. Nitin Vasant Ner, without the permission and knowledge of the then Municipal Commissioner. He has informed the Court that it is true that Shri Nitin Vasant Ner was collecting a fee from the hawkers and was issuing a receipt wherein he showed that the said fee was towards 'encroachment charges'. He was issuing such receipts in violation of the provisions of the Maharashtra Municipal Corporation Act and its Rules. The Commissioner has also stated on affidavit that Mr. Nitin Vasant Ner is suspended by the Nashik Municipal Corporation vide order dated 25.10.2019 for certain other illegalities committed by him. He has further stated that after he came to know about the illegal permission granted by Shri Nitin Ner to the hawkers to temporarily carry out their activities at the Don Bosco Road., Nashik he has issued a show cause notice dated 18.02.2020 to Mr. Nitin Ner. He has submitted that an enquiry would be conducted against Mr. Ner and strict action will be taken against him at the earliest.

5. Mr. Game undertakes to remove the hawkers of said Don Bosco Road within a period of one week from today. We accept the said

undertaking and we direct the Commissioner of Police, Nashik and the Senior Inspector Gangapur Road Police Station to patrol the said area and stop the anti-social elements from causing any harassment to the students using the said roads and to also ensure that there is no illegal parking of vehicles on the said road/s.

6 The Writ Petition is accordingly disposed of.

(R.I. CHAGLA J.)

(S.J. KATHAWALLA, J.)