

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 526 OF 2021
IN
NOTICE OF MOTION NO. 98 OF 2021
WITH
INTERIM APPLICATION NO. 4344 OF 2021**

Azad Hawkers Union through POA & Ors. ..Appellants/Applicants
Vs.
Municipal Corporation of Gr. Mumbai
through the Commissioner & Ors. ..Respondents

Mr. Rakesh Kumar with Mr. Akash Giri i/b. Legal Vision for Appellants.
Mr. Dharmesh Vyas with Ms. Smita Todwankar for Respondent
No.1/MCGM.
Mr. M. A. Khan with Ms. Dipti Mehta and Mr. Uzair Shaikh for
Respondent Nos.6 to 13.
Mr. Dineshkumar Yadav, Assistant Superintendent of Market, Market
Department, Mahatma Jyotiba Phule Market present.

**CORAM : G.S. KULKARNI, J.
DATE : FEBRUARY 01, 2023**

P.C.:

1. This appeal from order is filed assailing an order dated 29 November, 2021 passed by the learned Judge, City Civil Court at Dindoshi, Mumbai on Notice of Motion No. 98 of 2021 in L.C. Suit No. 67 of 2021 filed by the appellants whereby notice of motion filed by the appellants has been dismissed. The notice of motion was filed by the

appellants praying for the following reliefs:-

“(a) That pending the hearing and final disposal of the Suit this Hon’ble Court be pleased to pass an order of temporary injunction restraining the Defendant Nos. 1 to 4, their officers, agents and servants from disturbing and/or interfering in the Hawking/Fish selling business of the members of the Plaintiff No. 1 as described in schedule-I /list of members to the Plaint in the Suit Hawking Plaza/Suit market ie. Sainath Mandai, (Sainath fish market) Sainath Road (near Subway) Malad (west), Mumbai 400064 situated at CTS No. 593 and 594 of Village Malad (west).

b) That pending the hearing and final disposal of the Suit this Hon'ble Court be pleased to stay the operation and implementation of the order dated 21-10-2020 passed by Assistant Commissioner (Market) bearing No. A.C./Market/10723/Asm-4 and the Defendant Nos. 1 to 4, their officers, agents and servants be restrained from taking any action in pursuance of the said order.

c) That pending the hearing and final disposal of the suit this Hon’ble Court be pleased to direct the Defendant Nos. 1 to 4 to supply to the Plaintiff No. 1 copies of the wholesale fish vending licences issued/granted and/or transferred by Defendant Nos. 1 to 4 in the name of the Defendant Nos. 6 to 1 (*sic* 1 to 6).

d) That pending the hearing and final disposal of the Suit this Hon'ble Court be pleased to direct the Defendant Nos. 5 and 1 to conduct the survey of the existing fish vendors/street vendors/Hawkers carrying on Hawking/fish selling business in the Suit market i.e. Sainath Mandai, (Sainath fish market) Sainath Road (near Subway) Malad (west), Mumbai 400064 situated at CTS No. 593 and 594 of Village- Malad (west) in accordance with Section 3 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.

e) That pending the hearing and final disposal of the suit this Hon’ble Court be pleased to direct Defendant Nos.1 to 4 to provide copies of the notices, advertisements issued and/or published by the Defendant Nos. 1 to 4 calling applications from fish vendors, the applications received by the Defendant Nos. 1 to 4 for issuing wholesale and/or retail fish selling and/ or fish broking licences in the Suit Hawking Plaza i.e. Sainath Mandai, (Sainath fish market) Sainath Road (near Subway) Malad (west), Mumbai 400064 situated at CTS No. 593 and 594 of Village-Malad (west).

f) That this Hon'ble Court be pleased to grant ad-interim and

interim reliefs in terms of prayer clauses a) to e) above.

g) That this Hon'ble Court be pleased to provide for costs of this Notice of Motion to the Plaintiffs.

h) That this Hon'ble Court be pleased to grant such other and further reliefs to the Plaintiffs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The appellants/plaintiffs had approached the City Civil Court in the suit in question praying for reliefs inter alia for a declaration that the members of appellant no.1 as described in the Schedule-I (List of Members) annexed to the plaint are lawful pavati/ receipt holders in respect of the suit hawking plaza / suit market i.e. Sainath Mandai, (Sainath Fish Market), Sainath Road (near Subway), Malad (W.), Mumbai – 400 064; that the said market be declared as a natural market as provided in Section 2(1)(e) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (for short, "the said Act"); for a declaration that members of appellant no.1 are street vendors/hawkers as defined in Section 2(1)(1) of the said Act and are entitled to get certificate of vending/licence as street vendors as provided in Section 4 of the said Act; for a declaration that the resolution No.990 dated 19 October, 2018 passed by the standing committee of the Municipal Corporation is illegal, bad in law and not binding upon the members of appellant no.1. There are several other prayers which are not

required to be referred as the prayers in the notice of motion are already noted above.

3. The litigation being pursued by the appellants appears to have a chequered history. Initially, the appellants had approached this Court vide Writ Petition No. 1922 of 2009 in which Notice of Motion No. 8 of 2013 was filed which came to be decided by the Division Bench of this Court by an order dated 30 January, 2013, which reads thus:-

“1. Heard Counsel for the parties. In the main writ petition, the surviving reliefs are prayer clauses (a) and (e).

2. In the context of those reliefs, this Court on 18th October, 2012 passed interim directions directing respondents 1, 2 and 3 to stop all the illegal vendors from performing their business at Sainath Fish Market, Sainath Mandai, Malad (West). On the basis of said directions, the Corporation has initiated action against illegal vendors from the stated premises.

3. The applicants assert that they are affected because of the said action notwithstanding the fact that their occupation has been reckoned as legal even by this Court in its order dated 30th November, 1998 passed in Writ Petition No.1722/1998 and order dated 17th December, 1998 in Writ Petition No.2485/1998.

4. Counsel for the Corporation, however, submits that much water has flown after the said decisions which are pressed into service. The Corporation has already stopped issuing pavtis and instead have started giving licenses to the vendors who are permitted to do business from the stated premises. Those are known as legal vendors and any other occupant of the premises will have to be considered as illegal vendor.

5. The fact as to whether the applicants are legal vendors or illegal vendors is a matter which has to be examined by the Appropriate Authority of the Corporation. The applicants have already made representation vide legal notice dated 17th November,

2012. If so, the authorised officer of the Corporation before taking any action against the applicants, must consider the said representation and pass reasoned order to be communicated to the concerned applicant within two weeks from today and depending on the finding recorded in the said order, proceed against the concerned person in accordance with law.

6. In our opinion, no further indulgence can be shown to the applicants and in any case, in the pending petition the issue as to whether the applicants are legal vendors or otherwise, cannot be adjudicated which may be a disputed question of fact. That has to be considered as aforesaid by the Appropriate Authority of the Corporation in the first place.

7. Motion is disposed of on the above terms.

8. All concerned to act on the authenticated copy of this order.”

(emphasis supplied)

4. It is clear from paragraph 5 of the above order that the Municipal Corporation was required to examine the claim being made by the concerned vendors with which the appellants/plaintiffs were concerned as to whether they are “legal vendors or illegal vendors”. The Division Bench categorically observed that already a representation in that regard was made vide a legal notice dated 17 November, 2012, hence the authorized officer of the Corporation before taking any action against the appellants/plaintiffs, must consider the said representation and pass reasoned order, to be communicated to the concerned appellants within two weeks from the date on which the said order was passed and depending on the finding recorded in the said order, proceed against the concerned persons in

accordance with law.

5. It appears to be an admitted position that the said representation was decided on 04 March, 2013, and as the said representation was decided there was no embargo on the Municipal Corporation to take action against those who were illegally hawking and who were not the legal vendors and/or were illegal vendors. It appears that the appellants/ plaintiffs challenged the said decision of the Municipal Corporation dated 04 March, 2013, by filing Writ Petition No. 391 of 2014 before this Court, which came to be decided by the Division Bench of this Court on 04 November, 2019, by the following order:-

"1. The petitioner No. 1 is an association of hawkers claiming to be selling fish since long at Sainath Mandai, Malad (W). The petitioners have made multiple prayers, all revolving around their rights emanating from the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 ("the Act of 2014" for short). The Corporation has filed reply opposing the prayers made by the petitioners briefly on the ground that the site at which the members of the petitioner association wish to carry on their businesses is a designated market created by the Municipal Corporation, a portion of which is dedicated to fish selling vendors. According to the Corporation, the members of the petitioner association are carrying on their businesses illegally. In this context, this Court in an order dated 30.1.2013 passed in Notice of Motion No. 8 of 2013 in Writ Petition No. 1922 of 2009 (Coram : A.M. Khanwilkar and K.K. Tated, JJ) had made following observations:-

"4. Counsel for the Corporation, however, submits that much water has flown after the said decisions which are pressed into service. The Corporation has already stopped issuing pavtis and instead have started giving licenses to the vendors who are permitted to do business from the stated premises. Those are known as legal vendors and any other occupant of

the premises will have to be considered as illegal vendor.

5. The fact as to whether the applicants are legal vendors or illegal vendors is a matter which has to be examined by the Appropriate Authority of the Corporation. The applicants have already made representation vide legal notice dated 17th November, 2012. If so, the authorised officer of the Corporation before taking any action against the applicants, must consider the said representation and pass reasoned order to be communicated to the concerned applicant within two weeks from today and depending on the finding recorded in the said order, proceed against the concerned person in accordance with law.

6. In our opinion, no further indulgence can be shown to the applicants and in any case, in the pending petition the issue as to whether the applicants are legal vendors or otherwise, cannot be adjudicated which may be a disputed question of fact. That has to be considered as aforesaid by the Appropriate Authority of the Corporation in the first place."

2. In response to the said directions contained in paragraphs 5 and 6 in the above quoted portion of the order of the High Court, the Asstt. Superintendent (Market) of the Corporation passed an order on 4.3.2013 which reads as under:-

" In respect of above subject, it is mentioned here that, you had filed writ petition in the Hon. High Court on 17th November, 2012 about the fish vendors selling wet fish in fish division in Sainath Market, whether they are authorized and / or unauthorized.

Prior to year 2006, the receipts were issued for sale of fish daily to the wet fish vendors regularly. Thereafter, in the year 2006, as per Municipal Corporation Resolution No. 57 dt. 21.4.2006 of Standing Committee Resolution No. 1375 dt. 8.3.2006, the licenses were given to 140 daily wet fish vendors in Market Division with the approval of the Competent Officer and the monthly rent was to be recovered. Therefore, the daily fish selling receipt used for sale of fish daily earlier have been outdated.

Therefore, the Hon'ble Court has informed by their judgments on 30.1.2013 that all other fish vendors other than said 140 fish vendors in Sainath Road Market are unauthorized (petitioners). Therefore, if unauthorized vendor is found while selling fish in Market, then the action will be initiated against them."

3. Perusal of this order would show that instead of considering the representation of the members of the petitioner association and passing a speaking order as directed by this Court, the said Authority has merely proceeded on the basis that the High Court has considered the said vendors as unauthorized vendors and therefore, representation was rejected. In our opinion, this is not a correct way of dealing with the entire issue. When the High Court had required the Competent Authority to examine the representation of the members of the association and pass a speaking order thereon, such exercise would have been carried out. The said authority, instead wrongly proceeded on the basis that the High Court has held them as unauthorized vendor.

4. Under these circumstances, the said order is set aside. The competent authority shall pass a fresh order giving reasons in support of its conclusions preferably within four weeks from today. All the safeguards provided in the order of the High Court dated 30.1.2013 shall *mutatis mutandis* be applied till the fresh order is passed as directed. If the members of the petitioner association wishes to place any further material before the said Authority, they may do so within a period of two weeks from today.

5. The Writ Petition is disposed of with above directions. We have not expressed any opinion on the contentions of both sides.”

(emphasis supplied)

6. It appears to be not in dispute that in pursuance of the above directions of the Division Bench in its order dated 04 November, 2019, the concerned officer of the Municipal Corporation decided the representation afresh by an order dated 21 October, 2020, and in such order did not recognize the claim as made by the appellants/plaintiffs. The said order dated 21 October, 2020 is now assailed in the suit in question, as seen from the prayer clause (i) which reads thus:-

“(i) That this Hon’ble Court be pleased to pass a decree and order

declaring that the order dated 21-10-2010 passed by Assistant Commissioner (Market) bearing No. A.C./ Market/10723/ASM-4 is illegal, invalid and be further pleased to quash and set aside the said order.”

7. It is on the above backdrop, the suit in question has been filed by the appellants. The contention as urged on behalf of the appellants is to the effect that as the members of the appellants hold “pavtis” (receipts), they are entitled to have licences, so that they can conduct the hawking business in the said market. However, the fact remains and which appears to be not in dispute that the Municipal Corporation had passed resolution being Resolution No.57 dated 21 April, 2006 in its Standing Committee and further Resolution No.1375 dated 08 March, 2006, whereunder licenses were issued to 140 daily wet fish vendors in the Market Division with the approval of the Competent Officer, for a monthly rent to be recovered. Thus, the daily fish selling receipt used for sale of fish on daily basis as practiced earlier, being the foundation on which the appellants were making their claim, was declared to be outdated and discontinued. In the order dated 04 March, 2013 which was passed by the Assistant Superintendent (Market) of the Municipal Corporation, such fact was recorded, that except those vendors who have been issued licences, the others would be illegal vendors. This was also noted by the Division Bench of this Court in paragraph 5 of the order dated 30 January, 2013.

The fact remains that in so far as the appellants are concerned, the observations which were made in the order dated 30 January, 2013 passed by the Division Bench, such observations were not in any manner disturbed, superseded or set aside in any proceedings. Moreover, it is clear that the subsequent order dated 04 November, 2019 passed by the Division Bench has taken into consideration the order dated 04 March, 2013 and found no fault in the decision dated 04 March, 2013 taken by the Municipal Corporation on the representation filed by the appellants/plaintiffs. Such decision of the competent officer of the Municipal Corporation was not set aside by the Division Bench of this Court. It appears from the prayers as made in the notice of motion that the cause now being pursued by the appellants in the suit is not different from what had fell for consideration of the Division Bench in the proceedings of the said writ petition as noted above. Prima-facie, it is difficult to conceive as to how the reliefs in the nature as prayed for in the notice of motion can be granted to the appellants, in the absence of clear legitimate legal rights of the concerned vendors and not in the appellants/plaintiffs Union in regard to the claim for any such members to a hawking licence in the market in question.

8. Learned counsel for the appellants has drawn the Court's attention to the judgment in case of **Shri Vile Parle Kelvani Mandal & Ors. Vs. Municipal Corporation of Greater Mumbai and Ors**¹. Considering paragraph 2 of the said judgment, the same is not applicable to the facts of the present case as in the said case orders passed by the Division Bench as noted above were not applicable. The observations made in the said judgment would be applicable in the context of a market which the Court was considering as referred to in paragraph 2 of the said judgment. In any case, learned counsel for the appellants is not in a position to point out that the observations as made in the said judgment are blanketly applicable to all the markets in Greater Mumbai.

9. Learned counsel for the appellants has also placed reliance on the decision of **Maharashtra Ekta Hawkers Union and Ors. Vs. Municipal Corporation, Greater Mumbai and Ors.**² to contend that the market in question is a hawking plaza. However, this decision would not assist the appellants, as such contention would be contrary and destructive of the prayers as made in the suit, as one of the substantive prayers as made in the suit is that the market in question is a natural market and not the hawking plaza and thus, this judgment would certainly not assist the appellants.

1 2015(6) ABR 609

2 AIR 2004 SC 416

10. A perusal of the representation as made by the appellants/plaintiffs would make the position clear that it is not a representation pointing out the case of any individual member, who would become entitled for a hawking licence and/or there would be a legitimate legal right which would be existing with any such person for any recognized or permissible reason. In fact, what can be seen from the representation is a blanket prayer being made, that merely because the members of the appellants possess pavti (receipt), they ought to be granted licence and permitted to hawk including on the ground that the market in question was a natural market. Admittedly, it is seriously disputed by the Municipal Corporation that the market in question is a designated hawking plaza/municipal market, and which should be required to be governed as per the rules and regulations of the Municipal Corporation, whereunder licences are issued for the purpose of hawking. The foundation of the appellants' case is not to assert rights of the individual members on the basis of their independent documents, so that the Court can consider a relief for any of such legitimate cases, as to whether the same is arbitrarily or in any manner illegally rejected by the Municipal Corporation. In the light of the above discussion, in my prima-facie opinion, considering the prayers in the suit as also the nature of the reliefs as prayed for in the notice of

motion, as rightly observed by the learned trial Judge in the impugned order, it was certainly not possible for the appellants to succeed in seeking any of such reliefs. This apart, there is another fundamental fallacy in the contentions as urged on behalf of the appellants before the trial Court namely that if they intended to succeed in the claim and in the prayers made, they be permitted to hawk in the market in question, necessarily, the consequence would be that they would be required to oust 163 licencees who are already occupying the market and who are undertaking the hawking business as permitted by the Municipal Corporation. They are not parties to the suit. Thus s relief so as to oust somebody from the market and who are the licence holders and permit the members of the appellants to hawk by removing them, certainly could not have been granted looking at the prayers as made by the appellants.

11. It is also required to be observed that the appellants contention that paragraph 5 of the order dated 30 January, 2013 passed by the Division Bench in Notice of Motion No. 8 of 2013 in Writ Petition No. 1922 of 2009 grants the appellants a protection, cannot be accepted. As already noted above, the protection was limited till the representation was decided and hence no protection whatsoever was

available to the appellants after the decision on the representation dated 04 March, 2013. It is also required to be clarified from the reading of the order dated 04 November, 2019 and more particularly, paragraph 4 thereof that such protection as contended on behalf of the appellants/plaintiffs is not to be seen and is in no manner conceived.

12. For the aforesaid reasons, there is no merit in the appeal. It is accordingly rejected. No costs.

13. At this stage, learned counsel for the appellants/plaintiffs has pointed out that there was an ad-interim protection as granted by the City Civil Court vide an order dated 29 November, 2021 which be continued to operate by virtue of the orders passed on the present appeal. It is prayed that such ad-interim protection should be continued. In my opinion, for the aforesaid reasons, such protection cannot be continued and in fact, if such protection is continued, it certainly will create chaos and would be contrary to law. Thus, the prayer for continuation of the ad-interim protection is rejected.

[G.S. KULKARNI, J.]