

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4096 OF 2022

Rajeev Pandurang Sakpal
V/s.
State Of Maharashtra
Through The Principal
Secretary And 8 Ors

...Petitioner

... Respondents

Mr. Manoj Harit a/w. Mr. Neeraj Shetty i/b. Manoj Harit & Co., for
the Petitioner.

Ms. Dhruti Kapadia a/w. Mr. Kunal Waghmare i/b. Mr. Sunik K.
Sonawane for the Respondent-BMC.

Ms. P. H. Kantharia Government Pleader with M. A. Sayed AGP for
the State-Respondent Nos. 6 to 9.

CORAM : SUNIL B. SHUKRE &
RAJESH .S. PATIL, JJ.

DATED : 20th JULY, 2023

PC.:

1. Heard.
2. By this Petition, the Petitioner is seeking a direction to
the Corporation for swift, timely and perpetual action against
illegal hawking in the areas surrounding K.E.M. Hospital and
shifting of licensed hawkers from No Hawking Zone to somewhere
else.
3. The Petitioner has not given any details as to who are

the persons, who are illegally hawking on the street and their locations. The Petitioner is not aware of these facts and this can be seen from one of its prayer clause which urges this Court to call for record and proceeding in terms of working of the Respondents' Authorities in respect of the issue of illegal hawking and hawking in no hawking zone. By this very prayer the Petitioner is pleading that after examining the record, this court should issue appropriate directions.

4. Such an effort on the part of the Petitioner is, in our view, no less than the one of collection of evidence through the orders of the Court. It is also an attempt to initiate a roving inquiry in the matter. Such a Petition is therefore, not maintainable. It is necessary for the Petitioner to give details of the hawkers, the places from which they are carrying out the business of street vending and the timings, during which they are carrying on the business. Of course, we are conscious of the fact that in a matter like this, the Petitioner may find it difficult to get any information about the particular names of the hawkers, but there would still be a need to know minimum details about the activity of hawking so that appropriate steps can be directed to be taken by the Corporation. But, that has not been done by the Petitioner.

5. So, the conclusion is that this Petition is not maintainable. But, in spite of that fact, the Corporation has performed its duty and, in a way, has rendered assistance to the Petitioner. This is evident from the reply filed by the Corporation. The reply shows that *vis-a-vis* Manish Medical's case, there are nine number of authorised and licenced stalls on footpath of Dr. E.-

Borges Road in front of K.E.M. Hospital and these stalls are just in front of Manish Medicals and that the Corporation would like to find out a long term solution once the hawking zones which are yet to be identified by town vending committee, are so fixed by it.

6. Of course, learned counsel for the Petitioner submits that the grievance of the Petitioner is not only in respect of these nine licensed stalls but, it extends to several other illegal hawkers who are carrying on their business of street vending in the areas at and around K.E.M. Hospital including Dr. E.-Borges Road and the Corporation has not said anything about such illegal hawking activities. We have already noted that the Petitioner has not given sufficient details about these activities and the Petitioner by filing this Petition is attempting to collect evidence. In a case like this, the burden of proof is on the Petitioner, which the Petitioner must discharge. But, the necessary details have not been given by the Petitioner and to worsen the situation, there is no finding or determination whatsoever recorded by the Corporation to the effect that there is in existence, a particular area or a particular street at or around K.E.M. Hospital, which is infested with illegal hawkers, and, therefore, one has to say that the burden of proof is not discharged by the Petitioner. Besides, there being no determination about existence of illegal hawking in a particular area by the Corporation, this Petition necessarily gives rise to disputed questions of fact and for resolution of which, the remedy lies elsewhere.

7. In view of the above, we find that this petition is not maintainable inasmuch as the purpose of this Petition, to some

extent, has been served by the affidavit in reply filed by the Corporation.

8. This Petition stands dismissed accordingly.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)