

Prajakta Vartak

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

**WRIT PETITION NO. 2798 OF 2018
WITH
INTERIM APPLICATION NO.3 OF 2022**

Atul Ramanlal Vora

.Petitioner

Vs.

Municipal Corporation of Gr. Mumbai & Ors.

.Respondents

Mr. Jamshed Mistry i/b. Mr. Dipesh Siroya for Petitioner.
Mr. A. Y. Sakhare, Senior Advocate with Ms. Mahadik for MCGM.
Mr. Sayed Sarfuddin, H.S. Imam, Sr. Inspector, R/S Ward present.
Smt. P. H. Kantharia, GP for Respondent Nos. 8 to 13.

**CORAM : G. S. KULKARNI &
R. N. LADDHA, JJ.**

DATE : APRIL 24, 2023

P.C.:

1. This petition has been filed praying for the following reliefs:-

“(a) that the Hon’ble High Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondent No.1 to remove the pitches allotted to the hawkers as per the list published on 3rd January, 2018 on the website of Respondent No.1 on Mathurdas Road and Mathuradas Extension Road (Mangubai Dattani Road) at Kandivali (West), Mumbai as same to be contrary to the provisions of the Street Vendors Act;

(b) that the Hon’ble High Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing Respondents to take forthwith action on the hawkers which are present on the Mathuradas Road, Kandivali (West), Mumbai and Mathuradas Extension Road, Kandivali (West), Mumbai.

(c) that the Hon’ble High Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing office Respondent

Nos.2 , 3, 4 and 7 to personally ensure that the said roads i.e. Mathuradas road, kandivali (West), Mumbai and Mathuradas Extension Road, Kandivali (West), Mumbai are free from hawkers permanently and compliance report alongwith monthly CCTV Footage of the said road shall be duly submitted tot he Court Commissioner which may be appointed by the Hon'ble Court.

(d) that the Hon'ble High Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction in the nature of Writ of Mandamus directing Respondents:-

i) to keep Mathuradas Road, Kandivali (West), Mumbai and Mathuradas Extension Road, Kandivali (West), free from hawkers i.e. "Non Hawking Zone"

ii) basis on which hawkers are been allotted pitches on Mathuradas Road and Mathuradas Road and Mathuradas Extension Road (Mangubai Dattani Road) at Kandivali (West), Mumbai,

iii) To implement immediately same plan of action as adopted for D.J. Road, Vile Parle (W), Mumbai.

iv) To stay the implementation of pitches allotted to the hawkers as per the list published on 3rd January, 2018 on the website of Respondent No.1 on Mathuradas Road and Mathuradas Extension Road (Mangubai Dattani Road) at Kandivali (West).

v) Direct Respondents to produce CCTV footage of past 6 to 9 months of the Mathuradas Road and Mathuradas Extension Road (Mangubai Dattani Road) at Kandivali (West) in order to know the present situation of the said roads,

(e) That this Hon'ble Court be pleased to pass Order directing the Respondents to provide necessary assistance and protection to the Petitioner for not allowing the hawkers and the squatters on the road, Mathuradas Road, Mathuradas Extension Road in Kandivali (West), Mumbai,

(f) For ad-interim relief in terms of prayer clauses (d) and (e) herein above,

(g) For any other appropriate order, direction and further reliefs as this Hon'ble Court thinks fit.

(h) And for the cost of this Petition."

2. We have perused the orders passed on this petition and more particularly the orders dated 19 March, 2021, 12 January, 2022 and the

order dated 21 November, 2022. Today Mr. Sakhare, learned senior counsel for the respondent-municipal corporation has placed on record an affidavit of Mr. Sayed Sarfuddin H.S. Imam, Senior Inspector (Ench) R/S Ward, in the office of the Assistant Commissioner R/S Ward Office, Encroachment Department, Kandiwali (W.), Mumbai. Such affidavit sets out all steps taken from time to time to remove the unauthorized hawkers have been set out. Mr. Sakhare has also drawn our attention to the report dated 05 July, 2018 as annexed at Exhibit 'R-1' of the affidavit setting out that on the "Mathuradas Extended Road" from Vazanwadi till Priyadarshani, there are approximately 50 hawkers. Mr. Mistry has however stated that his client is not pressing any relief in that regard.

3. Mr. Mistry, on instructions, makes a statement that in view of the affidavit filed on behalf of the municipal corporation and the actions being taken, the grievances of the petitioner are substantially redressed. Mr. Mistry also points out the issue in regard to the hawkers coming back, although actions are being taken from time to time. In response to such contention, Mr. Sakhare has drawn our attention to paragraph 1(e) of the affidavit stating that regular encroachment removal actions against the unauthorized hawkers who are creating nuisance to the public as also hindrance to the vehicular traffic on Mathuradas Road were taken on

several dates as set out in the said affidavit and the last of such actions were taken on 27 February, 2023 and 02 March, 2023. He further submits that there cannot be a 24 hours vigil on such activities in view of shortage of staff.

4. We expect the municipal corporation to maintain taking of appropriate actions to remove unauthorized hawkers who are creating nuisance to the public and hindrance to the vehicular traffic. As mere removal of these hawkers would not suffice as they come back, Mr. Mistry, in this context, has drawn our attention to an order dated 14 November, 2022 passed in Writ Petition (L.) No. 23131 of 2022 (*Shrikant Shenoy & Ors. V/s. Municipal Corporation of Gr. Mumbai & Ors.*) wherein in regard to a similar situation, the Division Bench of this Court has observed that it is the duty of the Municipal Corporation to get the public street clear from the encroachers. It was also observed that the streets shall be made available to members of public and for smooth vehicular traffic and free from encroachment. The Division Bench was also not inclined to accept the submission as made on behalf of the Municipal Corporation that the Corporation though had made an attempt to remove these encroachers periodically, the encroachers returned to the site again. The Division Bench also observed that if the Municipal Corporation requires

any police protection from the respondent nos.7 to 9, then the same be made available on payment of requisite charges, if any. The said observations are required to be noted which read thus:-

“8. Learned counsel for the Municipal Corporation on the other hand invited our attention to the averments made in the affidavit in reply filed by the Municipal Corporation and submitted that though the action has been taken by the Municipal Corporation from time to time against these encroachers, the encroachers returned to the said Senapati Bapat Marg road. The affidavit in reply does not indicate that any permanent action is taken by the Municipal Corporation to keep the said road cleared from the encroachers which has been causing inconvenience to the residents of the said locality.

9. A perusal of the photographs produced before this Court by the learned counsel for the petitioners clearly indicate that there is large number of encroachers on both the sides of the road, including the encroachment on the bus stops. It is the duty of the Municipal Corporation to get the public street clear from the encroachers. The said street shall be made available to members of public and for smooth vehicular traffic and free from encroachment. The action alleged to have been taken by the Municipal Corporation is not of a permanent nature. We are not inclined to accept the submission of the learned counsel for the Municipal Corporation that the Corporation though had made an attempt to remove these encroachers periodically, the encroachers returned to the site again. If the Municipal Corporation requires any police protection from the respondent nos.7 to 9, the respondent nos.7 to 9 to make such police protection available on payment of requisite charges, if any.”

5. In this view of the matter, as the grievance of the petitioner has been substantially redressed, we dispose of the petition in terms of the following observations:-

(i) The municipal corporation shall from time to time take actions, if there is unauthorized hawking in the non-hawking zone and subject matter of the present proceedings and remove any

nuisance to the public and any hindrance to the vehicular traffic in accordance with law.

6. Disposed of in the above terms. No costs.

7. In view of disposal of the petition, interim application would not survive. It is accordingly disposed of.

[R. N. LADDHA, J.]

[G. S. KULKARNI, J.]