

Talwalkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 727 OF 2024

Kuljit Singh Gurdevsingh Shron & Ors ...Petitioners
Versus
The State of Maharashtra & Ors. ...Respondents

Mr Omprakash Pandey, a/w Ms. Suchita Pandey & Ms. Pramila
Prajapati, i/b M/s. Pandey & Co., for the Petitioners.
Mr Abhay L. Patki, Addl. GP, for the Respondent-State.
Ms R.M. Hajare, i/b Mr. Sunil Sonawane, for the Respondent-BMC.
Mr Haldikar, Licence Dept. K/E.
Mr Nitin P. Sonone(Road Engg.K/E), Maint's Dept.

CORAM M.S. Sonak &
Kamal Khata, JJ.
DATED: 24th June 2024

PC:-

1. Heard Mr. Omprakash Pandey, learned Advocate for the Petitioner and Ms. Hajare, learned Advocate for the Respondent-BMC.
2. The Petitioners seek a Writ of Mandamus from this Court to restrain the respondents from carrying on their street vending business at the footpath of Caves Road, near Tahira Compound, Jogeshwari(East), Mumbai 400060.
3. The Petitioners have produced on record a licence that grants them temporary permission to hawk in the hawking zone in the space measuring 1 mt. x 1 mt. This permission relates to the period

1/6/2001 to 31/7/2001. Mr Pandey, however, relies on the decision of the Hon'ble Supreme Court in the case of **Maharashtra Ekta Hawkers Union & Anr. v/s. MCGM & Ors.**¹ and the Order of this Court in **Shri Vile Parle Kelvani Mandal & Ors. v/s. Municipal Corporation of Greater Mumbai & Ors.**²

4. At this stage, we do not wish to go into the issue of whether the Petitioners are entitled to the protection of the above orders. However, this is a matter that will have to be investigated by the Municipal Corporation of Greater Mumbai ("MCGM"). But even if we were to accept Mr Pandey's submissions, under no circumstances can the Petitioners put up any structures, whether temporary or permanent, to undertake their business of hawking. Even in terms of the permission on which Mr. Pandey now relies, temporary permission is granted for hawking in the hawking zone in the space admeasuring 1 mt x 1 mt.

5. Ms. Hajare, learned Counsel for the MCGM, has produced before us certain photographs from which it is seen that the Petitioners have put up temporary structures on the footpath on the Jogeshwari Caves Road. Erection of such structures and carrying on their trade through them is not even contemplated permission on which the Petitioners rely. Even the orders on which Mr Pandey relies do not permit the erection of such structures on the road or on the footpaths. In fact, this Court is dealing with a Suo Moto Writ Petition in which direction has been issued to the BMC to initiate action against those who put up such structures on the footpath.

¹ (2014) 1 SCC 490 : 2013 SCC Online SC 815

² 2015 SCC Online Bom. 5546: (2015) 6 AIR Bom. R 609

6. Therefore, without concluding the issue as to whether the Petitioners are protected by the orders on which Mr Pandey relies and leaving it to MCGM to decide that issue in accordance with the law, we dispose of this Petition by directing the MCGM to remove the temporary structures erected by the Petitioners forthwith but after such removal, to allow the Petitioners to carry on their business on the place admeasuring 1 mt x 1 mt in the hawking zone. The Petitioners are restrained from putting these types of structures because even the permission on which they rely permits them to occupy only the space measuring 1 mt x 1 mt. in the hawking zone to undertake their business. This means that hawking will be undertaken in this limited space and not beyond.

7. Suppose the MCGM ultimately decides that the petitioners are not covered by the judgments and orders on which Mr Pandey relies. In that case, the MCGM is free to take action against the petitioners as contemplated under the law. The MCGM must then issue notices to the petitioners and hear them before they are deprived of the limited licence to hawk in the space of 1 mt x 1 mt in the designated hawking zone.

8. The Petition is disposed of in the above terms. No costs. All concerned to act on the authenticated copy of this order.

(Kamal Khata, J)

(M.S. Sonak, J)

ARUNA
SANDEEP
TALWALKAR

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