



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 3655 OF 2020

(Arun s/o Bhagwan Pahade and others ..vs.. State of Maharashtra, through Principal Secretary, Urban Development Department, Mumbai and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. V.D. Muley, Counsel for the petitioners,
Mr. D.P. Thakare, Addl.G.P. for respondent Nos.1 and 2,
Mr. M.I. Dhattrak, Counsel for respondent No.3,
Mr. C.S. Kaptan, Senior Counsel assisted by Mr. Sanket K. Bhandarkar,
Counsel for the intervenor.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 08-08-2024

We have heard Mr. Muley, learned Counsel appearing for the petitioners. He would invite our attention to the provisions of Section 3 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (for short, "the Act of 2014"). According to Mr. Muley, the petitioners are vendors within the meaning of Section 2(l) of the Act of 2014 and unless the respondents follow the procedure contemplated under Section 3 read with Section 22 of the Act of 2014 of carrying out a survey of vendors, preparation of vendors' list, a marking area for vending which should be around 2 ½ percent of the population of the said ward, the petitioners cannot be evicted particularly in view of inbuilt injunction provided under sub-section (3) of Section 3 of the Act of 2014.

2. The aforesaid contentions are disputed by M.I. Dhattrak, learned Counsel appearing for the respondent-

Municipal Council. Mr. M.I. Dhattrak would urge that the respondent-Municipal Council has no intention to evict the petitioners and the constitution of Town Vending Committee is already carried out. According to Mr. M.I. Dhattrak, the survey of vendors is almost concluded and the vendors list shall be published. He would claim that only such encroachment which is causing impediment in the management of flood water is sought to be removed.

3. We have considered the said submissions.

4. No doubt, Mr. V.D. Muley, learned Counsel is justified in claiming that the provisions of the Act of 2014 will have overriding effect on the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, “the Act of 1965”) by which the respondent- Municipal Council is governed.

5. However, this Court is required to be equally sensitive to the fact that such encroachment which is carried out on the storm water drain and the vendors who are occupying the permanent structures cannot be said to be protected by virtue of the provisions of the Act of 2014.

6. Thus who are protected pursuant to the definition of ‘street vendor’ provided in Section 2(l) read with sub-

section (3) of Section 3 of the Act of 2014, are having temporary structures. In case, if such structures are constructed on the storm water drain and if the Municipal Council under discharge of statutory authority under Sections 179 and 180 of the Act of 1965 is finding it difficult to maintain such storm water drain because of the construction or permanent encroachment carried out by the alleged vendors like the petitioners, the petitioners, in such an eventuality, cannot be claimed protection under sub-section (3) of Section 3 of the Act of 2014. To that extent, the claim put forth by the Municipal Council thereby directing removal of the encroachment by way of permanent structures carried out on storm water drain can be said to be quite justified.

7. Mr. M.I. Dhatrak, learned Counsel for the respondent-Municipal Council in categorical terms has stated that the mandate provided under sub-section (3) of Section 3 of the Act of 2014 is very much applicable to the respondent-Municipal Council and only such encroachment or structure which are causing impediment in the matter of management of the flood water, the respondent shall be asking the parties like the petitioners to remove the same.

8. Accepting the aforesaid statement, we see no reason to cause interference in the extraordinary jurisdiction of this Court. The petition accordingly stands disposed of with above clarification.

9. The pending application, if any, stands disposed of.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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