

Bombay High Court

Janhit Manch And 2 Ors vs Brihanmumbai Municipal ... on 23 October, 2015

Bench: A.S. Oka

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wp-224.11, pil-36.10

pmw

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

WRIT PETITION NO.224 OF 2011

Shri Vile Parle Kelvani Mandal and Ors. ... Petitioners  
Versus  
Municipal Corporation of Greater Mumbai and Ors. ... Respondents

WITH  
PUBLIC INTEREST LITIGATION NO.36 OF 2010

Janhit Manch and Ors. ig ... Petitioners  
Versus  
Brihanmumbai Municipal Corporation and Ors. ... Respondents

WP NO.224 OF 2011

Mr. V.A. Thorat, Senior Counsel a/w Mrs. Prachi Tatake and Ms.

Manorama Mohanty a/w Mr. Satish Srivastava & Co. for Petitioners.  
Mr. A.Y. Sakhare, Senior Counsel a/w Ms. Trupti Puranik, for

Respondent - Mumbai Municipal Corporation.  
Mr. J.S. Saluja, AGP, for Respondent - State of Maharashtra.  
Mr. Suresh K. Mali a/w Mr. Vishnu Choudhari, for the Respondent No.6.  
Mr. M.M. Vashi, Senior Counsel a/w Mr. A.A. Siddiqui i/by A.A. Siddiqui

& Associates, for the Respondent Nos.7 and 8.

PIL NO.36 OF 2015 AND CHSW NO.23 OF 2015 A/W CHSW/57 OF

2015

Mr. Bhagwanji Raiyani, Second Petitioner in person.

Mr. A.Y. Sakhare, Senior Counsel a/w Ms. Trupti Puranik, for Respondent - Mumbai Municipal Corporation.

Mr. J.S. Saluja, AGP for Respondent - State of Maharashtra.

Mr. Suresh K. Mali a/w Mr. Vishnu Choudhari for Applicant in Chamber Summons No.57 of 2015.

Mr. Makarand Kale a/w Aasif Siddiqui, for Respondent Nos.7 and 8 and for Applicant in Chamber Summons No.23 of 2015.

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CORAM : A.S. OKA & REVATI MOHITE DERE, JJ.

JUDGMENT RESERVED ON : 13th AUGUST, 2015 JUDGMENT PRONOUNCED ON : 23rd OCTOBER, 2015 JUDGMENT (PER A.S. OKA, J.):-

. In these two Petitions, the grievance is regarding the failure of the Mumbai Municipal Corporation to take action against illegal hawking.

FACTS OF PIL NO.36 OF 2010

2. PIL No.36 of 2010 has been filed by the second Petitioner appearing in person who is the President of the first Petitioner along with one Shri Dattaram Kumkar. This Petition has been filed inviting the attention of the Court to the illegal hawking activities on the Gulmohar Road which connects to S.V.Road and Juhu Tara Road and Versova Road through Link Road which is a 100 feet wide extremely busy road. It is pointed out that on a 600 meter stretch of the said road between the Mithibai College-NMIMS College junction to the Cooper Hospital junction, there are large number of educational institutions in which about 25,000 students are studying. It is pointed out that on this road, there is a large vehicular traffic and pedestrian movement as well. Apart from the educational institutions and the Cooper Hospital, it is predominantly a residential locality in which

there are large number of residential buildings.

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3. It is pointed out that thousands of people using Gulmohar road have to suffer traffic jams. It is pointed out that one of the most major causes of traffic jam is illegal shops/ stalls on footpaths on both sides of the road. It is pointed out that in many of these stalls, the occupants are illegally running eateries. They are cooking food in the stalls. They are selling fast food. It is pointed out that the customers of these stalls park their vehicles either in angular or parallel manner which creates traffic jams. It is pointed out that these illegal stalls are creating a lot of dirt and air as well as noise pollution. It is pointed out that large number of party workers of a political party have been given authorisation to run Zunka Bhakar stalls. They are also doing cooking in the stalls.

4. The Petitioners are relying upon information obtained by them under the Right to Information Act. The Petitioners are relying upon large number judgments including the orders passed by the Apex Court from time to time in Civil Appeal Nos.4156-4157 of 2002 (Maharashtra Ekta Hawkers Union and Another vs. Municipal Corporation of Greater Mumbai and others). Reliance is placed on final judgment delivered by the Apex Court in the said Civil Appeals which is dated 9th September, 2013. The Petitioners are relying upon number of photographs annexed to the Petition as well as to the additional 1 (2014) 1 SCC 490 3 of 70 4 wp-224.11, pil-36.10 affidavits filed by the second Petitioner appearing in person. The prayers are for removal of stalls and various other reliefs.

5. In PIL No.36 of 2010, Chamber Summons No.57 of 2015 has been taken out by Shri. N. Taranath Shetty seeking intervention in the PIL and for seeking relief of restraining the Municipal Corporation from demolishing the three stalls which are known as Aarey Sarita stalls at Gulmohar Road, Vile Parle (W). We may note here that "Aarey" stalls were established in Mumbai for selling the milk and milk products of the Government of Maharashtra Dairy situated at Aarey, Mumbai. There is a Chamber Summons being Chamber Summons (L) No.23 of 2015 taken out by Shri Shivaji Rama Gadkari and 8 others. The Applicants are claiming to be holding stalls on the footpaths near the property of Vile Parle Kelvani Mandal (the first Petitioner in Writ Petition No.224 of 2011) and therefore, they claim that they will be affected by the orders passed in this PIL.

6. There is an affidavit filed by Dr. Bapu Gopinath Pawar, the Deputy Municipal Commissioner (RE) of the Mumbai Municipal Corporation. In the affidavit he has stated that a survey of stalls situated on Gulmohar Road falling within 100 meters of educational institutions was made. He stated there are 20 stalls which are falling within the 4 of 70 5 wp-224.11, pil-36.10 distance of 100 meters of educational institutions. It is pointed out that out of 20 stalls, two stalls have been demolished which were used as Zunka Bhakar Kendra. It is pointed out that there are civil suits filed in relation to seven Aarey stalls in which there are prohibitory orders. It is pointed out that there are eight other licensed stalls of protected hawkers having licenses under Section 313 (A) of the Mumbai

Municipal Corporation Act, 1888. Apart from the aforesaid stalls, there are three stalls in respect of which licenses under Section 394 of the said Act of 1888 have been issued. It is pointed out that though notices of eviction have been served, the holders of the stalls have filed Civil Suits in which there are prohibitory orders.

#### FACTS OF Writ Petition No.224 of 2011

7. Writ Petition No.224 of 2011 has been filed by Shri Vile Parle Kelvani Mandal, the Principal of the Mithibai College of Arts, Chauhan Institute of Science and A.J. College of Commerce as well as by the Principal of Narsee Monjee College of Commerce and Economics.

The prayer in this Petition under Article 226 of the Constitution of India is for directing the Municipal Corporation to remove stalls put up on the footpath of Bhaktivedanta Swami Marg from Mithibai College, Gulmohar Road upto SBM Polytechnic College on Irla Road, J.V.P.D.

Scheme, Mumbai. A prayer is also made for restraining the Municipal 5 of 70 6 wp-224.11, pil-36.10 Corporation from granting any license/ permission to the hawkers to put up stalls or to carry out business on the footpaths. The Respondent Nos.6 to 9 have been impleaded who have been carrying out business in the said stalls. It is pointed out in the said Petition that the first Petitioner Society is a Charitable Trust which is running and administering various educational institutions such as N.M. Institute of Management studies, N.M. College, SBM Polytechnic College Mithibai College of Arts, Chauhan Institute of Science, A.J. College of Commerce, N.M. College of Commerce, Economics and others. It is pointed out that about 30,000 students are taking education in the said educational institutions run by the first Petitioner. It is pointed out that on the footpaths surrounding the educational institutions of the Petitioners, there are unauthorisedly constructed stalls and the hawkers are illegally carrying out business from the said stalls. It is pointed out that stalls have been constructed either close to the gates of the compound wall of the institutions of the first Petitioner or by blocking the gates of the compound wall. It is pointed out that on 30 th May, 2000 though the said stalls were demolished by the Mumbai Municipal Corporation, the same were allowed to be reconstructed and thereafter, no action has been taken by the Municipal Corporation.

8. The first Petitioner made an application to the Assistant Commissioner, 'K' Ward of the Mumbai Municipal Corporation seeking 6 of 70 7 wp-224.11, pil-36.10 permission to beautify the footpaths abutting the educational institutions run by it. On 18 th June, 2000, a permission was granted by the fourth Respondent. As some stalls were again put up on 24 th July, 2000, the first Petitioner addressed a letter to the Senior Inspector of Police of Juhu Police Station complaining about the unauthorised stalls and requesting the police to patrol the said area. The first Petitioner called upon the fourth Respondent by a letter 3 rd November, 2000 to remove the stalls. On 12th March, 2001 the fourth Respondent informed the first Petitioner that while carrying out demolition on 31 st May, 2000 certain stalls which were protected by the orders of the City Civil Court were wrongly demolished. The first Petitioner was called upon to remove the flower bed made by it on the said spot to accommodate a stall of one Mr. N. Arumugan Nainar.

9. Ultimately, the first Petitioner was forced to file Writ Petition No.1799 of 2001 in this Court. The said Writ Petition was disposed of by a Division Bench by order dated 21 st January, 2002 which reads thus :-

"P.C. :-

1. Heard parties.

2. Respondent-Corporation is directed to remove within two weeks the hawkers on the footpath near the premises of the Petitioner's Education institutions and allow the Petitioner to continue the beautification work which is already 7 of 70 8 wp-224.11, pil-36.10 sanctioned by the Corporation. The officer incharge of Juhu Police Station is directed to give police protection to the Municipal staff for the purpose of removal of the hawkers from the footpath abutting the Petitioner premises.

3. Petition is disposed of.

4. Certified copy expedited."

10. It is pointed out that notwithstanding the said order, the stalls have not been removed. It is pointed out that three Member Hawking Zone Committee constituted by the Municipal Corporation by order dated 16th August, 2005 declared Shamrao Parulekar Marg (13 th Road) under J.V.P.D Scheme as a Non-Hawking Zone.

11. By a letter dated 12 th October, 2010 addressed by the Advocate for the Petitioners, the first Respondent - Municipal Corporation was called upon to remove all hawkers carrying out the business on the footpath in the periphery of the Educational Institutions of the first Petitioner. On 28th October, 2010, the Senior Inspector (Removal of Encroachment) of the Mumbai Municipal Corporation informed the Advocate for the Petitioners that encroachment removal action has been taken and the same will be continued.

12. The case of the Petitioners is that there are number of illegal stalls from which the hawkers operating on the footpath on the 8 of 70 9 wp-224.11, pil-36.10 road in question. It is their case that the hawkers are contending that they have obtained permissions from the Municipal Corporation to carry out their business on the footpath. On 13th December, 2010 the Security Guard Agency employed by the first Petitioner informed that on the very day, a stall was constructed on the footpath and about 5 shops have come up on the footpath. Accordingly, the Writ Petition was filed on 7th January, 2011 by the Petitioners seeking a writ of mandamus for setting aside the permissions/ licenses granted by the Municipal Corporation to the hawkers to put up stalls and to carry out business on the footpath of the said road i.e. Bhaktivedanta Swami Marg from Mithibai College, Gulmohar Road upto SBM Polytechnic College on Irla Road, JVPD Scheme, Mumbai. Further, a writ of mandamus is prayed for directing the Respondents - Municipal Corporation to remove the stalls of the hawkers. Further a relief is prayed for restraining the Municipal Corporation

from granting licenses/ permissions to carry out business on the said footpath.

13. There are number of affidavits filed on record of the Writ Petition. The Municipal Corporation filed an affidavit of Shri Mahendra Chandrakant Shirke, Senior Inspector (License), K/West ward dated 24 th March, 2011. In the said affidavit, he stated that from January, 2010 to March, 2011 the municipal officers have taken action on 47 occasions 9 of 70 10 wp-224.11, pil-36.10 against the unauthorised hawkers in the vicinity of the educational institutions of the first Petitioner. Reliance is placed on the photographs annexed to the affidavit. It is stated that the Juhu Police Station has been requested to carry out patrolling in the said area. It is pointed out that there are 26 stalls in the vicinity of the educational institutions out of which 4 were unauthorised. It is stated that all 4 stalls have been removed in March, 2011. In case of 2 other stalls, Suits are pending in the City Civil Court. It is pointed out that out of the remaining 20 stalls which are permitted by the Municipal Corporation, 5 are Handicapped Public Call Offices (H.P.C.O), 6 are Aarey/ Aarey Sarita stalls. It is stated that 2 stalls are Zunka Bhakar Centres, 4 other stalls have licenses under Section 394 of the Mumbai Municipal Corporation Act, 1888 (for short "MMC Act") and 3 stalls are holding licenses under Section 313A of the MMC Act. Relying upon the order dated 9 th December, 2003 of the Apex Court, it was stated in the affidavit that these stalls are allowed to continue in the Non-Hawking Zone as these stalls have been issued licenses prior to the order of the Apex Court. It is stated that an action has been initiated against those who have infringed conditions of license/permit. It is claimed that though a request was made by the Municipal Corporation to the Petitioners to submit a proposal for beautification of pavement opposite their Educational Institutions to ensure that there are no stalls erected, the 10 of 70 11 wp-224.11, pil-36.10 Petitioners have not responded. There is another affidavit jointly filed by Shri Umesh Chandrashekhar Bodkhe and Vijay Janardhan Gawde, who are the officers of the Mumbai Municipal Corporation. The said affidavit is dated 8th December, 2012. What is stated in the earlier affidavit of Shri Mahendra Shirke is repeated in the said affidavit. In addition, a chart giving details of the 26 stalls styled as the "Gulmohar Road stall inventory list in K/W ward" has been annexed. There is a further affidavit filed by Shri Ramesh Waman Pawar dated 26 th December, 2011 who is the Assistant Commissioner, K/West ward. Same officer Shri Ramesh Pawar filed further affidavit dated 20 th December, 2011. In the said affidavit, precautions taken by the Municipal Corporation for preventing illegal hawking have been set out. It is stated that a Municipal vehicle is being permanently deployed at the site since last four months from 10.00 am to 8.00 pm. In the said affidavit, it is stated that so far, 6 stalls out of 26 stalls in the vicinity of the educational institutions of the first Petitioner have been demolished.

It is further stated that three stalls in respect of which Suits are pending in the City Civil Court will be demolished after interim orders are vacated. It is stated that two Zunka Bhakar stalls will be shifted in three months as per the policy of the Municipal Corporation known as Annadata Ahar Kendra Yojana. The correspondence made with the police has been annexed. The order dated 30 th July, 2004 passed by the 11 of 70 12 wp-224.11, pil-36.10 Apex Court in Civil Appeal Nos.4156-4157 of 2002 has been annexed to the said affidavit which records that earlier order dated 9 th December, 2003 permitting handicapped persons who have been granted license for running the Public Call Offices (PCO)/Aarey Sarita stalls to continue to run those stalls even in non-hawking zones has been modified and it is provided that no further new licenses to be granted to any other persons including handicapped persons in the non-hawking zones. The order specifically provides that in PCO stalls

no other activity shall be permitted and in respect of the other stalls, only the activity as provided in the license will be permitted. Lastly, there is an affidavit dated 9 th July, 2015 filed by Shri Parag Masurkar, the Assistant Commissioner of the K/W ward setting out the status of the stalls. To the said affidavit, a chart giving details of the 26 stalls styled as the "Gulmohar Road stall inventory list in K/W ward" has been annexed. It records that 2 Zunka Bhakar stalls and six other stalls have been demolished. He stated that there were 5 HPCO which are permitted under Section 313A of the MMC Act. There were 3 squatter stalls permitted under Section 313A. It is pointed out that the holders of 7 Aarey Sarita stalls have filed suits in the City Civil Courts out of which one has been decreed and six other suits are pending in which there are interim orders. Out of the 3 remaining stalls, in case of 2 there are interim orders of the City Civil Court preventing the demolition. The third stall in front of a gate of an 12 of 70 13 wp-224.11, pil-36.10 educational institution of the first Petitioner was demolished, but it was illegality reconstructed. It is pointed out that the said stall was protected by an ad-interim order of this Court in an Appeal from Order.

14. There is an affidavit-in-reply filed by the sixth Respondent .

He claimed that he was running three Aarey Sarita stalls from the year 1986. He claimed that he has been paying ground rent either to BMC or to Aarey. He is running Aarey Sarita Private Stall No.7 in the name of Dhiraj Enterprises as well as Aarey Sarita Stall No.98 and 168 at N.S.

Road No.1 opposite N.M. College Vile Parle (West), Mumbai. He claimed that a license has been granted in respect of one stall of Dhiraj Enterprises under Section 394 of MMC Act. The said license was revoked. He stated that he has filed a Civil Suit in the City Civil Court for challenging action of revocation of the said license in respect of the stall of Dhiraj Enterprises. He claimed that from the other two stalls, he is selling products of Aarey dairy after obtaining municipal license from the years 1981 and 1985 respectively. He claimed that the said two stalls were constructed by the State of Maharashtra which were handed over to him. He stated that the stall of Dhiraj Enterprises has been constructed on the basis of the permission granted by the Government and therefore, he has been paying ground rent to the Government and to the Municipal Corporation. He claimed that all the three stalls are protected and the same are protected even under the National Policy for 13 of 70 14 wp-224.11, pil-36.10 Urban Street Vendors, 2009. He claimed that there are various authorised stalls in existence for last more than 30-35 years on Gulmohar Road which are protected.

15. Shri Shivaji Rama Gadkari - the Respondent No.7 on behalf of himself, Respondent Nos.8, 9 A to 9D has filed an affidavit. It is claimed that since the year 1999-2000, they are stall holders. It is pointed out that predecessor of Respondent Nos.9A to 9D have filed Civil Suits in the City Civil Court which have been decreed. It is contended that the said Respondents are selling Aarey dairy milk and other milk products in their respective stalls as per the permission granted by Aarey dairy on 2nd August, 2004. It is contended that the order passed in Writ Petition No.1799 of 2001 filed by the Petitioners is not binding on them as they were not impleaded as parties in the said Petition.

16. There is a Chamber Summons No.137 of 2011 for intervention filed by Aazad Hawkers' Union.

## SUBMISSIONS

17. The learned Senior Counsel representing the Petitioners in Writ Petition No.224 of 2011 has made detailed submissions. The second Petitioner appearing in person in PIL No.36 of 2010 has made detailed submissions.

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18. The learned Senior Counsel Shri Thorat appearing for the Petitioners in Writ Petition No.224 of 2011 has taken us through the various orders of this Court as well as the orders of the Apex Court passed from time to time in Civil Appeal Nos.4156-4157 of 2002 and other connected Petitions.

19. The learned Senior Counsel submitted that the order dated 21st January, 2002 passed by the Division Bench of this Court in Writ Petition No.1799 of 2001 has not been challenged by anyone and that the same has become final. He urged that the affected vendors who are occupying the footpaths in question have not challenged the said decision. Inviting our attention to the order dated 9 th December, 2003 passed in Civil Appeal Nos.4156-4157 of 2002 and other connected matters and in particular Condition No.3 incorporated in paragraph 7 thereof, he urged that the direction that there should be no hawking within 100 meters from any place of worship, holy shrine, educational institutions and hospitals has not been disturbed by the Apex Court in any of its subsequent orders including the final order dated 9th September, 2013. He, therefore, submitted that apart from the aforesaid order of this Court in Writ Petition No.1799 of 2001, there is a complete prohibition on hawking within 100 meters of any educational institution. He also invited our attention to the other directions contained in clause 14 of the Judgment and Order dated 9 th December, 15 of 70 16 wp-224.11, pil-36.10 2003 in the aforesaid Civil Appeals. He pointed out the direction contained in clause 5 of paragraph 14 which makes it clear that no cooking shall be permitted by the hawkers. He submitted that even the sale of cooked food, cut fruit and juices is subject to obtaining of permission/ license. He pointed out that photographs on record show that the hawkers are cooking food in many stalls . He invited our attention to the additional affidavit placed on record which shows that the access to the Colleges run by the first Petitioner is blocked by some of the stalls. He pointed out the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (for short "the Street Vendors Act"). He urged that the provisions of the Street Vendors Act do not permit hawking within 100 meters from the educational institutions. Moreover, it does not protect hawkers who are obstructing entry to the private properties. He urged that the order of this Court dated 21st January, 2002 in Writ Petition No.1799 of 2001 is not affected by the Street Vendors Act and therefore, the said order will have to be implemented notwithstanding the provisions of the Street Vendors Act. He urged that the provisions of the Street Vendors Act cannot be interpreted to mean that hawkers who are illegally carrying on the business should be protected. The learned Senior Counsel contended that even the definition of "street vendor" under the Street Vendors Act does not permit cooking of food by the vendors. He would, 16 of 70 17 wp-224.11, pil-36.10 therefore, urge that a direction be issued to the Municipal



Corporation to remove stalls put up by hawkers as prayed for in prayer clauses (a) and (b) of the Petition.

20. Shri Raiyani appearing in person in support of PIL No.36 of 2012 has invited our attention to the photographs on record. He pointed out that not only that illegal hawking is being permitted but all hawkers are cooking food. He invited our attention to several photographs on record of the Petition as well as photographs filed along with the written submissions. He pointed out that the hawkers have virtually converted their stalls into eateries. He pointed out that even the authorised hawkers have committed breaches of the terms and conditions on which hawking was permitted. He urged that as a result of eateries run by the hawkers, their customers indiscriminately park their vehicles near the stalls thereby causing traffic congestion. He submitted that the stand taken by the Municipal Corporation that most of the hawkers are legal is completely wrong. He pointed out that the Aarey Sarita stall run by Dhiraj Enterprises has been converted into a full-fledged eatery as seen from the photographs. He submitted that the municipal officers are encouraging illegality. He submitted that as a result of the illegal acts of hawkers occupying footpaths in and around Gulmohar road, the entire area has become congested and the members 17 of 70 18 wp-224.11, pil-36.10 of the public are suffering a great deal of inconvenience. He pointed out that it is impossible to walk on the footpaths in the said area which have been taken over by the hawkers. He urged that apart from all this, unhygienic food is sold in the stalls.

21. Shri S.K. Mali representing the 6 th Respondent in Writ Petition No.224 of 2011 has also made detailed submissions. He is also representing the Applicant in Chamber Summons No. 57 of 2015 in PIL No.36 of 2010. He pointed out that sixth Respondent in Writ Petition No.224 of 2011 Shri N.Taranath Shetty is running the following three stalls : (1) Juhu Friends Association (Aarey Sarita) stall No.98; (2) Dhiraj Enterprises (Aarey Sarita) stall No.7; (3) Vikas Mitra Mandal (Aarey Sarita) stall No.168 opposite Mithibai College Gulmohar Road No.1, Vile Parle (West). His submission is that the said Respondent in Writ Petition No.224 of 2011 is running the said stalls for 34 years and the stalls are protected. He pointed out that as far as the stall of the Dhiraj Enterprises is concerned, by letter dated 8th June, 1987, the Ward Officer permitted construction of Aarey Sarita stall. He pointed out that Juhu Friends Association Stall has been allowed under the letter dated 23rd November, 1989 by the Controller (Procurement and Distribution) Greater Bombay Meal Scheme for the sale of Aarey dairy products. He pointed out that Vikas Mitra Mandal Aarey Sarita stall was allowed 18 of 70 19 wp-224.11, pil-36.10 under the letter dated 3rd January, 1992 by the Controller (Procurement and Distribution) Greater Bombay Meal Scheme. He urged that the said Respondent is running the said stalls for selling only milk products. He submitted that the three stalls are protected and the protection continues even under the Streets Vendors Act. Shri M.M. Vashi, the learned Senior Counsel appearing for Respondent Nos.7 and 8 in Writ Petition No.224 of 2011 who are the Applicants in Chamber Summons No.23 of 2015 has made detailed submissions. He invited our attention to the orders passed by the Apex Court from time to time in Civil Nos.

4156-4157 of 2002 and urged that the stalls of the concerned Respondents have been duly protected. Without prejudice to the rights and contentions of the said Respondents, he urged that the said Respondents are willing to shift their stalls on the footpaths abutting educational institutions of the first Petitioner in Writ Petition No.224 of 2011 provided the said Respondents are accommodated

elsewhere by the Municipal Corporation by allotting pitches/stalls. Inviting our attention to the various provisions of the Street Vendors Act, he submitted that the said Act is brought on the statute book with the object of protecting the rights of urban vendors. Inviting our attention to the elaborate scheme provided under the said Act for protecting street vendors, he submitted that even the Rules have not been framed under the said Act and therefore, the Street Vending Committee is not 19 of 70 20 wp-224.11, pil-36.10 in existence. He pointed out that even the Town Vending Committee is not in existence and therefore, the survey as contemplated by Section 3 is not carried out. He urged that in view of Sub-section (3) of Section 3, unless a survey is conducted by the Town Vending Committee, no street vendor can be evicted or relocated. He urged that unless a certificate of vending is issued to all vendors, no one can be evicted or relocated. He invited our attention to Section 31 of the Street Vendors Act which provides that the Appropriate Government shall undertake promotional measures of making available credit insurance and other welfare schemes including social welfare security for street vendors. He pointed out that contents of the plan for street vendors are provided in the First Schedule. He pointed out the matters to be provided in the scheme for the street vendors which is required to be framed by the Appropriate Government have been incorporated in the Second Schedule. He pointed out the principles of relocation incorporated in Second Schedule. He urged that no street vendor can be disturbed now.

22. The learned AGP has placed on record a letter dated 4 th August, 2015 addressed to him by the Joint Secretary, Urban development Department. The letter records that a Committee has been constituted for framing of the Rules in accordance with Sub-section (1) of Section 36 of the Street Vendors Act. The letter records that a 20 of 70 21 wp-224.11, pil-36.10 scheme is required to be formulated under Section (1) of Section 38.

The letter records that the Committee was constituted to frame the scheme as well as the Rules. It is pointed out that the Committee has submitted draft Rules and draft scheme to the State Government which have been approved by the Department of Law and Justice subject to certain conditions. It is stated that the process of formulation of the scheme and framing of the Rules may require at least a period of four months. He stated that the Street Vendors Act has come into force with effect from 1st May 2014.

23. The learned Senior Counsel Shri Sakhare appearing for the Mumbai Municipal Corporation invited our attention to the affidavits filed by the Municipal officers in these two Petitions. He pointed out the charts annexed to the affidavits and in particular the affidavit dated 7 th July, 2015 filed in Writ Petition No.224 of 2011. He pointed out that the action taken as regards each illegal stall has been set out. He invited our attention to the chart annexed to the said affidavit. He pointed out that out of 26 stalls listed in the said chart, stalls at Sr. No.10, 11, 18, 19, 22, 23 and 25 have been demolished. He pointed out that in case of stalls at Sr. Nos.1, 2, 4, 7, 8, 9, 12, 15 and 21, Suits are pending in the City Civil Court in which prohibitory orders have been passed. He pointed out that certain stalls are protected by grant of license under Section 313A of the Mumbai Municipal Corporation Act. He pointed 21 of 70 22 wp-224.11, pil-36.10 out that stall at Sr. No.17 was shifted and existing structure of the stall was demolished on 12th January, 2015. Inviting our attention to the provisions of the Street Vendors Act he submitted that in view of the prohibition imposed by the provisions of the Street Vendors Act, no further action can be taken by the Municipal Corporation.

24. Shri Raiyani, the Petitioner appearing in person in the PIL submitted that whenever action is proposed to be taken by the Municipal Corporation against illegal hawkers, a precaution should be taken by filing caveats in the concerned Courts and by ensuring that the Suits and proceedings are contested. He pointed out the manner in which the Suits are progressing in the City Civil Court, he urged that the directions be given to dispose of the Suits in a time-bound program.

#### CONSIDERATION OF THE DECISIONS OF THE APEX COURT

25. We have carefully considered the submissions. Firstly, it will be necessary to make a reference to various orders passed by the Apex Court in the case of *Bombay Hawker's Union vs Bombay Municipal Corporation*<sup>2</sup> as well as in the case of *Maharashtra Ekta Hawkers Union and another vs. Municipal Corporation of Greater Mumbai and others* (Civil Appeal Nos.4156-4157 of 2002 and other connected matters).

2 (1985)3 SCC 582

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26. In the case of *Bombay Hawker's Union*, certain directions were issued by the Apex Court. In paragraph No.9, the Apex Court reproduced the guidelines suggested by the Commissioner of the Mumbai Municipal Corporation in his letter addressed to the Mayor which read thus:

"The following restrictions/conditions shall be imposed on such hawkers:

(i) They should do their hawking business only on an area of 1 Mt. × 1 Mt. on the footpath wherever it exists or on the extreme sides of the carriage way, in such a manner that the vehicular and pedestrian traffic is not obstructed and access to shops and residences is not blocked.

(ii) They should not put up any stall or place any table, stand or such other thing or erect any type of structure whatsoever on the pitch on which they are conducting their hawking business nor should they hawk on handcarts. They should also not put up any cloth, plastic sheet, chaddar, tarpaulin etc. as shelter.

(iii) They should not hawk within 100 metres from any place of worship, holy shrine, educational institution and general hospital and within the periphery of 150 metres from any Municipal or other market.

(iv) They should not create any noise for attracting the public/customers.

(v) They should not hawk any cooked food articles, cut fruits etc.

(vi) They should do their hawking business only between 7 a.m. and 9 p.m. on the day on which the prescribed daily fee is recovered. In other words, payment of the prescribed daily fee shall not be deemed to authorise them to do their hawking business beyond the aforesaid hours.

(vii) They should extend full co-operation to Municipal conservancy staff for cleaning the streets and footpaths and also to other Municipal staff for carrying out any Municipal work. They should also cooperate with other Government and public agencies such as the B.E.S.T. Undertaking, Bombay Telephones, B.S.E.S. Ltd., etc. for laying cables or for doing any repair/development work."

(Emphasis added) The Apex Court considered the suggestions and held thus:

"10. We have considered carefully the eight conditions mentioned above, subject to which the Commissioner proposes to grant licences to the hawkers. No exception can be taken to conditions (i), (ii), (iii), (iv), (vii) and

(viii) except that conditions (ii) and (viii) require a little clarification. The first part of condition (ii) beginning with the words "They should not put up any stall" and ending with the words "nor should they hawk on handcarts" may stand. But, the second part of that 24 of 70 25 wp-224.11, pil-36.10 condition should not be construed to mean that the hawkers will not be entitled even to protect their wares against the sun, rain, wind and so on, by spreading a cloth, plastic sheet, chaddar, tarpaulin etc. The object of that condition is to ensure that no construction is put up and no handcarts are used. Insofar as condition (viii) is concerned, all that it should be understood to mean is that the fact that a daily fee is charged will not confer upon the hawker the right to do his business at any particular place. That is because, the daily fee is a kind of licence fee to do business; it is not a fee charged for doing business at any particular place. The Commissioner will, therefore, be free to impose conditions (i), (ii), (iii), (iv), (vii) and (viii) while granting licences to the hawkers in the Hawking Zones, after making the necessary clarifications in conditions (ii) and (viii). Condition (v) is an unreasonable restriction on the hawkers' right to carry on their trade or business and must be dropped. There are several working families in Bombay, belonging to different strata of society, which depend upon the food supplied by hawkers. We do not see any valid reason why hawkers should not be allowed to sell cooked food, cut fruits and the like. That will, of course, not confer upon them the licence to sell adulterated or unhygienic food. They shall have to comply, like any other vendor of food, with the Municipal licensing regulations and the provisions of the Prevention of Food Adulteration Act, 1954. Lastly, the hours of business mentioned in condition (vi) should be from 7 a.m. to 10 p.m. instead 25 of 70 26 wp-224.11, pil-36.10 of 7 a.m, to 9 p.m. In cities like

Bombay, nights are quite young at 10 p.m. (emphasis added) Thus, the Apex Court did not permit cooking of food by the vendors and they were permitted to sell only the cooked food. The Apex Court also directed that no hawking shall be permissible within the distance of 100 meters from the educational institutions.

27. The Appeals before the Apex Court in the case of Maharashtra Ekta Hawkers Union arose out of the Judgments of this Court dated 5th July, 2000 and 3rd May, 2001. By the Judgment dated 5th July, 2000 this Court sanctioned a scheme for hawking and non-

hawking zones. There were various orders passed by the Apex Court from time to time. In the order dated 9th December, 2003, the Apex Court passed elaborate directions after taking into consideration the aforesaid directions issued in the case the Bombay Hawker's Union.

Paragraph 14 of the said Order reads thus :-

"14. The restrictions/conditions on which the hawkers shall do business are:

(1) An area of 1 m × 1 m on one side of the footpath wherever they exist or on an extreme side of the carriageway, in such a manner that the vehicular and pedestrian traffic is not obstructed and access to shops and residences is not blocked. We further clarify that even where hawking is permitted, it can only be on one side of the footpath or road and under no circumstances 26 of 70 27 wp-224.11, pil-36.10 on both sides of the footpaths or roads. We, however, clarify that aarey/saritastalls and sugarcane vendors would require and may be permitted an area of more than 1 m × 1 m but not more than 2 m × 1 m.

(2) Hawkers must not put up stalls or place any tables, stand or such other thing or erect any type of structure. They should also not use handcarts. However, they may protect their goods from the sun, rain or wind.

Obviously, this condition would not apply to aarey/saritastalls.

(3) There should be no hawking within 100 metres from any place of worship, holy shrine, educational institutions and hospitals or within 150 metres from any municipal or other markets or from any railway station. There should be no hawking on footbridges and overbridges. Further, certain areas may be required to be kept free of hawkers for security reasons.

However, outside places of worship hawkers can be permitted to sell items required by the devotees for offering to the deity or for placing in the place of worship e.g. flowers, sandalwood, candles, agarbattis, coconuts etc. (4) The hawkers must not create any noise or play any instrument or music for attracting the public or the customers.

(5) They can only sell cooked foods, cut fruits, juices and the like. We are unable to accept the submission that cooking should be permitted. We direct that no cooking of any nature whatsoever shall be permitted. Even where cooked food or cut fruits or the like are sold, the food must not be adulterated or unhygienic. All Municipal Licensing Regulations and the provisions of the Prevention of Food Adulteration Act must be complied with.

(6) Hawking must be only between 7.00 a.m. and 10.00 p.m.

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(7) Hawking will be on the basis of payment of a prescribed fee to be fixed by BMC. However, the payment of prescribed fee shall not be deemed to authorize the hawker to do his business beyond the prescribed hours and would not confer on the hawker the right to do business at any particular place.

(8) The hawkers must extend full cooperation to the municipal conservancy staff for cleaning the streets and footpaths and also to the other municipal staff for carrying on any municipal work. They must also cooperate with the other government and public agencies such as BEST Undertaking, Bombay Telephones, BSES Ltd. etc. if they require to lay any cable or any development work.

(9) No hawking would be permitted on any street which is less than 8 metres in width. Further, the hawkers also have to comply with the Development Control Rules, thus, there can be no hawking in areas which are exclusively residential and where trading and commercial activity is prohibited. Thus hawking cannot be permitted on roads and pavements which do not have a shopping line.

(10) BMC shall grant licences which will have photos of the hawkers on them. The licence must be displayed, at all times, by the hawkers on their person by clipping it on to their shirt or coat.

(11) Not more than one member of a family must be given a licence to hawk. For this purpose BMC will have to computerize its records.

(12) Vending of costly items e.g. electrical appliances, video and audio tapes and cassettes, cameras, phones etc. is to be prohibited. In the event of any hawker found to be selling such items his licence must be cancelled forthwith.

(13) In areas other than the non-hawking zones, licences must be granted to the hawkers to do their business on payment of the prescribed fee. The licences must be for a period of 1 year. That will be without prejudice to the 28 of 70 29 wp-224.11, pil-36.10 right of the Committee to extend the limits of the non- hawking zones in the interests of public health, sanitation, safety, public convenience and the like.

Hawking licences should not be refused in the hawking zones except for good reasons. The discretion not to grant a hawking licence in the hawking zone should be exercised reasonably and in public interest.

(14) In future, before making any alteration in the scheme, the Commissioner should place the matter before the Committee who shall take a decision after considering views of all concerned including the hawkers, the Commissioner of Police and members of the public or an association representing the public.

(15) It is expected that citizens and shopkeepers shall participate in keeping non-hawking zones/areas free from hawkers. They shall do so by bringing to the notice of the ward officer concerned the presence of a hawker in a non-hawking zone/area. The ward officer concerned shall take immediate steps to remove such a hawker. In case the ward officer takes no action, a written complaint may be filed by the citizen/shopkeeper to the Committee. The Committee shall look into the complaint and if found correct, the Committee will with the help of police remove the hawker. The officer in charge of the police station concerned is directed to give prompt and immediate assistance to the Committee. In the event of the Committee finding the complaint to be correct it shall so record. On the Committee so recording an adverse remark re failure to perform his duty will be entered in the confidential record of the ward officer concerned. If more than three such entries are found in the record of an officer it would be a ground for withholding promotion. If more than six such entries are found in the records of an officer it shall be a ground for termination of service. For the work of attending to such complaints BMC shall pay to the Chairman a fixed honorarium of Rs 10,000 p.m. (16) The scheme framed by us will have a binding effect on all concerned. Thus, apart from those to whom licences 29 of 70 30 wp-224.11, pil-36.10 will now be issued, no other person/body will have any right to squat or carry on any hawking or other business on the roads/streets. We direct that BMC shall bring this judgment to the notice of all courts in which matters are now pending. We are quite sure that the court(s) concerned shall then suitably vacate/modify its injunction/stay order."

(emphasis added)

28. In paragraphs 16 of the said Judgment and order, the Apex Court appointed a Committee consisting of a retired Judge of the Bombay City Civil Court and other members. The Committee was directed to make site visits and also hear all the parties concerned. The Committee was directed to decide whether a particular road or street

should be a hawking zone or not. The Committee was also directed to decide as to which hawkers can be accommodated in the hawkers' zone. There is a further order passed by the Apex Court on 30 th July, 2004 in the same Civil Appeals. Paragraphs 7 and 8 of the said order are material which read thus :-

"7. A fervent plea has been made to reconsider our order qua the licensed hawkers. Having heard the parties at great length, we feel that the decision on this aspect needs to be considered only after the position regarding total number of available sites becomes available. The question whether the licensed hawkers who have been operating for a long period of time must also stand in line with the others is for the present left open. The committees are directed to decide, on a priority basis, 30 of 70 31 wp-224.11, pil-36.10 whether the licensed hawkers who are in non-hawking zones can on a provisional basis and until further orders be allowed to continue in those zones. If the committees find that in a particular non-hawking zone the licensed hawkers cannot be allowed to continue they will, for the present, be shifted into a hawking zone. Clarified that this arrangement is provisional and will not create any right in the licensed hawkers. BMC to continue to accept the licence fees from the licensed hawkers with a note that the same will not in any manner confer any right, title or interest in favour of the hawkers as the same is subject to final orders of this Court.

8. We, however, modify our order dated 9-12-2003 [Maharashtra Ekta Hawkers Union vs. Municipal Corpn., Greater Mumbai, (2004) 1 SCC 625] by permitting handicapped persons who have been granted licence for running PCOs/Aarey/Sarita stalls to continue to run those stalls even in non-hawking zones. No further or new licences to be granted to any other person even a handicapped person in non-hawking zones. We, however, clarify that a licence to run PCO stalls would mean running a PCO stall. No other activity can be carried out from a PCO stall. Similarly, even in respect of other stalls, only the activity permitted by the licence can be carried on."

(emphasis added)

29. Thereafter, there is a further Judgment and Order passed by the Apex Court on 12th February, 2007. The Apex Court referred to 31 of 70 32 wp-224.11, pil-36.10 the National Policy on Urban Street Vendors , 2009. It records that the State Government has constituted a Committee for implementation of the said policy . Under the further order dated 30 th November, 2010 the Apex Court discontinued the three member Committee constituted earlier and modified the directions issued under the order dated 9 th December, 2003 in clause 15 of paragraph 14 thereof dealing with the grievances about the hawkers, encroachers and unauthorised parking by shop owners. Ultimately, the pending Appeals were disposed of by the Judgment and Order dated 9 th September, 2013 by the Apex Court.



The Apex Court referred to Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012 and observed that until the said Bill becomes law, it will be appropriate to direct that the National Policy on Urban Street Vendors, 2009 (for short "the Policy of 2009") shall be implemented throughout the country. In paragraph 16 of the said Judgment and Order, for facilitating the implementation of the Policy of 2009, various directions were issued. Paragraphs 16 and 17 of the said decision read thus :-

"16. For facilitating implementation of the 2009 Policy, we issue the following directions:

(i) Within one month from the date of receipt of copy of this order, the Chief Secretaries of the State Governments and Administrators of the Union Territories shall issue necessary instructions/ directions to the concerned department(s) to ensure that the Town 32 of 70 33 wp-224.11, pil-36.10 Vending Committee is constituted at city /town level in accordance with the provisions contained in the 2009 Policy. For the cities and towns having large municipal areas, more than one Town Vending Committee may be constituted.

(ii) Each Town Vending Committee shall consist of representatives of various organizations and street vendors / hawkers. 30% of the representatives from the category of street vendors/hawkers shall be women.

(iii) The representatives of various organizations and street vendors/ hawkers shall be chosen by the Town Vending Committee by adopting a fair and transparent mechanism.

(iv) The task of constituting the Town Vending Committees shall be completed within two months of the issue of instructions by the Chief Secretaries of the State and the Administrators of the Union Territories.

(v) The Town Vending Committees shall function strictly in accordance with the 2009 Policy and the decisions taken by it shall be notified in the print and electronic media within next one week.

(vi) The Town Vending Committees shall be free to divide the municipal areas in vending/hawking zones and sub-zones and for this purpose they may take 33 of 70 34 wp-224.11, pil-36.10 assistance of experts in the field. While undertaking this exercise, the Town Vending Committees constituted for the cities of Delhi and Mumbai shall take into consideration the work already undertaken by the municipal authorities in furtherance of the directions given by this Court. The municipal authorities shall also take action in terms of Paragraph 4.2(b) and (c).

(vii) All street vendors/hawkers shall be registered in accordance with paragraph 4.5.4 of the 2009 Policy.

Once registered, the street vendor/hawker, shall be entitled to operate in the area specified by the Town Vending Committee.

(viii) The process of registration must be completed by the municipal authorities across the country within four months of the receipt of the direction by the Chief Secretaries of the States and Administrators of the Union Territories.

(ix) The State Governments/Administration of the Union Territories and municipal and local authorities shall take all the steps necessary for achieving the objectives set out in the 2009 Policy.

(x) The Town Vending Committee shall meet every month and ensure implementation of the relevant provisions of the 2009 Policy and, in particular, paragraph 4.5.1

(b) and (c).

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(xi) Physically challenged who were allowed to operate

PCO's in terms of the judgment reported in (2009) 17 SCC 231 shall be allowed to continue to run their stalls and sell other goods because running of PCOs. is no longer viable. Those who were allowed to run Aarey/Sarita shall be allowed to continue to operate their stalls.

(xii) The State Governments, the Administration of the Union Territories and municipal authorities shall be free to amend the legislative provisions and/or delegated legislation to bring them in tune with the 2009 Policy. If there remains any conflict between the 2009 Policy and the municipal laws, insofar as they relate to street vendors/hawkers, then the 2009 Policy shall prevail.

(xiii) Henceforth, the parties shall be free to approach the jurisdictional High Courts for redressal of their grievance and the direction, if any, given by this Court in the earlier judgments / orders shall not impede disposal of the cases which may be filed by the aggrieved parties.

(xiv) The Chief Justices of the High Courts are requested to nominate a Bench to deal with the cases filed for implementation of the 2009 Policy and disputes arising out of its implementation. The concerned Bench shall regularly monitor implementation of the 2009 Policy 35 of 70 36 wp-224.11, pil-36.10 and the law which may be enacted

by the Parliament.

(xv) All the existing street vendors/hawkers operating across the country shall be allowed to operate till the exercise of registration and creation of vending / hawking zones is completed in terms of the 2009 Policy. Once that exercise is completed, they shall be entitled to operate only in accordance with the orders/directions of the concerned Town Vending Committee.

(xvi) The provisions of the 2009 Policy and the directions contained hereinabove shall apply to all the municipal areas in the country.

17. The aforesaid directions shall remain operative till an appropriate legislation is enacted by Parliament or any other competent legislature and is brought into force."

(Emphasis supplied) THE PROVISIONS OF THE STREET VENDORS ACT AND IMPACT THEREOF

30. We must note here that the provisions of the Street Vendors Act were brought into force with effect from 1st May, 2014 under the notification of the same date published in the Government of India Gazette of the same date by the Ministry of Housing and Urban Poverty 36 of 70 37 wp-224.11, pil-36.10 Alleviation of the Union of India. Therefore, in view of paragraph 17 of the Judgment and Order of the Apex Court dated 9th September, 2013, the directions issued in paragraph 16 thereof and even earlier directions issued from time to time in the said case of Maharashtra Ekta Hawkers Union ceased to apply from 1st May, 2014 and now what occupies the field from the said date is the Street Vendors Act.

31. Therefore, it will be necessary to make a reference to the provisions of the Street Vendors Act. The definitions in clauses (l), (m) and (n) of Section 2 are material which read thus :-

"(l) "street vendor" means a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to place and includes hawker, peddler, squatter and all other synonymous terms which may be local or region specific; and the words "street vending" with their grammatical variations and cognate expressions, shall be construed accordingly;

(m) "Town Vending Committee" means the body constituted by the appropriate Government under Section 22;

(n) "vending zone" means an area or a place or a location designated as such by the local authority, on the recommendations of the Town Vending Committee, for 37 of 70 38 wp-224.11, pil-36.10 the specific use by street vendors for street vending and includes footpath, side walk, pavement, embankment, portions of a street, waiting

area for public or any such place considered suitable for vending activities and providing services to the general public."

32. Sections 3 and 4 are also material which read thus :-

"3. Survey of street vendors and protection from eviction or relocation.--(1) The Town Vending Committee shall, within such period and in such manner as may be specified in the scheme, conduct a survey of all existing street vendors, within the area under its jurisdiction, and subsequent survey shall be carried out at least once in every five years.

(2) The Town Vending Committee shall ensure that all existing street vendors, identified in the survey, are accommodated in the vending zones subject to a norm conforming to two and half per cent of the population of the ward or zone or town or city, as the case may be, in accordance with the plan for street vending and the holding capacity of the vending zones.

(3) No street vendor shall be evicted or, as the case may be, relocated till the survey specified under sub-section (1) has been completed and the certificate of vending is issued to all street vendors.

4. Issue of certificate of vending.--(1) Every street vendor, identified under the survey carried out under sub-section (1) of Section 3, who has completed the age of fourteen years or such age as may be prescribed by the appropriate Government, shall be issued a certificate of vending by the Town Vending Committee, subject to such terms and conditions and within the period specified in the scheme including the restrictions specified in the plan for street vending:

Provided that a person, whether or not included under the survey under sub-section (1) of Section 3, who has been issued a certificate of vending before the commencement of this Act, whether known as licence or any other form of permission (whether as a stationary vendor or a mobile vendor or under any other category) shall be deemed to be a street vendor for that category for the period for which he has been issued such certificate of vending.

(2) Where, in the intervening period between two surveys, any person seeks to vend, the Town Vending Committee may grant a certificate of vending to such person, subject to the scheme, the plan for street vending and the holding capacity of the vending zones.

(3) Where the number of street vendors identified under sub-section (1) or the number of persons seeking to vend under sub-section (2) are more than the holding capacity of the vending zone and exceeds the number of persons to be accommodated

in that vending zone, the Town Vending Committee shall carry out a draw of lots for issuing the certificate of vending for that vending 39 of 70 40 wp-224.11, pil-36.10 zone and the remaining persons shall be accommodated in any adjoining vending zone to avoid relocation."

33. The rights and obligations of the Street Vendors are specified in Chapter III. Sections 12 to 16 forming part of Chapter III read thus :-

"12. Rights of street vendor.--(1) Every street vendor shall have the right to carry on the business of street vending activities in accordance with the terms and conditions mentioned in the certificate of vending.

(2) Notwithstanding anything contained in sub-section (1), where any area or space, as the case may be, has been earmarked as no-vending zone, no street vendor shall carry out any vending activities in that zone.

13. Right of street vendor for a new site or area on relocation.--Every street vendor, who possesses a certificate of vending, shall, in case of his relocation under Section 18, be entitled for new site or area, as the case may be, for carrying out his vending activities as may be determined by the local authority, in consultation with the Town Vending Committee.

14. Duty of street vendors.--Where a street vendor occupies space on a time sharing basis, he shall remove his goods and wares every day at the end of the time- sharing period allowed to him.

15. Maintenance of cleanliness and public hygiene.--

Every street vendor shall maintain cleanliness and public hygiene in the vending zones and the adjoining 40 of 70 41 wp-224.11, pil-36.10 areas.

16. Maintenance of civic amenities in vending zone in good condition.--Every street vendor shall maintain civic amenities and public property in the vending zone in good condition and not damage or destroy or cause any damage or destruction to the same."

34. Chapter IV deals with relocation and eviction of street vendors. Section 18 thereof is relevant which reads thus :

"18. Relocation or eviction of street vendors.--(1) The local authority may, on the recommendations of the Town Vending Committee, declare a zone or part of it to be a no-vending zone for any public purpose and relocate the street vendors vending in that area, in such manner as may be specified in the scheme.

(2) The local authority shall evict such street vendor whose certificate of vending has been cancelled under Section 10 or who does not have a certificate of vending and vends without such certificate, in such manner as may be specified in the scheme.

(3) No street vendor shall be relocated or evicted by the local authority from the place specified in the certificate of vending unless he has been given thirty days' notice for the same in such manner as may be specified in the scheme.

(4) A street vendor shall be relocated or evicted by the local authority physically in such manner as may be specified 41 of 70 42 wp-224.11, pil-36.10 in the scheme only after he had failed to vacate the place specified in the certificate of vending, after the expiry of the period specified in the notice.

(5) Every street vendor who fails to relocate or vacate the place specified in the certificate of vending, after the expiry of the period specified in the notice, shall be liable to pay for every day of such default, a penalty which may extend up to two hundred and fifty rupees, as may be determined by the local authority, but shall not be more than the value of goods seized."

35. Chapter VII deals with the constitution and functions of Town Vending Committee. Under Sub-section (1) of Section 22, it is an obligation of the Appropriate Government to establish a Town Vending Committee in each local authority. Clause (c) of Section 2 defines local authority which includes a Municipal Corporation or a Municipal Council or a Nagar Panchayat, by whatever name called, or the Cantonment Board, as the case may be.

36. Section 26 forming part of Chapter VII is material which reads thus :-

"26. Publication of street vendor's charter and data-base and carrying out of social audit.--(1) Every Town Vending Committee shall publish the street vendor's charter specifying therein the time within which the certificate of vending shall be issued to a street vendor 42 of 70 43 wp-224.11, pil-36.10 and the time within which such certificate of vending shall be renewed and other activities to be performed within the time limit specified therein.

(2) Every Town Vending Committee shall maintain up to date records of registered street vendors and street vendors to whom certificate of vending has been issued containing name of such street vendor, stall allotted to him, nature of business carried out by him, category of street vending and such other particulars which may be relevant to the street vendors, in such manner as may be prescribed.

(3) Every Town Vending Committee shall carry out social audit of its activities under the Act or the rules or the schemes made thereunder in such form and manner as may be specified in the scheme."

37. Section 33 of the Street Vendors Act is also material which gives overriding effect to the Act. Sections 36 and 38 are also material which read thus :-

"33. Act to have overriding effect.--The provisions of this Act shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act." "36. Power to make rules.--(1) The appropriate Government shall, within one year from the date of commencement of this Act, by notification, make rules 43 of 70 44 wp-224.11, pil-36.10 for carrying out the provisions of this Act. (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely--

- (a) the age for street vending under sub-section (1) of Section 4;
  - (b) the form, period and manner of filing appeal with the local authority under sub-section (1) of Section 11;
  - (c) the persons and the experience such person shall have under sub-section (1) of Section 20;
  - (d) the form and the manner of making application under sub-section (2) of Section 20;
  - (e) the manner of verification and enquiry on receipt of grievance or dispute, the time within which and the manner in which steps for redressal of grievances and resolution of disputes may be taken under sub-section (3) of Section 20;
  - (f) the form, the time within which and the manner in which an appeal may be filed under sub-section (4) of Section 20;
  - (g) the time within which and the manner in which an appeal shall be disposed of under sub-section (5) of Section 20;
  - (h) the term of, and the manner of constituting, the Town Vending Committee under sub-section (1) of Section 22;
- 44 of 70 45 wp-224.11, pil-36.10
- (i) the number of other members of the Town Vending Committee under clause (b) of sub-section (2) of Section 22;
  - (j) the manner of elections among street vendors under clause (d) of sub-section (2) of Section 22;

- (k) the allowances to Chairperson and members under sub-section (3) of Section 22;
- (l) the time and place for meeting, procedure for transaction of business at meetings and functions to be discharged by the Town Vending Committee under Section 23;
- (m) the manner and the purpose for which a person may be associated under sub-section (1) of Section 24;
- (n) the allowances to be paid to an associated person under sub-section (2) of Section 24;
- (o) the other employees of Town Vending Committee under Section 25;
- (p) the manner of maintaining up to date record of all street vendors under sub-section (2) of Section 26;
- (q) the returns to be furnished under Section 30;
- (r) the manner of publishing summary of scheme under sub-section (2) of Section 38.

(3) Every rule and scheme made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, 45 of 70 46 wp-224.11, pil-36.10 while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or scheme or both Houses agree that the rule or scheme should not be made, the rule or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or scheme.

(4) Every rule or scheme made by the State Government under this Act shall, as soon as may be after it is made, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House."

"38. Scheme for street vendors.--(1) For the purposes of this Act, the appropriate Government shall frame a scheme, within six months from the date of commencement of this Act, after due consultations with the local authority and the Town Vending Committee, by notification, which may specify all or any of the matters provided in the Second Schedule. (2) A summary of the scheme notified by the appropriate Government under sub-section (1) shall be published by the local authority in at least two local news papers in such manner as may be prescribed."



46 of 70 47 wp-224.11, pil-36.10

38. As it appears from Sub-section (1) of Section 36 the Appropriate Government which is the State Government in the present case was under an obligation to make Rules for carrying out the provisions of the Street Vendors Act within a period of one year from 1 st May, 2014. Clauses (h) and (i) of Sub-section (2) of Section 36 confer rule making power on the Appropriate Government to provide for the term and the manner of constituting the Town Vending Committees and the number of other members of the Town Vending Committee as provided in clause (d) of Sub-section (2) of Section 22. Hence, unless the Rules are framed, the Town Vending Committees cannot be constituted by the Appropriate Government. Section 38(1) enjoins the Appropriate Government to frame a scheme within a period of six months from the date of commencement of the Street Vendors Act providing for all or any of the matters set out in the Second Schedule.

Perusal of the Second Schedule shows that the scheme should provide for the manner of conducting survey, the period within which certificate of vending shall be issued to the Street Vendors etc. Section 21 is also material which reads thus :-

"21. Plan for street vending.--(1) Every local authority shall, in consultation with the planning authority and on the recommendations of the Town Vending Committee, once in every five years, prepare a plan to promote the vocation of street vendors covering the matters 47 of 70 48 wp-224.11, pil-36.10 contained in the First Schedule.

(2) The plan for street vending prepared by the local authority shall be submitted to the appropriate Government for approval and that Government shall, before notifying the plan, determine the norms applicable to the street vendors."

39. Thus, every local authority is under an obligation to prepare a plan to promote vocation of street vendors covering the matters contained in the First Schedule. Clause (1) of First Schedule contains mandatory requirements for the plan for street vending. First Schedule reads thus :-

"(1) The plan for street vending shall,--

(a) ensure that all existing street vendors identified in the survey, subject to a norm conforming to two and half per cent of the population of the ward, zone, town or city, as the case may be, are accommodated in the plan for street vending;

(b) ensure the right of commuters to move freely and use the roads without any impediment;

(c) ensure that the provision of space or area for street vending is reasonable and consistent with existing natural markets;

(d) take into account the civic facilities for appropriate use of identified spaces or areas as vending zones;

(e) promote convenient, efficient and cost effective distribution of goods and provision of services;

(f) such other matters as may be specified in the scheme to give effect to the plan for street vending. (2) The plan for street vending shall contain all of the 48 of 70 49 wp-224.11, pil-36.10 following matters, namely--

(a) determination of spatial planning norms for street vending;

(b) earmarking of space or area for vending zones;

(c) determination of vending zones as restriction-free-

vending zones, restricted vending zones and no- vending zones;

(d) making of spatial plans conducive and adequate for the prevalent number of street vendors in that city or town and also for the future growth, by adopting such norms as may be necessary;

(e) consequential changes needed in the existing master plan, development plan, zonal plan, layout plan and any other plan for accommodating street vendors in the designated vending zones.

(3) Declaration of no-vending zone shall be carried out by the plan for street vending, subject to the following principles, namely--

(a) any existing market, or a natural market as identified under the survey shall not be declared as a no-

vending zone;

(b) declaration of no-vending zone shall be done in a manner which displaces the minimum percentage of street vendors;

(c) overcrowding of any place shall not be a basis for declaring any area as a no-vending zone provided that restrictions may be placed on issuing certificate of vending in such areas to persons not identified as street vendors in the survey;

(d) sanitary concerns shall not be the basis for declaring any area as a no-vending zone unless such concerns can be solely attributed to street vendors and cannot be resolved through appropriate civic action by the local authority;

(e) till such time as the survey has not been carried out and the plan for street vending has not been formulated, no zone shall be declared as a no- vending zone."

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40. Sub-clause (e) of clause 3 of First Schedule clearly mandates that till such time the survey has not been carried out and the plan for street vending has not been formulated, no zone shall be declared as no-vending zone.

41. From the perusal of the provisions of the Street Vendors Act and considering the Scheme thereof it appears to be a complete Code which makes provisions for determining the rights and liabilities of Street Vendors within the meaning of clause (l) of Section 2.

42. After having perused the provisions of the Street Vendors Act, the mandatory steps which are required to be taken thereunder can be summarized as under :-

A] The Scheme for street vendors was required to be framed by the State Government in accordance with section 38 within a period of six months from 1 st May, 2014. The said scheme as specified in the Second Schedule must provide for the manner of conducting survey, the period within which certificates of vending shall be issued to the street vendors identified under the survey and the terms and conditions thereof. The scheme must also provide for the manner of evicting street 50 of 70 51 wp-224.11, pil-36.10 vendor, the procedure to be followed for evicting street vendor, form and manner of carrying out social audit as well as the provision for relocation of the street vendors carrying on business in non-vending zones in the vending zones.

B] Within one year from 1st May, 2014, the Rules were required to be framed in accordance with Sub-section (1) of Section 36.

C] After the Rules are made, under Sub-section (1) of Section 22, the Appropriate Government is required to constitute Town Vending Committees in each local authority.

D] As per Sub-section (1) of Section 3 Town Vending Committee is under an obligation to conduct a survey of existing street vendors within the area of its jurisdiction.

The survey is required to be carried out within such a period and in such a manner as may be provided in the scheme framed under Section 38.

E] After the survey is carried out, it is the obligation of the Town Vending Committee to ensure that all the existing street vendors identified in the survey are accommodated in vending zones.

F] Every street vendor identified in the survey carried out in

accordance with Sub-Section (1) of Section 3 is required to be issued a certificate of vending by the Town Vending Committee, subject to such terms and conditions and within the period specified in the scheme including the plan for street vending. A person whether or not included in the survey under Sub-section (1) of Section 3 who has been issued a certificate of vending before the commencement of the Street Vendors Act, whether known as license or any other form of permission shall be deemed to be a street vendor for that category for the period for which he has been issued such certificate of vending.

G] On the basis of the recommendations of the Town Vending Committee, every local authority is under an obligation to prepare a plan for street vending once in every five years which is required to be approved by the Appropriate Government.

43. Unfortunately, if the State Government is lagging far behind as far as the implementation of the Street Vendors Act is concerned. The letter dated 4<sup>th</sup> August, 2014 placed on record by the learned AGP addressed by the Joint Secretary of the Urban 52 of 70 53 wp-224.11, pil-36.10 Development Department shows that neither the scheme for street vendors as contemplated by Sub-section (1) of Section 38 has been formulated nor the Rules have been framed under Sub-section (1) of Section 36. The time for framing the scheme contemplated by Section 38 expired on 31<sup>st</sup> October, 2014 and the time provided in Sub-section (1) of Section 36 for framing the Rules expired on 31<sup>st</sup> April, 2014.

Thus, both the mandatory provisions have not been complied with by the State Government within the time specified therein. As the Rules have not been framed, Town Vending Committees have not been appointed. As Town Vending Committees have not been appointed, plan for street vending in terms of Sub-section (1) of Section 21 has not been prepared. As the Town Vending Committees have not been appointed, a survey under Sub-section (1) of Section 3 cannot be carried out and consequently certificates of vending cannot be issued.

Therefore, in view of Sub-section (3) of Section 3, no existing street vendor as on 1<sup>st</sup> May 2014 can be evicted or relocated. However, those Street Vendors who have illegally started operating after 1<sup>st</sup> May, 2014 are not protected by Sub-Section (3) of Section 3 and such Street Vendors will have to be evicted. The existing Street vendors cannot be evicted or relocated till the survey is carried out in accordance with Sub-section (1) of Section 3 and the certificates of vending are issued in terms of Sub-section (1) of Section 4. Considering the fact that the 53 of 70 54 wp-224.11, pil-36.10 object of the Street Vendors Act is to protect the Urban Street Vendors, Sub-section (3) of Section 3 will have to be held as mandatory.

44. We have already made a reference to the definition of "street vendor" in clause (1) of Section 2. "street vendor" means a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement or any other public place. Such a street vendor can operate from a temporary built up structure or by moving from place to place. Clause (1) of Section 2 clarifies that street vendor includes hawker, peddler, squatter and all other synonymous terms which may be local or region specific. There are two categories of persons who can be included in the category of street vendors. One category is of persons engaged in vending of articles, goods, wares, food items or merchandise of everyday use.

Second category of persons is offering services to the general public such as running telephone booths.

45. The question is what is the meaning of vending. This is in the context of the fact that the person engaged in vending of food items also becomes a street vendor. We have perused the dictionary meaning of the word vending in various dictionaries. In the Oxford English dictionary, the meaning of the verb "vend" is to offer small items for sale. In Merriam Webster dictionary, the meaning of the verb "vend" is to sell especially as a hawker or peddler. The meaning of the word "vending" in Cambridge dictionary is the selling of goods. Thus, the vending contemplates sale. By no stretch of imagination, the vending of food items will include preparation and/or cooking of food items. In our opinion a person who cooks or prepares food in the stall and sells it is not included in the definition of street vendor as the definition includes a person who is engaged in vending of articles, food items or a person who is offering services to general public. In fact all the directions issued by the Apex Court which we have considered earlier, provide that a hawker is not entitled to cook food at the place of hawking and sell it there. Thus, a street vendor can sell only ready food items, but he is not entitled to cook or make food items at the place of vending. Cooking of food by a street vendor at the place of vending is not at all contemplated by the Street Vendors Act. Thus, those Street Vendors who are cooking food at the place of vending will not be covered by the definition of the Street Vendors under the Street Vendors Act. Hence, such vendors are not entitled to the protection under the Street Vendors Act.

46. For preparation and cooking of food items for sale, licenses are required under various statutes. Therefore, persons engaged in cooking and/or preparation of food items in a street, lane, side walk, footpath, pavement or any other public place either from a temporary built structure or by moving from place to place have not been included in the definition of Street Vendor under clause (1) of Section 2 and therefore, such person is not protected under the Street Vendors Act.

Only those vendors who are otherwise covered by the definition of Street Vendors who are only selling ready food items will be protected under the Sub-section (3) of Section 3 and Sub-section (1) of Section 12 of the Street Vendors Act. However, if the persons who are cooking or preparing food are otherwise holding licenses required by various statutes and are otherwise lawfully carrying out business will be protected provided their structures are lawful. But they will not be protected under the Street Vendors Act unless and until they give up the activity of cooking. Therefore, action will

have to be initiated against the Street Vendors who are cooking food at the place of vending.

WHETHER THE PROVISIONS OF THE STREET VENDORS ACT OVERRIDE THE COURT ORDERS IN OPERATION AS ON 1ST MAY, 2014

47. Now, we turn to the argument canvassed in Writ Petition No.224 of 2011 based on the direction contained in the order of the Apex Court dated 9th December, 2003 which lays down that hawking is not permitted from any place of educational institutions or hospitals or place of worship within a distance of 100 meters. The contention is that 56 of 70 57 wp-224.11, pil-36.10 as the said direction has not been disturbed while passing final Judgment and Order dated 9th December, 2013, no hawking can be permitted within the said prohibited distance of 100 meters. All the orders which were passed from time to time in Civil Appeal Nos.4156-

4157 of 2002 merged into final Judgment and Order dated 9th September, 2013. Paragraph 17 of the final Judgment and Order dated 9th September, 2013 specifically provides that the directions contained in the said Judgment and Order shall remain operative only till the appropriate legislation is enacted by the competent legislature and is brought into force. Accordingly, the Street Vendors Act has been brought into force with effect from 1 st May, 2014. Therefore, the directions issued under the order dated 9 th September, 2013 including the directions issued from time to time during the pendency of the Appeals are not operative with effect from 1 st May, 2014. Therefore, we are unable to accept the contention that the condition imposed by the directions contained in clause 3 of paragraph 14 of the order dated 9 th December, 2003 continues to operate after the Street Vendors Act came into force. While implementing the provisions of the Street Vendors Act by prescribing no-vending zones such restrictions such as ban on vending within a distance of an educational institution etc. can be always imposed. All the existing street vendors who are covered by the definition under clause (1) of Section 2 of the Street Vendors Act are 57 of 70 58 wp-224.11, pil-36.10 entitled to protection under Sub-section (3) of Section 3 with effect from 1st May, 2014.

48. Another issue canvassed is regarding the enforceability of order dated 21st January, 2002 in Writ Petition No.1799 of 2001 which we have already quoted. We must make a reference to communication dated 18th June, 2000 issued by the Mumbai Municipal Corporation to the Secretary of the first Petitioner in Writ Petition No.224 of 2011. The said communication reads thus :-

"To, The Secretary, Shri Vile Parle Kelvani Mandal, Shri Bhaidas Manganlal Sabhagriha Bldg., N.S. Road No.1, J.V.P.D. Scheme, Vile Parle (W), Mumbai - 56.

Sub: Beautification of footpath by upper 3½ width and storm water drain as per the Area Plan along with Mithibai N.M.A.J. College of Commerce VIDCO S.B.M. Polyclinic and D.J. Road, Sanghvi College and Engineering on Irla Society Road, Bhaktivedanta Swami V.L. Mehta Road, Vile Parle (W).

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Sir, With reference to your letter dated 16 th June, 2000 in connection with the above mentioned subject. I am pleased to inform you that there is no objection to beauty the footpath and S W Drain in front of the above said Colleges of Shri Vile Parle (W) Kelvani Mandal subject to the following terms and conditions excluding 3 stalls to whom NOC's has been issued by M.C.G.M.

1. That you shall pay Re.1/- as compensation per annum and Re.2/- as a Security Deposit.

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wp-224.11, pil-36

2. That you shall not utilize the portion of footpath S.W.

Drain beautified for the purpose of canvassing your trade of business for advertisement. However, you may provide titles bearing your trade on mono letters of standard size.

3. That you shall hereby agree that the said footpath S.W.

Drain shall be made available for exclusion use of the pedestrians traffic.

4. That no hawkers on payment, dwelling shall be allowed to utilize this part of footpath/storm water drain.

5. That you shall beautify the footpath by using 2 1/2 width x W.W. Drain at your own cost by Flower beds as per this office plan attached.

6. That you shall reinstate the footpath/ S.W.D. to the original condition in case of any public utility dig up the above portion of footpath for doing any underground work.

7. That you shall submit undertaking on Rs.20/- Stamp Paper per proforma attached.

8. The above permission is granted upto one year on yearly renewal basis.

9. That you shall clean the storm water drain before starting the work of beautification, and to maintain regularly."

49. For enforcing the permission granted under the said communication dated 18th June, 2000 that

Writ Petition No.1799 of 2001 was filed by the first Petitioner in Writ Petition No.224 of 2011.

The direction of this Court under order dated 21 st January, 2002 to the Respondents including the Mumbai Municipal Corporation is to remove 59 of 70 60 wp-224.11, pil-36.10 hawkers on the footpaths near the premises of the first Petitioner's educational institutions. The said order is in respect of the beautification of the footpath which was permitted under communication dated 18th June, 2000. The question is whether effect can be given to the said order of this Court in the light of the provisions of the Street Vendors Act.

50. Section 33 gives overriding effect to the provisions of the Street Vendors Act over the provisions of any other law for the time being in force or any other instrument having effect by virtue of any other law. However, Section 33 does not override the orders of the Court which were passed earlier and therefore, the said orders can be implemented notwithstanding the applicability of the Act. Therefore, order dated 21st January, 2002 passed in Writ Petition No.1799 of 2001 can be always implemented subject to prohibitory orders passed by the City Civil Court or any other Court of law. The said order has become final as even the vendors who are fully aware of the order have not challenged the same.

51. We have perused the photographs on record in both the Petitions. From the photographs we find substance in the submissions of the Petitioners that in many stalls, food is being cooked and some of the 60 of 70 61 wp-224.11, pil-36.10 stalls have been virtually converted into eateries. Therefore, there is merit in the contention that such illegal activities are leading to traffic congestion and are causing inconvenience to the local residents. Some of these stalls have been protected during the pendency of following Suits in the City Civil Court :-

1. L.C. Suit No.2418 of 2002
2. L.C. Suit No.2472 of 2011
3. L.C. Suit No.2473 of 2011
4. L.C. Suit No.2462 of 2011
5. L.C. Suit No.2463 of 2011
6. L.C. Suit No.2471 of 2011
7. L.C. Suit No.1924 of 2012
8. L.C. Suit No.1420 of 2008
9. L.C. Suit No.666 of 2011
10. L.C. Suit No.2461 of 2011



52. In ordinary course, this Court is very slow in passing orders directing the Courts under the superintendence this Court to decide the matters within a time-bound limit. However, considering the gravity of situation, we propose to direct the concerned Courts to dispose of the Suit within a time-bound frame. Moreover, the traffic police will have to ensure that due to indiscriminate parking of vehicles by the customers of the stalls on the Gulmohar road and nearby streets, traffic congestion is not created.

53. As stated earlier, there is a complete failure on the part of the State Government to implement the provisions of the Street Vendors 61 of 70 62 wp-224.11, pil-36.10 Act. We, therefore, propose to direct the State Government to come out with the outer limit within which compliance will be made. Similarly, the Mumbai Municipal Corporation will have to come out with the statement regarding the outer limit within which a plan for street vending in terms of Sub-section (1) of Section 21 shall be prepared from the date on which Town Vending Committee is established for the said Corporation.

54. We have already held that persons who are cooking/ making food items in a street, lane, side walk, footpath, pavement or any other public place or private area either from a temporary built up structure or by moving from place to place, are not covered by the definition of "street vendor" under the Street Vendors Act. If such persons are carrying out business of making/preparing food items and selling, it is obvious that they are creating health hazards to the citizens.

Immediate action of evicting the persons who are carrying out such illegal acts of cooking and making food will have to be initiated by the Mumbai Municipal Corporation in accordance with law. As persons who are cooking or making food are not covered by the definition of street vendor, the protection under the Street Vendors Act is not available to such persons. After giving a notice, those Street Vendors who do not stop activity of cooking/ making food items at the place of their 62 of 70 63 wp-224.11, pil-36.10 business within specified time can be evicted by the Municipal Corporation by demolition of their stalls. Those street vendors who are cooking food are causing health hazards to the citizens. They create dirt and nuisance. However, if the persons who are cooking or preparing food are otherwise holding licenses required by various statutes and are otherwise lawfully carrying out business will be protected provided their structures are lawful.

55. There is a merit in the contention of the second Petitioner in PIL No.36 of 2010 that whenever an action is proposed to be taken against illegal vendors or illegal structures, it is necessary for the Municipal Corporation to file caveats in all concerned Courts and to further ensure that such legal proceedings are promptly and properly contested. The Municipal Corporation may consider establishing a tracking system of all such litigations dealing with illegal structures.

55A. Before we part with the judgment, we must quote what the Apex Court held in paragraph 8 of its decision in the case of Bombay Hawker's Union:

" .....the right conferred by Article 19(1)(g) of the Constitution to carry on any trade or business is subject to the provisions of clause (6) of that article, which provides that nothing in sub-clause (g) of Article 19(1) 63 of 70 64 wp-224.11, pil-36.10 shall effect

the operation of any existing law insofar as it imposes, or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause. The affidavits filed on behalf of the respondents show in unmistakable terms that the impugned provisions of the Bombay Municipal Corporation Act are in the nature of reasonable restrictions, in the interests of the general public, on the exercise of the right of hawkers to carry on their trade or business. No one has any right to do his or her trade or business so as to cause nuisance, annoyance or inconvenience to the other members of the public.

Public streets, by their very nomenclature and definition, are meant for the use of the general public. They are not laid to facilitate the carrying on of private trade or business. If hawkers were to be conceded the right claimed by them, they could hold the society to ransom by squatting on the centre of busy thoroughfares, thereby paralysing all civic life.

Indeed, that is what some of them have done in some parts of the city. They have made it impossible for the pedestrians to walk on footpaths or even on the streets properly so called."

(emphasis added)

56. Hence, we dispose of the Petitions by passing the following order :-

64 of 70 65 wp-224.11, pil-36.10 ORDER

(i) We hold that with effect from 1 st May, 2014 the directions issued by the Apex Court from time to time in Civil Appeal Nos.4156-4157 of 2002 (Maharashtra Ekta Hawkers Union and others vs. Municipal Corporation of Greater Mumbai and others) shall cease to apply and all existing street vendors as on 1 st May, 2014 who are covered by the definition of clause (1) of Section 2 of the Street Vendors Act are entitled to protection against eviction and relocation as provided under Sub-section (3) of Section 3 thereof. No Street Vendors who were carrying on business as on 1st May, 2014 and who are covered by the definition of Street Vendor under clause (1) of Section 2 shall be evicted or relocated by the Mumbai Municipal Corporation till the survey as specified under Sub-Section (1) of Section 3 of the Street vendors Act is carried out and the certificates of vending are issued to all Street Vendors in accordance with Sub-section (1) of Section 4 by the Town Vending Committee. This protection is applicable only to those Street Vendors who were carrying on 65 of 70 66 wp-224.11, pil-36.10 business as on 1st May 2014;

(ii) Those Street Vendors who have started street vending after the said date shall be evicted by the Mumbai Municipal Corporation in accordance with law. The action of eviction shall be initiated as expeditiously as possible;

(iii) We declare that a Street Vendor who is engaged in cooking or preparation of food items in a street, lane, side walk, footpath, pavement, public park or any other public place or private place either from a temporary built structure or by moving from place to place is not covered by the definition of street vendor under clause (l) of Section 2 of the Street Vendors Act and consequently such a vendor shall not be entitled to protection under Sub-section (3) of Section 3 so long as he is indulging in cooking or preparation of food items;

(iv) We, therefore, direct the Mumbai Municipal Corporation to initiate action of eviction in accordance with law against Street Vendors who are engaged in preparation/cooking of food items in street, lane, side walk, footpath, pavement, public 66 of 70 67 wp-224.11, pil-36.10 park or any other public place or private area either from a temporary built structure or by moving from place to place and who do not stop cooking or making food within the time specified in a notice served to them. Action of eviction shall be initiated by the Mumbai Municipal Corporation after following due process of law against such Street Vendors immediately on expiry of a period of two months from today;

(v) We direct the Municipal Corporation to ensure that when such action of eviction is proposed, caveats shall be filed in appropriate Courts and the Municipal Corporation shall take prompt steps to contest the proceeding if filed for challenging the action of eviction. We direct the Municipal Corporation to create a tracking system for all such litigations so that the same are promptly attended to;

(vi) We direct the Traffic Police to take necessary action in accordance with law for preventing indiscriminate parking of vehicles by the customers of the stalls on the said Gulmohar road and nearby streets. Sufficient Traffic Police shall be deployed on the said roads 67 of 70 68 wp-224.11, pil-36.10 during the rush hours;

(vii) We direct the Principal Secretary of the Urban Development Department of the State Government to file affidavit setting out the outer limit within which the following actions shall be completed by the State Government :-

(a) Formulation of the scheme for street vendors under Sub-section (1) of Section 38 of the Street Vendors Act;

(b) Framing of the Rules in accordance with Section 36 of the Street Vendors Act; and

(c) Constitution of Town Vending Committees in each local authority;

(viii) The aforesaid affidavit shall be filed within a period of one month from today. Before setting out the outer limit, the State Government shall make a note that the time provided to the State Government under the Street Vendors Act has expired long back;

(ix) We direct the Mumbai Municipal Corporation to file an affidavit setting out the outer limit within which the plan for street vending shall be prepared from the date on which the Town Vending Committee is 68 of 70 69 wp-224.11, pil-36.10 constituted for the said local authority. Such affidavit shall be filed within the period of six weeks from today. The compliance affidavit reporting compliance with the directions issued in terms of clauses (ii) and

(iv) shall be filed on or before 31st January, 2016;

(x) For considering the compliance affidavits to be filed by the State Government and the Municipal Corporation, the Petition shall be listed on 21 st December, 2015;

(xi) We direct the Mumbai Municipal Corporation to take steps for implementation of order dated 21 st January, 2002 in Writ Petition No.1799 of 2001 immediately on expiry of a period of two months from today.

Affidavit of compliance on this aspect shall be filed on or before 31st January, 2016;

(xii) The suits listed in paragraph 51 above pending in the City Civil Court at Dindoshi shall be disposed of as expeditiously as possible and in any event within a period of one year from. This direction be communicated by the Registrar (Judicial-I) to concerned Court;

(xiii) Rule issued in the above Petitions is made partly

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absolute on above terms. There will be no order as to costs;

(xiv) All Chamber Summons and Notice of Motion, if any, are disposed of accordingly.

( REVATI MOHITE DERE, J )

( A.S. OKA, J )

