

3rd May 2001

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

WRIT PETITION NO. 1722 OF 1998

Avinash Tambe & Ors.Petitioners

VERSUS

The Municipal Corporation of
Greater Mumbai & Ors.Respondents

Mr. I. N. Subramaniam i/by Mr. Kaushik Kothari
for Petitioners

Mr. R. M. Sawant, Government Pleader, for State

Mr. E. P. Bharucha with Mrs. N. V. Sanglikar for B. M. C.

Ms. Madhavi Divan i/by M/s. Thakore Jariwala

& Associates for Citizens Forum for Protection
of Public Property

Mr. Anand Grover for Interveners.

CORAM: B. P. SINGH, C. J., AND

SMT. RANJANA DESAI, J.

DATE : 3RD MAY, 2001

P.C. :-

1. By judgment and Order dated 5th July, 2000 passed in Writ Petition No. 1722 of 1998 and other connected matters, this Court approved the Scheme prepared by the Bombay Municipal Corporation

relating to creation of Hawking and Non-Hawking Zones, etc. The Scheme was framed in implementation of the directions of the Supreme Court as contained in the Judgment reported in Bombay Hawkers' Union and Ors. v. Bombay Municipal Corporation & Ors. [AIR 1985 S.C. 1206]. The Municipal Commissioner was directed to proceed to frame the final Scheme on the lines suggested in the judgment. Accordingly, a Scheme was framed which was ultimately approved by this Court with certain modifications. We are informed that some of the Petitioners have preferred Special Leave Petitions before the Supreme Court of India. We are not informed as to whether the Special Leave Petitions have since been disposed of.

2. Later, the Respondent-Municipal Corporation informed us that large number of representations had been made to the Corporation and large number of applications have been filed in this Court in connection with the implementation of the Scheme. In view of the large number of representations received, the Corporation was not in a position to take further steps for implementation of the Scheme, as it had become necessary to consider those representations. The Corporation informed this Court as is recorded in the Order dated October 4, 2000, that the representations deserved

consideration, and if the Corporation felt that there was need for modification of the Scheme, the Corporation will come to this Court seeking appropriate modifications. Thereafter, an affidavit was filed before this Court on behalf of the Bombay Municipal Corporation, which suggested certain modifications in the Scheme. On perusing the affidavit, we found that the modifications amounted to virtually substituting a new Scheme in place of the one approved by this Court in the batch of Writ Petitions. We, therefore, clarified to Counsel appearing on behalf of the Corporation that by modifications, the Court only meant such small changes here and there, which may be necessitated on the ground of compassion or for practical considerations. The Respondent-Corporation submitted before us that they will consider the representations, and thereafter come to us with concrete suggestions.

3. An affidavit has been filed before us affirmed by Bhaskar S.Gholap, Superintendent of Licences in Respondent No.1-Corporation. The affidavit states that all the representationists numbering about 740, and the Petitioners in the several Petitions filed before this Court, numbering about 40, were given opportunity of being heard, and

after considering their representations, the Corporation seeks the approval of the Court of the modifications now suggested.

4. It is stated that out of 187 roads declared as Hawking Zones, representations were received in respect of 81 roads. After considering the representations, the Respondent-Corporation proposes to delete 56 roads from the purview of the Hawking Zones, resulting in reduction of about 5830 pitches. The list of the 56 roads proposed to be included in the Non-Hawking Zone has been annexed as Exhibit 3.

None of the parties appearing before us objects to the aforesaid modification, and we, therefore, approve the modifications, and permit modification of the Scheme deleting 56 roads as contained in Exhibit 3 from the Hawking Zones.

5. The Respondent-Corporation has annexed Exhibit 4, showing the total number of licensed stall holders and the number of such licence holders who were not proposed to be shifted to the Hawking Zones. Counsel for the Corporation submitted that there are several categories, and this Court may

consider whether they should be shifted to the Hawking Zones, if they were presently operating in areas falling within Non-Hawking Zones.

6. So far as the first category is concerned, it relates to stalls numbering 3929. No particulars have been furnished, and, therefore, in the absence of particulars, we are not able to give any direction. We, therefore, direct the Corporation to furnish full particulars, whereafter we shall consider what orders should be passed.

7. The next category relates to Cobbler Pitches numbering 2439. The Corporation has proposed a modification to the effect that such cobbler pitches be not shifted to Non-Hawking Zones. Apart from cobbler pitches, there is reference to cobbler stalls numbering 419. We understand that cobbler pitches do not have stalls regularly constructed, whereas cobbler stalls have some sort of a construction, maybe of temporary nature. So far as the cobbler pitches are concerned, they cannot be permitted in Non-Hawking Zones. However, if there are cobbler stalls duly licensed which have been erected pursuant to regular permission granted by the Municipal Corporation, they may be permitted to continue even in Non-Hawking Zones.

8. The next category is Public Call Office Booths numbering 1564. Since this is a public utility service, there may be no objection to P.C.O.Booths continuing in Non-Hawking Zones, and we, therefore, permit P.C.O.Booths to remain in Non-Hawking Zones. There are 88 Aarey Sarita stalls, 140 stalls for handicapped and 10 Jai Jawan Stalls. There is no serious objection to these stalls continuing in Non-Hawking Zones, and we, therefore, permit the modification of the Scheme to permit these categories to continue their hawking operations in Non-Hawking Zones.

9. The last category is sugarcane crushers, numbering 192. We cannot permit sugarcane crushers to operate in Non-Hawking Zones. However, such of the licensed sugarcane crushers who operate from regularly constructed stalls which have been erected after seeking permission of the Bombay Municipal Corporation, may be permitted to continue in Non-Hawking Zones.

10. It is then stated that there are about 97 Municipal markets in the City of Mumbai, and out of these markets, 43 markets do not have hawkers conducting their trade in and around the markets.

However, the remaining 54 markets have hawkers conducting their trade on the roads leading to these markets. The Corporation has proposed to permit hawkers around these 54 markets to carry on their trade within a distance of 50 metres from the respective markets. We cannot permit this modification, because the Supreme Court has approved, in principle, that no hawking activity should be carried on within the periphery of 150 metres from any municipal or other markets [See AIR 1985 S.C. 1206, para. 10]. The proposal for such modification is, therefore, rejected.

11. The next proposal relates to hawking activity in the vicinity of railway stations. In the original Scheme as approved by this Court, a minimum distance of 250 metres from railway stations was treated as prohibited area for the hawkers, and roads situate within 250 metres of the railway stations were declared as Non-Hawking Zones. The Corporation has proposed that, as far as the railway stations are concerned, instead of fixing minimum distance by taking different railway stations into consideration, it is more practicable to take into consideration the approach roads, the vehicular and pedestrian traffic, etc., and it may be allowed to

prescribe the area which is to be kept free from hawkers. It has annexed Exhibit 6, a statement showing the extent to which the roads are proposed to be kept free from hawkers near each railway station of the City of Mumbai. We approve this proposal as detailed in Exhibit 6, subject to the condition that no hawking shall be permitted on such roads beyond the extent indicated in Exhibit 6, unless such roads beyond the extent indicated in Exhibit 6 for hawking, otherwise fall in Hawking Zone.

12. It is then suggested that instead of drawing lots to accommodate hawkers, the licences be granted on "First Come, First Served" basis. After some discussion, Counsel for the Corporation suggested that for the time being, they may be permitted to grant temporary licences to hawkers in the Hawking Zones on an experimental basis. It is only by experience that one can know how many hawkers can be conveniently accommodated, whereafter the matter may be considered further, and appropriate principle evolved for grant of hawking licences. The suggestion is practical, and we, therefore, permit the Corporation to grant temporary licences in Hawking Zones, and after seeing the working of the

Scheme for about two months, the matter may be reviewed. The temporary licences, if granted, should make it clear that it does not confer any right on the licensee to carry on his hawking business permanently in that locality, and that the grant of licence is temporary and subject to change pursuant to any order that this Court may pass in the light of the experience gained by grant of licences for a limited period on experimental basis.

13. We, therefore, grant the modifications to the extent indicated above. The Municipal Corporation shall now proceed to implement the Scheme.

CHIEF JUSTICE

SMT. RANJANA DESAI, J.