

ORD 1
30/5/14/04

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

2004
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Civil Appeal Nos. 4156-4157 of 2002

Maharashtra Ekta Hawkers Union & Anr.

Appellant (s)

VERSUS

Municipal Corporation, Greater Mumbai & Ors.

Respondent (s)

(WITH APPLN. (S) FOR DIRECTIONS AND INTERVENTION AND PERMISSION TO SUBMIT ADDITIONAL DOCUMENT(S) AND IMPEADMENT AND CLARIFICATION AND STAY AND FOR EXEMPTION FROM FILING O/T AND FOR PERMISSION TO FILE AFFIDAVIT)

I.A.NOS.50-51, 54-55, 58-59 (APPLICATION FOR DIRECTIONS), 52-53, 56-57 (APPLICATION FOR EXEMPTION FROM FILING O/T) AND I.A.NO.60-61 (APPLICATION FOR INTERVENTION)

WITH

C.A. Nos. 4158-4159/2002, C.A. Nos. 4161-4162/2002

C.A. Nos. 4163-4164/2002

C.A. No. 4160/2002

C.A. Nos. 4170-4171/2002,

C.A. Nos. 4167-4169/2002
(WITH APPLICATION FOR INTERVENTION)

C.A. Nos. 4165-4166/2002,

C.A. Nos. 4175-4176/2002
(WITH APPLN. (S) FOR PERMISSION TO FILE REJOINER AFFIDAVIT AND PERMISSION TO FILE LIST OF HAWKERS)

C.A. Nos. 4179-4180/2002

C.A. Nos. 4172-4174/2002,

COMMT.PET (C) NOS. 195-196/2001 IN C.A.NO.4175-4176/2002

C.A. No. 4178/2002, C.A. No. 4177/2002, C.A.NO.9661/2003,
C.A.NO.9662/2003

Certified to be true copy
[Signature]
Assistant Registrar (Judl.)
.....P.6/AB/-A.....
Supreme Court of India

C.A.NO.9663-9666/2003
 (WITH APPLN. (S) FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED
 JUDGMENT AND WITH PRAYER FOR INTERIM RELIEF AND OFFICE
 REPORT)

C.A.NO.9667/2003
 (WITH OFFICE REPORT)

CONMT.PET.(C) NO.456-458/2002 IN C.A.NO.4167-4169/2002

WITH

W.P.(C)NO.335/2004
 (WITH APPLN.(S) FOR DIRECTIONS AND OFFICE REPORT)

AND

W.P.(C) NO.337/2004
 WITH APPLN.(S) FOR DIRECTIONS)

Date : 30/07/2004 These appeals and writ petitions were called
 on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N.VARIAVA
 HON'BLE MR. JUSTICE H.K.SEMA

For Appellant (s)/
 Applicant (s)/
 Petitioner (s) in
 IA NO.28-29/04

Mr. Collin Gonsalves.Sr. Adv.
 Ms.Aparna Bhat, Adv.

Mr.P.Ramesh Kumar, Adv.

Mr.Sushil Kumar Jain,Adv.

Mr.A.P.Dhamija, Adv.

Mr.Punit Jain, Adv.

Mr.Ram Niwas, Adv.

Mr.L.P.Singh, Adv.

Mr.Sarad Singhania, Adv.

Mr.Venkateswara Rao Anumolu, Adv.

Mr.Sushil Karanjikar, Adv.

Mr.Harish N.Salve, Sr.Adv.

Mr.Anand Grover, Adv.

Ms.Firdaus Moosa, Adv.

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Mr.S.M.Yadav, Adv.

Mr.Navin Nath, Adv.

For the appellants in
C.A.No.4167-4169/02

Mr.Vijay Hansaria, Sr.Adv.
Mr.Jayesh K.U., Adv.
Mr.Sunil K.Jain, Adv.

For appellant in
C.A.No.9667/03

Mr. Vijay Kumar, Adv.
Mrs.Sangeeta Kumar, Adv.
Mr.Ashwani Garg, Adv.

For Petitioner in SLP(C)
No.9662/04

Mr.Abhay Thorat, Adv.

For Petitioners in
W.P.(C)No.335/04 &
337/04

Mr.Vinod A.Bobde, Sr.Adv.
Mr.S.G.Shirodkar, Adv.
Mr.Shivaji M.Jadhav, Adv.
Mr.Himanshu Gupta, Adv.
Mr.Brij Kishor Sah, Adv.
Ms.Neeta Karnik, Adv.

I.A.No.60-61/04

Mr.K.K.Singhvi, Sr.Adv.
Mr.Susheel Mahadeshwar, Adv.
Mr.Uday B.Dube, Adv.
Mr.Kuldeep Singh, Adv.
Mrs.Lakshmi Shastri, Adv.
Mr.Chierag M.Shroff, Adv.
Mr.M.N.Shroff, Adv.

For intervenors in I.A.No.
38-39,40-41/04

Mr.R.D.Rathore, Adv.
Mr.S.K.Suri, Adv.
Dr.Kailash Chand, Adv.

For intervenors in I.A.No.
36,38/04 in
C.A.No.4156-4157/02

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For Respondents/Intervenors

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Mr.Sandeep Narain,
Ms.Anjali Jha,
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For Intervenors

Mr.Senthil Jagadeesan, Adv.
Mr.Janshed Mistry, Adv.
Mr.V.Ramasubramanian, Adv.

For Thomas Cook India

Ms.Ruby Singh Ahuja, Adv.
Ms.Nandini Gore, Adv.
Ms.Seeza Sundd, Adv.

For intervenors

Mr. Shyam Divan, Adv.
Mr. Pradeep K. Bakshi, Adv.

Mr. R. D. Rathore,
Mr. Shiv Kr. Suri, Adv.
Dr. Kailash Chand, Adv.

For intervenors in I.A.No.42-
43 of 2004 in C.A.4156-57/02

Mr. Vijay Kumar, Adv.

For Jai Jawans

Mr. A. Sharan, Sr. Adv.

For Respondents

Mr. G. E. Vahanvati, Sol. Genl.
Mr. Bhimrao N. Naik, Sr. Adv.
Mr. Pallav Shishodia, Adv.
Mr. S. H. Ujjainwala, Adv.
Mrs. A. V. Patil, Adv.
Mr. D. N. Misra, Adv.

For Respondent UOI

Mr. P. P. Khurana, Sr. Adv.
Mr. A. K. Raina, Adv.
Mr. V. K. Varma, Adv.

UPON hearing counsel, the Court made the following

O R D E R

This Court had, on 9th December, 2003, framed a scheme and laid down guidelines on the basis of which hawking was to be permitted in the city of Mumbai. These matters were then kept last week in order to oversee implementation. When these matters were listed last week, we were informed that some of the licensed hawkers had obtained from the Bombay High Court Orders dated 16th April, 2004 and 23rd April, 2004 wherein the Bombay High Court purports to interpret our above mentioned Order. We do not intend to comment on the patently fallacious reasoning of the Bombay High Court. We clarify that Bombay High Court Orders shall no longer

ly. On a plain reading of our Order dated 9th December 2003 it is clear that the Bombay High Court has gone wrong.

30 July 2004

We were also informed that one other party had also obtained an order from some other Court in Mumbai. We, therefore, feel it necessary to clarify that this Court is framing a scheme for hawking. Thus only this Court will hereinafter deal with this aspect. No other Court shall either interpret Orders of this Court or pass any Orders contrary to the orders of this Court. If any clarifications are required they must be obtained from this Court. Also if any party feels aggrieved by the effect of an Order of this Court, then the remedy of that party will be to approach this Court for a clarification or variation.

It appears that the Committee, which had been established by our Order dated 9th December, 2003, has already received a very large number of applications. It, therefore, becomes necessary to appoint more Committees. We, therefore, appoint two more Committees. The procedure established by our aforementioned Order will apply in respect of these Committees also. The Chief Justice of the Bombay High Court shall nominate two other ex-Judges of the City Civil Court who will be assisted by the Officers of the Bombay Municipal Corporation as set out in our earlier order. All other modalities set out in our earlier order will apply to these Committees. The Committee already established will deal with Zones 1 and 2, one other Committee will deal with Zones 3 and 4 and the last Committee will deal with Zones 5 and 6. Applications already made to be segregated zone-wise and forwarded to the concerned Committee.

All unauthorized hawkers and hawkers other than the licensed hawkers must now be, in a phase-wise manner, removed from non-hawking zones. The Senior Police Officers of the Traffic Department are directed to render all assistance to the Bombay Municipal Corporation for such removal. A complaint is made that hawkers are not cooperating and not abiding by the decision of this Court. The Scheme has been framed keeping in mind the rights and needs of hawkers and balancing that with the rights of the public. It is clear that any person/hawker who chooses not to abide by the Scheme framed dis-entitles himself from being considered. If any hawker resists removal by physically obstructing, the Bombay Municipal Corporation to get the name and identity of that hawker and that hawker not to be allowed any space in future. Before this Court a number of Associations are appearing and are seeking to intervene. Each such Association shall file in this Court, and also give to the Bombay Municipal Corporation, a list of all its members with the address of each member. [The Association and each such member shall file an undertaking before this Court that they will cooperate with the Bombay Municipal Corporation in the implementation of the Scheme. Any Association or member who does not file list/undertaking not to be considered for allotment of space.]

We have heard parties at great length as to whether our Order dated 9th December, 2003 covered the licensed hawkers. There can be no doubt that our Order dated 9th December, 2003 also covered the licensed hawkers. Our Order dated 9th December, 2003 refers to licensed hawkers at a number of places. We have also noticed the provision made by the Bombay High Court, in the Scheme framed by it, for licenced hawkers. The Scheme

framed by us supercedes the Scheme framed by the Bombay High Court except to the extent it is upheld in our Order. The final Scheme framed by that Order does not contain any separate provision for licensed hawkers. This Court chose not to continue those provisions when it framed the Scheme. Our Order dated 9th December, 2003 categorically states as follows:

"The scheme framed by us will have a binding effect on all concerned. Thus apart from those to whom licenses 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 concerned Court/s shall then suitably vacate/modify its injunction/stay order."

In our view, the above paragraph is very clear and categorical. It leaves no room for doubt.

It is pointed out to us that the BMC is only allotting 17,000 pitches. However, Mr. Vahanvati, the learned Solicitor General, fairly states that 23,000 pitches would immediately be made available on the basis of the Order of this Court.

A fervent plea has been made to reconsider our Order qua the licensed hawkers. Having heard 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, 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 hawking zone. Clarified that this arrangement is provisional and will not create any right in the licensed hawkers. The BMC to continue to accept the license 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.

We, however, modify our Order dated 9th December, 2003 by permitting handicapped persons who have been granted license for running the PCOs/Aarey/Sarita stalls to continue to run those stalls even in non-hawking Zones. No further or new licenses to be granted to any other person even a handicapped person in non-hawking zones. We, however, clarify that a license to run the PCO stalls would mean running a PCO stall. No other activity can be carried out from the PCO stall. Similarly, even in respect of other stalls, only the activity permitted by the license can be carried on.

Mr. A. Sharan, learned senior counsel appearing for the Jai Jawans Association states that he has instructions from his clients that they will now abide by the Orders of this Court and will get the order of the High Court vacated within a period of four weeks from today. Thus they are also permitted to continue in non-hawking zones on the same basis.

We clarify that neither our Order dated 9th December, 2003 nor this Order shall affect parties, who prior to our Orders, had obtained in their favours an Order from any competent Court. Those Orders would continue to apply qua those persons only unless they are got vacated or are set aside.

The BMC is now directed to remove the hawkers from non-hawking zones in the phased manner indicated to this Court.

We are told that the BMC has decided not to evict hawkers' plazas. The Bombay Municipal Corporation is requested to reconsider its decision considering the acute problem.

The Committees to submit their report to us by 31st December, 2004.

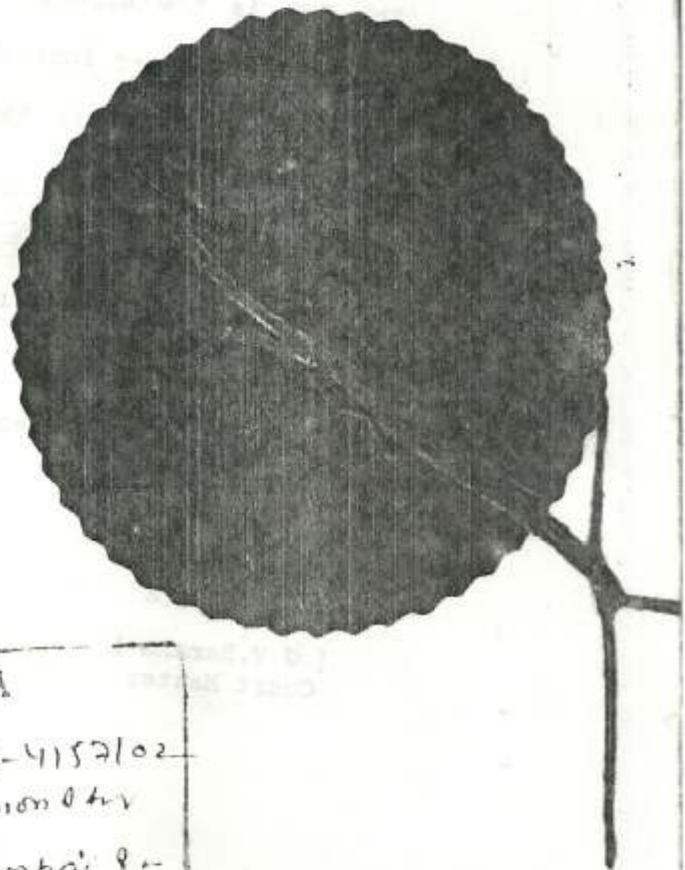
All matters to be listed on the last working Friday in January, 2005.

G.V. Ramana
3/8
[G.V. Ramana]
Court Master

Jasbir Singh 2/11/14
[Jasbir Singh]
Court Master

[Handwritten initials]

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SUPREME COURT OF INDIA
 Certified copy issued in
 Matter No. C.N.O. 4156-4157/02
M.F.H. Union & Ors
 vs.
 Brief Cause Title M.C.G. Mumbai & Ors

Serial No. 7 of 191
 Nos. 16870
 Cests. Nineteen
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 Section Officer
 Supreme Court of India
6/8/04

SEALED IN MY PRESENCE

[Signature]
6/8/04