

MANU/MH/0844/2000

Equivalent Citation: 2000(4)ALLMR34, 2001(1)BomCR118

IN THE HIGH COURT OF BOMBAY

Writ Petition Nos. 813 of 1995, 1730, 1732, 1741, 1756, 1752, 1758, 1770, 1826, 1838, 1842, 1875, 1885, 1890, 1891, 1894, 1897, 1900, 1902, 1903, 1905, 1968, 1994, 1996, 2001, 2031, 1983, 2099, 2102, 2324, 2314, 2357, 2170 and 2456 of 1998, 1821, 655, 30, 643, 765, 621, 971, 972, 1399, 1133, 1151, 1691, 2159, 2433, 2308, 2486, 1846, 1821, 2765 and 2627 of 1999 and 1722, 473 and 886 of 2000

Decided On: 05.07.2000

Appellants: **Avinash Tambe and Ors.**

Vs.

Respondent: **Municipal Corporation of Greater Mumbai and Ors.**

Hon'ble Judges/Coram:

B.P. Singh, C.J. and N.J. Pandya, J.

Counsels:

Anand Grover, Adv. for Intervener in W.P. No. 972/99

For Appellant/Petitioner/Plaintiff: T.N. Subramaniam and S.C. Gupte, Advs., i/b., Kaushik Kothari, in W.P. No. 1722/2000, H.S.S. Murthy, Adv. in W.P. for 1730/1998, Y.D. Mulani, Adv. in 1732/1998, S.C. Dharmadhikari and M.K. Nesari, Advs. in W.P. No. 1741, 1756/1998, Girish Desai and Geeta Shastri, Advs. in W.P. No. 1752/1998, Shekhar Naphade, Adv., i/b., Divekar & Co. in W.P. No. 1758 of 1998, S.C. Dharmadhikari, Adv., i/b., Shah, Dasai Doijode and Phatarphekar, Advs. in W.P. No. 1770/1998, M.P. Vashi, Adv., i/b., M.P. Vashi & Associates in 813/1995, A.C. Singh and S. Subramaniam Iyer, Advs. in W.P. No. 1821/1999, M.K. Nesari, Adv. in W.P. No. 1826/1998, Manojkumar Upadhyay, Adv. in 1838/1998, Shashipal Shankar, Adv. in 1842/1998, Virendra V. Tulzapurkar and Virag V. Tulzapurkar, Advs., i/b., Wadia Gandhi & Co. in W.P. No. 1875/1998, Bipin Joshi, Adv. in W.P. 1885 and 1897/1998, S.C. Naidu and M. Desai, Advs., i/b., C.R. Naidu, Adv. in 1890/1998, S.C. Naidu and K.A. Shah, Adv., i/b., A.G. Shah, Adv. in 1891/1998, K.D. Shah, Adv. in W.P. No. 1894/1998, T.N. Subramaniam, S.C. Gupte and Kaushik Kothari, Advs. in W.P. No. 1900/1998, A.D. Thorat, Adv. in W.P. No. 1905/1998, Usha J. Madbhavi and A.M. Talreja, Advs. in W.P. No. 1968/1998, V.R. Bhandare, Adv. in W.P. No. 1994/1998, F. Puniwala, Adv., i/b., Mehta & Girdharlal in W.P. No. 1996/1998, A.G. Damle, Adv. in W.P. No. 2001/1998, Clifford Martis, Adv. in W.P. No. 2031 of 1998, V.V. Joglekar and Manjari Shah, Advs., i/b., Sigantoria and Dalvi in W.P. No.1983/98, Sunil Karandikar, Adv. in W.P. No.2099/98, D.D. Maden and K.A. Shah, Advs., i/b., A.G. Shah, Adv. in W.P. No. 2102/98, Shyam A. Diwan, Madhavi Diwan and Zariwala, Advs., i/b., Thakore Zariwala & Co. in W.P. 2324/98, M.M. Vashi, Adv., i/b., M.P. Vashi & Associate in W.P. No. 655, 972, 2627/1999, D.N. Kawli and D.A. Barot, Adv. in W.P. No. 2314/1998, C.A. Deshmukh, Adv. in W.P. No. 2357/1998, M.M. Vashi, Adv., i/b., M.P. Vashi & Associates in W.P. No. 30 of 1999 S.S. Lanke and J.A. Udaipuri, Advs., i/b., Udaipuri & Co. in W.P. No. 2170/98, J.A. Udaipuri, Adv.,i/b., Udaipuri & Co. in W.P. No. 2456/98, E.P. Bharucha, Sr. C. and P.K. Vyas, Adv. in W.P. No. 643/99, V.R. Bhatia, Adv. in W.P. No. 765/99, Ram U. Singh and A.A. Mirza, Advs. in W.P. No. 621/99, R.S. Jaisingh and K.S. Shetty, Advs., i/b., Suresh M. Shah, Adv. in W.P. No. 971/99, K.D. Kagtala, Adv., i/b., R.K. Kakkara, Adv. in W.P. No.

1399/99, M.M. Vashi, Adv. in W.P. No. 1133/99, C.A. Deshmukh, Adv. in W.P. No. 1151/99, D.A. Dube, Adv. in W.P. No. 1691/99, Neeta Madhyan, Adv., i/b., S.M. Associates in W.P. No. 2159/99, P.M. Patel, Adv. in W.P. No. 2433/99, S.R. Mishra, Adv. in W.P. No. 2308/99, Girish Desai and Geeta Shastri, Advs. in W.P. No. 2486/99, Y.D. Mulani, Adv. in W.P. No. 1846/99, S.C. Naidu, Adv., i/b., C.R. Naidu & Co. in W.P. No. 1821/99, S.P. Srivastav, Adv. in W.P. No. 2765/99, S.A. Sawant, Adv. in W.P. No. 473/2000 and K.D. Kagtala and K.P. Agarwal, Advs. in W.P. No. 886/2000

For Respondents/Defendant: C.J. Sawant, Sr. C. and N.V. Sanglikar, Adv. in W.P. No. 1722/2000 and for respondent No. 1 in W.P. No. 1730/1998 and for respondent No. 2 and 3. in 1741/1998 and 1752/98, R.M. Sawant, Adv. for State in W.P. 1722/2000, for respondent No. 4 in 1732/1998 and for respondent Nos. 1 and 2. in W.P. No. 2102/98, R.J. Mane, in W.P. No. 1730 and 2031/1998, for respondent No. 2 in W.P. No. 1741 and 1756/1998 and for respondent Nos. 1 and 4 in W.P. No. 1821/1999 C.J. Sawant, Sr. C., N.V. Sanglikar, R.S. Pawar and A.R. Patil, Advs. for respondent Nos. 1 to 3 for respondent Nos. 2 and 3 in W.P. No. 1732/1998 and W.P. No. 1756/1998 and for respondent Nos. 1 and 2 in W.P. No. 1758, 1998 and 1994/1998, M.M. Vashi, Adv. in W.P. No. 1756/1998, R.M. Sawant, Adv. for respondent Nos. 1 and 4 in W.P. No. 1758/1998, for respondent No. 4 in W.P. No. 813/1995 and 1894/1998 and for respondent No. 3. in W.P. No. 1994/1998, C.J. Sawant, Sr. C. and N.V. Sanglikar, Advs. in W.P. 1770/1998, for respondent Nos. 1 and 2, K.R. Belosey, Adv. in W.P. No. 1770/1998 for respondent No. 3, C.J. Sawant, Sr. C. and N.V. Sanglikar, Adv. in W.P. No. 813/1995 for respondent Nos. 1 to 3 and C.J. Sawant, Sr. C. and N.V. Sanglikar, Adv. in W.P. No. 1821/1999 and for respondent Nos. 3 and 4 in 1890, 1891 and 2102/1998, R.J. Mane, Adv. in W.P. No. 1826/1998, for respondent Nos. 1 and 4 and for respondent Nos. 1 and 2 in 1890/1998, C.J. Sawant, Sr. C. and N.V. Sanglikar, Adv. in W.P. No. 1826, 2001/1998 for respondent Nos. 2 and 3, R.M. Sawant, Adv. for respondent No. 1 in 1838, 2001/1998 and for respondent No. 5. in 1875/1998, C.J. Sawant, Sr. C. and N.V. Sanglikar, Adv. in 1838/1998, for respondent No. 2 to 4 and for respondent/B.M.C. in 235, 1842, 1885, 1897, 1902 and 1903/1998 and 473/2000, C.J. Sawant Sr. C. and N.V. Sanglikar, Adv. for respondent Nos. 1 to 4 in 1875, 1900 and 2099/1998, R.M. Sawant, Adv. for respondent Nos. 1 and 2 in W.P. No. 1891/1998, C.J. Sawant, Sr. C., N.V. Sanglikar, R.S. Pawar and A.R. Patil, Advs. in W.P. No. 1894/1998, for respondent Nos. 1 to 3, K.R. Belosey, Adv. in W.P. No. 1905/1998, for respondent No. 1, C.J. Sawant, Sr.C. and N.V. Sanglikar, Adv. for respondent Nos. 4 and 5 in W.P. No. 1905/1998, R.M. Sawant, Adv. for respondent Nos. 1 and 2 in W.P. No. 1996/1998 and for respondent Nos. 2 and 3 in W.P. No. 2324/98, C.J. Sawant, Sr. C. and N.V. Sanglikar, Adv. for respondent Nos. 3 and 5 in W.P. No. 1996 and 2314/1998, C.J. Sawant, Sr. C. and N.V. Sanglikar, Adv. for respondent Nos. 1 in W.P. No. 2031 and 2324/1998 and 2627/99, R.J. Mahe, Adv. for respondent No. 2. in W.P. No. 2031 of 1998, C.J. Sawant, Sr. Counsel and N.V. Sanglikar, Adv. for respondent No. 1 in W.P. No. 2031 of 1998, R.M. Sawant, Adv. for respondent Nos. 1 and 4 in W.P. No. 1983/98, C.J. Sawant, Sr. C., N.V. Sanglikar, R.S. Pawar and A.R. Patil, Advs. for respondent Nos. 2 and 3 in W.P. No. 1983/98, C.J. Sawant, Sr. C., N.V. Sanglikar, R.S. Pawar and A.R. Patil, Advs. for respondent No. 1 in W.P. No. 655/1999, Umesh Shetty, Adv., i/b., Mulla & Mulla & Craigle Blunt & Caroe, for respondent No. 2 in W.P. No. 655/1999, A.L. Patki, Adv. for respondent Nos. 1, 2, 6 and 7 in W.P. No. 2314/1998, and for respondent Nos. 4 to 7 in W.P. No. 2170/98 and for respondent No. 1 in 2456/98, A.L. Patki, Adv. for respondent Nos. 3 to 5 in W.P. No. 643/99, A. Patki, Adv. for respondent No. 11 in W.P. No. 1133/99, R.J. Mane, Adv. for respondent No. 4 in W.P. No. 1691/99, R.J. Mane, Adv. for respondent Nos. 3 to 5 and 7 in W.P. No. 1846/99,

D.S. Sakhalkar, Adv. for respondent No. 6 in W.P. No. 1846/99, R.J. Mane, Adv. for respondent Nos. 4 and 5 in W.P. No. 1821/99, R.M. Sawant, Adv. for respondent No. 2 in W.P. No. 2627/99 and for respondent No. 1 in 886/2000, C.J. Sawant, Sr. C. and N.V. Sanglikar, Adv. in W.P. Nos. 1996 and 2314/1998

Case Note:

Constitution - hawkers - Articles 14, 19 and 226 of Constitution of India and Sections 313, 314 and 497 of Bombay Municipal Corporation Act - scheme imposing certain restrictions on hawking put up before Court for approval - hawking involves movement of traders - such movement may cause obstructions on frequently used roads - object of scheme is to maintain smooth flow of vehicular traffic on station roads - reasonable restrictions can be placed for larger public interest - scheme liable to be approved.

JUDGMENT

N.J. Pandya, J.

1. This public interest litigation has its genesis in a Supreme Court judgment reported in *Bombay Hawkers Union & others v. Bombay Municipal Corporation*, MANU/SC/0027/1985 : AIR1985SC1206 . The petitions before the Supreme Court were filed by the Bombay Hawkers Union & others. The main respondent was the Bombay Municipal Corporation, in those petitions (hereinafter referred to as the "Corporation"). The crux of the petitions was to the effect that the petitioners have a fundamental right to carry on trade, business or calling and that the respondent/Corporation through its officers was unlawfully interfering with that right.

2. The Corporation was invoking its power under sections 313, 313A, 314(3) and 497 of the Bombay Municipal Corporation Act, 1888 (hereinafter referred to as the "Corporation Act"). One of the prayers was to the effect that these provisions be declared as void as they confer upon the respondent/corporation an arbitrary and unguided power to refuse to grant or renew licences for hawking and to remove the goods without affording to the hawkers an opportunity to be heard.

3. So far as the main controversy pertaining to those provisions are concerned, in paragraph 8, at page 1208 of the judgment they are considered to be reasonable restrictions as contemplated by Clause (6) of Article 19. The right conferred by Article 19(1)(g) of the Constitution upon which, as per the said Clause (6), if there are reasonable restrictions the provisions containing those restrictions cannot be challenged. This aspect has been dealt with in para 8 of the said judgment, a portion of which is extracted hereinbelow :-

"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 thorough-fares, thereby paralysing all civil 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."

4 . However, both the parties before the Supreme Court had approached with a positive frame of mind and, therefore, a consensus had emerged. According to the consensus, the Commissioner of the Bombay Municipal Corporation had to frame a scheme for regulating the grant of licences to hawkers and for creating hawkers zones wherever necessary. This fact has been noted in para 5, page 1207 of the said judgment. Over and above the provisions referred to earlier, in the said Corporation Act, there is one more provision of section 61(O) taking care of removal of obstructions and projections in or upon streets, bridges and other public places. In fact, this is considered to be an obligatory duty of the Corporation. The letter written by the Commissioner to the Mayor of Bombay is quoted in extension on page 1209 where the possibility of removing the licensed hawkers to alternative sites has been indicated. However, the prime consideration has been the smooth flow of vehicular and pedestrians traffic as also the hawkers not causing nuisance. The said letter contains in it certain restrictions and conditions to be imposed upon the licensed hawkers and they are set out in para 9 at page 1210 of the said judgment, and for easy reference, they are quoted hereunder :-

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

(i) They should do their hawking business only on an area of 1Mt. X 1Mt. 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 places 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 7-00 a.m. and 9-00 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 co-operate 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.

(viii) Recovery of prescribed daily fee shall not bestow on them any right

whatsoever over the space used by them for hawking on the day on which the fee is recovered."

5. After considering all the eight conditions, in paragraph 10, Their Lordships of the Supreme Court have expressed their opinion with regard to each of them and have modified some of the conditions and, the final outcome is to be found in paragraph 11 which again is quoted for ready reference:---

"(a) As far as possible, there should be one Hawking Zone for every two contiguous municipal wards in Greater Bombay.

(b) The Non-Hawking Zones may be fixed by the Municipal Commissioner in his discretion, in consultation with the Bombay Municipal Corporation.

(c) In areas other than the Non-Hawking Zones, licenses should be granted to the hawkers to do their business on payment of the prescribed fee. That will be without prejudice to the right of the Commissioner to extend the limits of the Non-Hawking Zones in the interests of public health, sanitation, safety, public convenience and the like.

(d) 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 by the Commissioner reasonably and in public interest.

(e) In future, before making any alteration in the scheme, the Commissioner should take into confidence all public interests, including the hawkers, the Commissioner of Police and representative associations of the public such as the one which appeared before us. Hawkers have the right to do their business, subject to reasonable restrictions in the interests of the general public. The Police Commissioner is in the best position to speak about the law and order problem as well as the traffic hazards created by street trading. The general public has a stake in showing how and why the hawking trade should be regulated. The power conferred upon the Commissioner by section 313-A of the Act to grant licences to hawkers is in the nature of a discretion coupled with a duty. It is therefore essential that the said power should be exercised by consulting all concerned interests and guided by considerations of what is in the interests of the general public. The scheme framed by the Commissioner will have a binding effect on all concerned. The scheme shall be framed as far as possible, before October 31, 1985."

6. Apparently the Court expected in the said judgment of the scheme being framed as far as possible before October 31, 1985 but the same has not materialised. Almost after 15 years the matter is coming to a head, the scheme has been prepared and submitted to us by the Corporation for approval.

7. In view of the aforesaid pronouncement of the Supreme Court in respect of the Bombay Hawkers Union case, in order to evaluate the scheme for its approval, the thrusts of the Supreme Court order will have properly to be identified. While doing so, a judgment which was strongly relied on by Counsel appearing in support of the claim of the hawkers should now be referred to. It is A.I.R. 1989 S.C. 1988 Sodan Singh and etc. etc. v. New Delhi Municipal Committee and another. This judgment in no uncertain term reiterates the trading on pavement and street by hawkers in keeping with the fundamental right of carrying on business as envisaged by Article

19(1)(g). However, this very judgment also clearly says that it can be subject to the reasonable restrictions. It also says that the hawkers cannot insist that they should be allowed to conduct business on every street. It may be recalled that the said 1985 judgment of the Supreme Court is specifically related to the problems of the hawkers of the city. In our opinion, therefore, Sodan's case relied on by the hawkers will not bring about any substantial change in the directions given by the Supreme Court in Bombay Hawkers Union case as set out above.

8. The thrust of the Supreme Court order in Bombay Hawkers Union's case can be summarised as under :

(i) There should be clear-cut demarcation of Hawking Zones and Non-Hawking Zones;

(ii) While demarcating Non-Hawking Zones, there should be consultation;

(iii) In Hawking Zones, only licensed hawkers may be permitted. (iv) While doing so, right of the Commissioner to extend the limits of the Non Hawking Zones in the interests of public health, sanitation, safety, public convenience and the like are kept intact and the Corporation will work towards it.

(v) If the hawking licences are refused in hawking zones, it should be for good reasons. The discretion should be exercised by the Commissioner reasonably and in public interest :

(vi) Before making any alteration in the scheme in future, the Commissioner shall take into confidence all public interests, including the hawkers, the Commissioner of Police and representative associations of the public. It is highlighted that the Police Commissioner is in the best position to speak about the law and order problem as well as the traffic hazards created by street trading :

In the course of hearing, a grievance was made that though the scheme has been submitted before the Court, an opportunity has not been given and, more particularly, the hawkers were not heard. By the order dated 1st March, 2000, a committee was specially constituted to give hearing to the representatives of the hawkers. On completion of this exercise, on 22nd March, 2000,. the Committee submitted its report.

9. The aforesaid report is submitted along with an affidavit dated 22nd March, 2000 sworn by Shri Yashwant Malhari Sathe, Superintendent of Licence with the Municipal Corporation of Greater Mumbai. This officer has been dealing with the matters and all previous affidavits during the pendency of the scheme have been filed by him only. Right from the time of filing of the petition, this officer has been speaking on behalf of the Corporation, as can be seen from the first affidavit dated 7th November, 1998 followed by affidavits dated 9th July, 1999 and 4th September, 1999. For the first time, the scheme was placed for consideration of the Court along with the said affidavit dated 4th September, 1999.

10. This scheme was examined by the said Committee, and along with its Minutes, at page 89, accompanying the last affidavit dated 22nd March, 2000, situation as to the scheme is now crystalised.

11. Plots to be meant for Hawking Zones are in reality found not to be available. This

has been noted by the members of the Committee in their Minutes at page 91. Only 9 plots were found to be in possession of the Corporation. But they are not developed nor are they encroached upon. 7 more plots belonging to the Government are to be taken note of, 5 of which are found to be with MHADA. Only one plot is developed as Market by MHADA and remaining 6 plots are either with the State Government or with MHADA. They are yet to come in possession of the Corporation. According to the Development Plan, 6 market plots are reserved but they are belonging to Central Government and 5 plots of them are in possession of the Salt Commissioner. This is the background in which it has been noted that the provisional suggestion of putting up hawking zones between the two wards are not found to be practicable. Moreover, in the city of Mumbai, it has to be accepted that there is hardly any mark of division left between the two suburbs. One continuous settlement is found across the length and breadth of the city where suburbs are identified in different names on municipal record. By and large, one would hardly notice any indication whatsoever as to commencement of the suburbs and end of it. One may note it only if one finds time to take note of either sign boards on the shops or may be sign boards of the Municipal Corporation indicating that the particular place is falling in a particular suburb or ward office.

12. The Scheme in effect therefore has been taken wardwise and zonewise by the Corporation keeping in mind the development plan as also the Municipal Division into commercial and residential zones, particularly with regard to the roads and streets. Shop lines wherever prescribed are also taken note of, but in the scheme originally suggested, Hawking Zone is tried to be laid down or earmarked in places where Shop lines are not permitted. In order to identify the areas where Shop lines are prescribed or not, special care was taken in the Committee meeting.

13. As noted earlier in the affidavit dated 7th November, 1998 as well as 9th July, 1999, the aforesaid Mr. Sathe, Superintendent of Licence of the Municipal Corporation of Greater Mumbai, had placed wardwise and zonewise details of Hawking Zones. Subsequent changes were indicated in the affidavit dated 4th September, 1999.

14. Overall Scheme is in keeping with the aforesaid requirement of maintaining the smooth flow of vehicular and pedestrian traffic as also to avoid congestion on narrow streets and by-lanes. Accordingly, the station roads leading to suburban stations are to be cleared of the hawkers. This is required, obviously, because of majority of the populace of this city travels by the suburban railway and there is huge flow of the aforesaid traffic both to and fro the station.

15. Hawkers in the surroundings of religious places will be permitted to cater to the needs of a particular shrines with reference to the worshipers. Same is the position with regard to the educational institutions and their surroundings. Obviously, the narrow streets and by-lanes have not been declared as "Hawking Zones" and this is unexceptionable.

16. When all these affidavits and exercises of the Committee are taken into consideration, as can be expected on behalf of the hawkers, an attempt has been made to include as many places in the Hawking Zones, and on behalf of the petitioners, correspondingly, there has been an exercise to reduce the scope. However, all along the scheme keeping in mind the main requirement of convenience to the members of the public at large, maintenance of smooth flow of vehicular and pedestrian traffic and other relevant material were finally come out with the

suggestions with our approval subject to what we have said hereunder.

17. Before proceedings further, it may be noted that in the scheme, there is no indication as to what type of trade or goods that may be handled by these hawkers. When submissions were made on this point, we have tried to take care of it in our order.

18. In the course of hearing before us, at the bar, an attempt was made to spell out what is meant by "hawking" and hawkers". Dictionaries were referred to and recourse was taken to legal phrases and interpretation.

19. However, this being a matter before us, pursuant to the said 1985 Supreme Court judgment in the Bombay Hawkers Union's case, their Lordships have clearly set out the position of the city. They noted in the very opening line of the report that the hawkers sell everything under the sun, from hairpins to hot food and vegetables to video cassettes. They hawk their wares standing or squatting on public streets, which constitutes a serious impediment to the free movement of pedestrians and vehicular traffic.

20. Later on, it is further noted that some of the streets in Mumbai are so incredibly flooded with merchandise sold by hawkers that it is impossible for the pedestrians to walk on those streets. After noting the efforts of the Corporation, the reality has been recorded that these efforts of the Corporation have met with intense opposition from several quarters, not unexpectedly, even from those who wield considerable political influence. It is also noted that in the ultimate analysis, it is the ballot-box that matters. This tug of war or the game of hide and seek between the Corporation and Hawkers led recently to a serious incident and so on. Thus, their Lordships have highlighted the magnitude of the problem. The hawkers having given licences already, and depending upon the number of places available others may be given licences in future, the Corporation shall have to take care for, over and above, the law and order problem, smooth flow of traffic both pedestrian and vehicular as also convenience of the public at large. Subject to the very scheme and this judgment, the Corporation shall allow the hawkers in hawking zones only.

21. The scheme submitted by the Corporation makes it clear that, instead of there being one hawking zone for every two contiguous municipal wards in Greater Bombay, the hawkers are practically spread all over the city irrespective of the contiguity of wards. The concept of Hawking Zone envisaged in Clause (a) of para 11, as quoted above, in that as far as possible, there should be the effect of bringing all the hawkers at one place, known as "Hawking Zones", and thereby free from remaining areas of the wards from hawkers. Clause (c) of para 11 envisages the extension of Non-Hawking Zones but the scheme on the other hand talks of extending the limits of the Hawking Zones.

22. In this background, if we consider the scheme, firstly, in our opinion, we should be clear about the concept of what is meant by Hawking, and broadly speaking who can be called hawkers in the backdrop of the situation prevailing in this city and as noted in the "Hawkers" case by the Supreme Court. This can be done by contrasting them with traders who do their trading activities from a fixed place where the buyers would come and trading would take place.

23. In contrast with the aforesaid trading activities at a fixed place, instead of buyers coming to the place of trading, hawkers are supposed to carry their ware to the buyers which necessarily means that either they would move about or they would

easily be accessible to the potential buyers without the buyers being made to specially make a trip to the place of trading. The aforesaid distinction clearly indicates that the activities to be carried on by the hawkers have to keep the buyers in focus and satisfy their needs as to the sundry purchases with the least possible exertion on the part of the buyers. At the same time, smooth flow of both vehicular and pedestrian traffic has to be kept in mind in the context of the city that we are talking about.

24. It being an island city, it has more length than breadth and, therefore, the residences have also developed more vertically than horizontally. In other words, there is more and more pressures with possibility of increase on the limited space available. A look at the census figure of the period 1980 to 1990 in between which the Supreme Court judgment came to be delivered in the year 1985 would clearly show that the population has grown rapidly. Today, the estimated population is 14,000,000. In the year 1985 when the Supreme Court has given the judgment, the population of the Greater Mumbai was more than 82 lakhs, as per the Census of 1981. The trading activities, which the hawkers can be permitted to have, will necessarily be therefore confined to the areas where there may not be a possible obstruction to the smooth flow of vehicular and pedestrian traffic or if that is not possible because of the density of population, there should be least possible obstruction. Obviously, they cannot be allowed to have a fixed place otherwise there would be no distinction left between the hawkers as ordinarily understood and the traders as understood in common parlance.

25. In this background, if the scheme is examined to the extent to which all arterial roads, pavements, carriageway, as also approaches to the railway stations, places of worship and schools and also the roads with less than 8.5 metres, the declaration of Non-Hawking Zones cannot be faulted with.

26. Over and above, we should also bear in mind not only the provisions of the Corporation Act but also the Development Control Regulations, as applicable to the City. Necessarily, there cannot be any trading or commercial activities in the exclusive residential zones. Likewise, there cannot be any such activities on the roads and pavements which are not having shopping line.

27. We are conscious of the fact that on putting these limitations, we have drastically reduced the possible number of hawkers to be accommodated. After the said Supreme Court judgment in the Bombay Hawkers Union case, surveys were conducted and studies were carried out. Tata Institute of Social Sciences and other organisations including NGOS were involved in this exercise. About 15,000 licensed hawkers were found to be operating at the time of survey which was done somewhere in the year 1997. These licenced hawkers will, of course, have to be permitted to carry on hawking activity and after they being so accommodated, the others can be permitted to carry on that very activity in the available areas or zones. There being too many hawkers wanting to do so, necessarily method of draw of lots will have to be resorted to. For that purpose, the method followed by the MHADA in the allotment of plots can very well be taken as model with suitable variations required, if any. On the draw of lots, those who are selected, thereafter be processed for issuance of licence. Only licenced hawkers shall be permitted to ply their trade into hawking zones. It is obvious that unlicenced hawkers are not permitted at all.

28. It is quite clear that, if the balance is to be struck between the hawking activities on one side, which mainly are catering to the requirements of the citizens in general,

and smooth flow of traffic, both vehicular and pedestrian traffic on the other, the number of hawkers will have to be restricted in relation to the areas available. Obviously, therefore, one far fetched submission made on behalf of the hawkers to the effect that irrespective of the number of hawkers, they all should be permitted to carry on their activities all over the city cannot be entertained.

29. I Mt. X Mt. space in the said 1985 judgment of the Supreme Court has been kept in mind in the suggested scheme by the Corporation. However, if this space or pitch, as it is called, is allowed and a hawker is to carry on business at a fixed place, it will defeat the purpose for which the scheme is contemplated in the first instance. For that very reason, it cannot be said to be a heritable right or transferable right of anyone. By very nature again, in a given permissible Hawking Zones or Areas, the number of hawkers will have to be restricted keeping in mind the aforesaid primary requirements of smooth flow of traffic and reducing the chances of causing nuisance.

30. After issuing the licence and permitting the hawkers in a Hawking Zones, the Corporation may also think of introducing a rule of insisting upon the hawkers plying their trade on one side of the road only on the odd days i.e. 1, 3, 5 etc. if they are operating on eastern or northern pavement of the road depending upon the direction of the road or street, and on even days, i.e. 2, 4, 6, etc., they should operate on the western or southern pavement. This is left to be decided as also implemented by the Corporation.

31. As far as hawking of tradable articles are concerned, there cannot be much of a difficulty in regulating the same. However, the activity of selling food-stuff, if permitted, will create many problems including the health problem. Every one agrees that the food-stuff permitted to be sold will meet the requirements of Prevention of Food Adulteration Act, 1954 and other requirements imposed in that regard by the Corporation. However, by very nature, to monitor these activities in relation to the provisions and to implement them would be a stupendous task. More so when, as contemplated by this Scheme, such activity is not to be permitted at the site where the food stuff is being sold. We cannot shut our eyes to the fact that the food stuff permitted to be sold on the road side is obviously the fast food varieties, and if sold by bringing them cooked on various places where the hawkers stay at the source of production itself, those provisions referred to above virtually will become impossible to be implemented. The situation will further be complicated by the fact that as the prepared food is brought in almost all cases, it will be cold and, therefore, hardly palatable. The cold Omelet and Bread or cold Vada Pav or Upama or Idli can hardly be an idea of a snack of anyone while moving on the road. In our opinion, vending of food-stuff should not be permitted at all. Here we clarify that while referring to food stuff, we mean solid food, juices are not covered. However, at the same time, the very concept of the applicability to the solid food stuff will be applicable to the stalls selling cut fruits ready to be consumed on the spot. Thus, except for the fruit juices, food stuffs, whether cooked food or in form of cut fruit, shall not be permitted. As per the suggestions of the Corporation before the Supreme Court also, as per Item No. (v), the hawkers were not to hawk any cooked food articles, cut fruits etc.

32. Vending of costly articles, like Electrical Appliances, Video-tape or Audio-tape should also not be permitted. Audio cassettes vendors make noise pollution by actually playing the cassettes at the loudest possible volume to attract the potential buyers. Ordinarily, the hawkers are supposed to deal in articles which are known as "convenience shopping". By this, it generally means, those articles which may require for the convenience of the people and to meet with the immediate requirements.

Costly, Items, i.e., Audio & Video Cassettes can never be treated as such.

33. Now coming to all important question of implementing the scheme, the city is divided into 23 Wards which sprawls into 603 sq. kilometres approximately. No scheme will be of any use unless there is strict enforcement thereof. The corporation in its scheme has not come out with details in this regard. No doubt, Mr. C.J. Sawant, Senior Counsel, appearing on behalf of the Corporation has assured the Court that the scheme, as framed, or the one which would be modified by the Court, will certainly be enforced by the Corporation. We would, therefore, like to have details as to the enforcement machinery so that further directions in this regard can be issued, if necessary. In this regard, possible involvement of public spirited organisations and citizens will also be considered. We suggest the pattern followed by the Civil Defence Organisation which is already in place but lacking Government support. Areawise wardens were appointed to take care of streets, lanes and by lanes in every ward. If the city is to be kept clean and hawking activities to be restricted and smooth flow of vehicular and pedestrian traffic to be maintained, in our opinion, it has to be dealt with on a war footing. That model can be kept in mind while suggesting enforcement machinery.

34. In areas where there are arcaded pavement, the existing shopkeepers may participate in keeping the Non-hawking Zones free from hawkers, and for that purpose, either they should be ready to provide security or man power to enforce the scheme. The Corporation may also consider the question of fencing the area in front of the arcades and have entry from the sides as has been done in some part of the cities so that the hawkers are prevented from entering that particular part of the streets or roads if it is not a hawking zone. If the exercise of demolition is to be undertaken under this very scheme, a systematic demolition operation in phasewise manner can be worked out in different parts of the cities with reasonable assurance of keeping the areas free from hawkers thereby achieving the very purpose of the entire exercise. An idea of odd and even days, as set out in paragraph 28, and that of the arcaded pavements, referred to in this paragraph, are drawn from the suggestions of Mr. Jamshed Kanga, that appeared in the Bombay Times dated 20th May, 2000.

35. An idea of Hawking Plaza leading to a multi-storeyed construction does not appeal to us, because, it automatically makes the shopkeepers with possible heritable or transferable right in the space allotted in the plaza, but then again the very essence of hawking is lost, because, the customers are coming to the plaza and not the hawkers are going to the customers. All such intended schemes have been reduced into unintended use by unscrupulous people. It is not difficult to visualise that if at all hawking plaza is permitted, the hawkers will be tempted out of their plots or stalls on payment of fabulous amount and, in turn, the plots or stalls will be converted into shops. This distinct possibility of things happening this way because of the acute shortage of places in this island city cannot be ignored.

36. In view of the fact that the Corporation has to come out with its suggestions for implementation of the entire scheme as set out hereinabove, and also as may be suggested by the parties to the petition including the State of Maharashtra through the City Police of Bombay, the writ petition will have to be marked further for direction. However, so far as the scheme is concerned, it stands approved with the aforesaid modifications and directions.

37. The matter is kept on 2-8-2000.

38. After the judgment is pronounced, so far as the directions for recommendations are concerned, four weeks time is requested by Counsel appearing for the Bombay Municipal Corporation and accordingly that much time is granted. The matter to come up on board on 2nd August, 2000.

39. Our attention was drawn also to the fact that there might be some injunction in the related proceedings and, therefore, the Scheme approved by this judgment would have adverse effect on those proceedings. It is clarified that, subject to the orders passed in other related proceedings, the injunctions granted therein shall continue to operate.

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