

20th April 1999

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

WRIT PETITION NO. 1722 OF 1998

DISTRICT: MUMBAT

Avinash Tambe & Ors. Petitioners

VERSUS

The Municipal Corporation
of Greater Mumbai & Ors. Respondents

Mr. S.A. Divan with Mr. Gautam Patel
for Petitioners

Mr. M.B. Rao for Respondent No. 1.

CORAM: * Y.K. SABHARWAL, C.J. &

S. RADHAKRISHNAN, J.

DATE : 20TH APRIL, 1999.

P.C. :-

1. In this Petition, the action of the Municipal Corporation to declare certain roads and byelanes as Hawking Zones has been questioned. Various other Petitions, including Writ Petition (lodging) No. 2485 of 1998, claiming similar reliefs

are also pending and are before us. The Petitions filed by the Association of Hawkers are also part of this batch of Petitions.

2. Certain directions were issued by this Court on 30th November, 1998 in regard to the Scheme being prepared by the Municipal Corporation for Hawking and Non-hawking Zones, after considering the representations of all concerned. Mr. Rao, learned Counsel appearing for the Corporation, submits that the Scheme has been finalised by the Administration, but various steps are required to be taken and the Scheme is still to be placed before the Corporation. Technically, therefore, the Scheme is still at the draft and consideration stage. Mr. Rao submits that the Scheme will be finalised by the first week of July, 1999.

3. We make it clear that, in case the Scheme is not finalised within the time now being sought for, we will have to consider the suggestions about certain areas and roads being declared as Non-hawking or Hawking Zone. We may notice that, even during the course of hearing yesterday, forceful submission was made that certain areas and roads, as an interim measure, be directed to be

declared as Non-hawking Zones. We may further notice that, as far back as 22nd September, 1998, this Court had directed the Municipal Commissioner to finalise Hawking and Non-hawking Zones, after obtaining the approval of the Corporation, on or before 10th November, 1998.

4. Regarding the issue of 'Pawtis', learned Counsel for the Corporation submits that, after the Order dated 30th November, 1998 was passed by this Court, the Corporation had stopped issuing 'Pawtis' and collecting daily any amount on that account. In order to appreciate this Order, it would be useful to bear in mind the two earlier Orders passed on this aspect, one dated 30th November, 1998 itself and the other dated 31st July, 1998.

5. The question of recovery of daily charges and issue of 'Pawtis' was subject-matter of Writ Petition No.892 of 1998. The Division Bench made absolute the Rule in the said Writ Petition in terms of Judgment dated 31st July, 1998. It was observed that the Circular under which the daily charges were being collected was without any authority of law and it was held to be unenforceable. The Court directed the Corporation Authorities not to act on the

Circular to recover the charges from unauthorised hawkers. The Corporation was, however, given liberty to take such steps as admissible in law to control and regulate unauthorised hawking business in the City of Mumbai. We may clarify that it is not the case of any of the parties before us that such daily charges are being collected from authorised or licensed hawkers.

6. The aforesaid Judgment dated 31st July, 1998 has also been noticed in the Order dated 30th November, 1998. This Court specifically directed that in view of the Order dated 31st July, 1998, it is not possible to accept the contention of learned Counsel for the hawkers that the practice of issue of 'Pawtis' should be continued. In paragraph 4 of the orders/directions dated 30th November, 1998, it was specifically ordered that "the Municipal Commissioner would see that henceforth no fresh 'Pawtis' are issued or any amount collected from unauthorised or unlicensed hawkers under any head." Rightly understanding these directions, as already noticed, the collection of amount and issuing 'Pawtis' were stopped with effect from 2nd December, 1998. Paragraph 4 of the directions dated 30th November, 1998 further goes on to say that non-issue

of 'Pawtis' or payment by unauthorised or unlicensed hawkers would not affect the rights, if any, of the persons to whom 'Pawtis' were duly issued. It has also been further clarified in paragraph 7 that the Order should not be interpreted to mean that those persons who are hawking since years are to be removed on the basis of this Order (30th November, 1998). At the same time, the Court directed that it would be open to the Corporation to take appropriate action against unauthorised or unlicensed hawkers in accordance with law.

7. By Order dated 17th December, 1998 passed in Writ Petition (Lodging) No.2485 of 1998, while issuing the Rule, as an interim measure, it was observed that, in order to ensure that the revenue of the Corporation does not suffer, it would be open to the Corporation to collect daily charges by issue of 'Pawtis' as has been collected in the past. The Order dated 17th December, 1998 deserves to be clarified. It does not seem that the Order dated 31st July, 1998, referred to above, was brought to the notice of the Bench which passed the Order dated 17th December, 1998. In fact, in all material particulars, the Order dated 17th December, 1998 reiterates the earlier Order dated 30th November,

1998 passed in the aforesaid Writ Petition. It is further not clear whether the Bench was informed or not that, pursuant to the Order dated 30th November, 1998, the Corporation had already stopped issue of 'Pawtis' and collection of daily charges. The Order dated 30th November, 1998, to our mind, clearly prevents the Corporation from issuing 'Pawtis' even in favour of hawkers who have been hawking for a considerable period of time and in whose favour 'Pawtis' have been issued. The only protection to such persons in the Order dated 30th November, 1998 is that the non-issue of 'Pawtis' would not affect their rights, if any, on the basis of 'Pawtis' issued to them. It was specifically directed, as noticed earlier, that practice of issue of 'Pawtis' cannot be continued. This direction was also in consonance with the Judgment dated 31st July, 1998.

8. Under these circumstances, we clarify and vacate the Order dated 17th Decemebr, 1998 and direct that, henceforth, the Corporation shall not issue 'Pawtis' and make any daily collections and it will comply with the directions dated 31st July, 1998 and 30th November, 1998. We further reiterate that this Order would not mean that those persons, who are hawking since years, are to be removed on

the basis of this Order. It would, however be open to the Corporation to take appropriate action in accordance with law.

9. The Corporation is directed to file an affidavit placing on record the amount collected by it by issue of 'Pawtis' from 1st August, 1998 till date.

10. This and other connected Petitions would stand over for 12th July, 1999.

CHIEF JUSTICE

S. RADHAKRISHNAN, J.