

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (LODGING) NO.3431 OF 2022

The Bombay Mothers and Children ... Petitioner
Welfare Society

V/s.

The Commissioner and 2 Ors. ... Respondents

WITH
INTERIM APPLICATION (LODGING) NO.30819 OF 2022

Anil Govind Palav and 3 Ors. ... Petitioners

V/s.

Bombay Municipal Corporation and 3 ... Respondents
Ors.

Mr. Satish Borulkar a/w. Mr. Siddhesh Borulkar for the petitioner.

Mr. Anoop Patil a/w. Ms. Pooja Yadav I.by Mr. S.K. Sonawane for
MCGM.

CORAM : SUNIL B. SHUKRE &
M.W. CHANDWANI, J.J.

DATE : 1ST FEBRUARY 2023.

PC. :

. Heard.

2. Leave to file additional affidavit by the Corporation in the
office is granted.

3. It appears that there are 11 stall owners who have been granted permission by the Corporation to relocate themselves on a footpath situated right in front of the hospital run by the petitioner. According to learned counsel for the petitioner, there is a prohibition upon hawking within 100 metres from any hospital and also such places as temples, holy shrines or other places of worship and educational institutions and this restriction has been imposed by the Apex Court in the case of '*Maharashtra Ekta Hawkers Union and Another Vs. Municipal Corporation, Greater Mumbai and Others*'¹ which is popularly called as "2004 Ekta Judgment", which has been followed by Coordinate bench of this Court in Writ Petition No. 652 of 2017 decided on 01.11.2017.

3. We request learned counsel for the Corporation to seek instructions in the matter. At this Stage, learned counsel for the Corporation submits that "2004 Ekta Judgment" may not be applicable to the facts of the present case as the prohibition imposed thereunder is upon hawkers and not on the stall owners.

4. *Prima facie*, the submission of learned counsel for the Corporation appears to be right. But, we are of the view that a detailed examination of the facts of the present case and applicability of "2004 Ekta Judgment" to the facts of the present case would have to be undertaken by this Court and that will be possible only after this petition is heard on its own merits.

1 (2004) 1 SCC 624

5. Besides, there is an issue regarding proper use of the footpaths, which are meant for pedestrians and not for carrying on any business by anybody. If corporation permits any stall owner to erect the stall on the footpath, the corporation is *prima facie* acting against public interest as it causes obstructions to the pedestrians and resultantly the pedestrians would be forced to use the road for walking, thereby endangering their own lives and also lives of the occupants of the vehicles which are plying on the road. When footpaths are constructed, their purpose is to allow smooth passage of vehicles or traffic on the one hand and making available to the pedestrians a safe path to traverse distance by walking. This very purpose, in our opinion, is *prima facie* getting defeated at the hands of the Corporation by permitting erection of stalls right in the middle of the footpath.

5. We, therefore, request the learned counsel for the Corporation to reconsider the entire issue.

6. Ad interim relief passed earlier is continued until further orders.

(M.W. CHANDWANI, J)

(SUNIL B. SHUKRE, J)