

PETITIONER:
AHMEDABAD MUNICIPAL CORPORATION

Vs.

RESPONDENT:
DILBAGSINGH BALWANTSINGH AND ORS.

DATE OF JUDGMENT 24/03/1992

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
PANDIAN, S.R. (J)

CITATION:
1992 SCR (2) 322 1992 SCC Supl. (2) 630
JT 1992 (2) 363 1992 SCALE (1) 721

ACT:
Ahmedabad Municipal Corporation Act
Foot-path hawkers on public streets-Obstructions to traffic and other public amenities-Removal by Corporation under an approved scheme-Tactics of hawkers to thwart implementation of scheme-Interim injunction granted in their favour vacated.

HEADNOTE:
A mushroom growth of public street/footpath hawkers affected the traffic and other public amenities. The Corporation (appellant) decided to remove the obstructions created by such hawkers, after giving them enough opportunity.

The Corporation's action was challenged by way of writ petitions in the High Court. The High Court after hearing all the petitioners and following the judgments of this Court in *Bombay Hawkers Union v. Bombay Municipal Corporation*, [1985] 3 SCC 528 and *Olga Tellis v. Bombay Municipal Corporation*, [1985] 3 SCC 544 directed the Corporation to evolve a scheme having regard to the overall local conditions in the area.

Several special leave petitions were filed against the High Court's judgment and this Court remitted the matter back to the High Court for consideration of the scheme.

On 22.4.87 the High Court held that the scheme framed by the Corporation observed to be accepted subject to certain modifications.

When some of the aggrieved persons approached this Court, this Court permitted the hawkers and other similarly placed traders to place their difficulties before the High Court.

On 7.12.87 the High Court reconsidering the scheme, held that it was not necessary to further modify the scheme and ultimately the scheme was confirmed.

The respondents were small traders running their business in small

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shops. they were alleged to have made encroachments and were also covered by the scheme. They filed several suits and withdrew them after the High Court gave its final verdict.

On 1.10.88 the respondents filed a suit in the City Civil Court for directions and injunction. The appellant Corporation filed a reply to the notice of motion. The City Civil Court on 18.9.89 vacated the interim injunction.

The respondents thereupon filed an appeal in the High Court seeking interim injunction which was admitted granting interim injunction restraining the Corporation from removing or pulling down the business premises of the respondents.

The Corporation filed the present appeal questioning the High Court's order, contending that on earlier occasions the High Court dismissed the appeals and that the encroachment was causing nuisance and inconvenience to the public and the Corporation was finding it extremely difficult to implement the scheme which was considered and approved by the High Court in accordance with the directions given by this Court.

The respondents submitted that there was no objections to the implementation of the scheme; and that their shops did not in any way amount to encroachment and their locations did not cause any inconvenience or nuisance.

Allowing the appeal, this Court,

HELD: 1.01. Several associations of hawkers, traders and larrigallawalas filed writ petitions and the Supreme Court directed the High Court to consider the difficulties and finally the High Court approved the scheme subject to some modifications. [326C]

1.02. In the instant case notice was issued and this Court and also directed the appellant-Corporation to seek any other relief on the basis of the order of this Court in the S.L.P. (Civil) No.5465/89, and the S.L.P. was adjourned to 15.11.91 for enabling the Corporation to provide alternative suitable sites for the respondents according to the scheme. Thereafter the matter was adjourned several times at the request of the counsel. [326 F-G]

1.03. On 4.2.92 a rejoinder was filed in which it is stated that the

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Corporation had offered to the respondents hawking licenses etc. under the scheme but the respondents are not accepting the same and that the respondents were offered four alternative sites in Plot No. 174 of the Town Planning Scheme and that the same are suitable to carry on their businesses. [326 G-327A]

1.04. On 7.2.92 the respondents stated before this Court that they will choose any one of the alternative sites now offered by the appellant Corporation and move to the offered place. The matter was again adjourned. The respondents once again have come forward with the same kind of grievance and it is also submitted that they are not encroaching upon the public road and some other shops similarly situated are not being shifted and that the sites offered by the Corporation are not suitable. [327 A-B]

1.05. The respondents have been trying their best to thwart the implementation of the scheme which was examined by this Court as well as the High Court on more than one occasion. [327 B-C]

JUDGMENT:

Bombay Hawkers Union v. Bombay Municipal Corporation, [1985] 3 SCC 528; Olga Tellis v. Bombay municipal Corporation, [1985] 3 SCC 544; Baroda Municipal Corporation v. Sharmjivi Hathlary Association & Ors., SLP (CIVIL) No. 5465/89-D/-3.5. 1989, referred to.

&
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1117 of 1992.

From the Judgment and Order dated 27.9.1990 of the Gujarat High Court in Appeal from Order No. 393/89.

WITH

Civil Application No. 2857 of 1989.

T.U. Mehta, Kuldeep Parihar and H.S. Parihar for the Appellant.

Ramesh P. Bhatt, Ms. Tanuja Sheel, Ms. Priya Hingorani and M.N. Shroff for the Respondents.

The Judgment of Court was delivered by

K.JAYACHANDRA REDDY, J. Leave granted

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Ahmedabad Municipal Corporation ('Corporation' for short) is the appellant herein and the four respondents are small traders running their businesses in small shops. They claimed that their shops are 10 feet away from the public road. According to the appellant Corporation there was a mushroom growth of public street/footpath hawkers which affected the traffic and other public amenities and therefore the police/public Authorities within the Municipal Corporation area were constrained to remove the obstructions created by such hawkers after giving them enough opportunity. The said action of the police/public authorities had been challenged by way of a number of petitions in the High Court of Gujarat. The High Court after hearing all the petitioners and following the Judgments of this Court in *Bombay Hawkers Union v. Bombay Municipal Corporation*, [1985] 3 SCC 528 and *Olga Tellis v. Bombay Municipal Corporation*, [1985] 3 SCC 544 directed the Corporation to evolve a scheme having regard to the overall local conditions in the area. Questioning the above said order and judgment of the High Court several special leave petitions were filed and this Court remitted the matter back to the High Court of Gujarat for consideration of the scheme in the light of certain observations made therein. The High Court by its order dated 22.4.87 held that the scheme framed by the Corporation deserves to be accepted subject to certain modifications. Again some of the persons aggrieved by the said order of the High Court approached this Court and this Court permitted the hawkers and other similarly placed traders to place their difficulties before the High Court. The High Court reconsidered the scheme and by an order dated 7.12.87 held that it is not necessary to further modify the scheme and ultimately the scheme was confirmed. The respondents who are alleged to have made encroachments and who are also covered by the scheme filed several suits and withdrew them after the High Court gave its final verdict. The respondents again filed a suit on 1.10.88 in the City Civil Court, Ahmedabad for directions and injunction. The City Civil Court granted interim injunction. The appellant Corporation filed a reply to the notice of motion. The City Civil Court by its order dated 18.8.89 vacated the interim injunction. The respondents thereupon filed an appeal in the High Court and also sought interim injunction. The High Court admitted the appeal and granted interim injunction restraining the Corporation from removing or pulling down the business premises of the respondents. Questioning the same the Corporation has filed the present appeal.

It was contended that on earlier occasions the High Court dismissed

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the appeals and that the encroachment is causing nuisance

and inconvenience to the public and the appellant Corporation is finding it extremely difficult to implement the scheme which has been considered and approved by the High Court in accordance with the directions given by this Court. Learned counsel for the respondents submitted that there is no objection to the implementation of the scheme. But so far as the respondents' shops are concerned, it was submitted that they do not in any way amount to encroachment and their locations do not cause any inconvenience or nuisance.

As already mentioned several associations of hawkers, traders and larri-gallawalas filed writ petitions and the Supreme Court directed the High Court to consider the difficulties and finally as stated above the High Court approved the scheme subject to some modifications. In a similar matter which was the subject matter of S.L.P.(Civil) No. 5465/89 - Baroda Municipal Corporation v. Sharmjivi Hathlary Association & Ors. This Court by its order dated 3.5.89 observed thus :

"We are of the view that it was an attempt to thwart the Scheme by approaching the Civil Court. It is an abuse of process of the Court and gives rise to a situation where contempt action should lie. We, however, do not propose to take such action, but consider it very appropriate in the interest of justice to direct dismissal of the suit itself. By this order of ours, the said suit being No. 1761 of 1985 in the Court of 6th Joint Civil Judge, Sr. Div., Vadodara, shall stand dismissed and all interlocutory orders made therein shall stand dismissed."

However, in the instant case notice was issued and this Court also directed the appellant Corporation to seek any other relief on the basis of the order of this Court in the above S.L.P. (Civil) no. 5465/89. By an order dated 13.9.91 the S.L.P. was adjourned to 15.11.91 for enabling the Corporation to provide alternative suitable sites for the respondents according to the scheme. Thereafter the matter was adjourned several times at the request of the counsel. Meanwhile on 4.2.92 a rejoinder was filed in which it is stated that the Corporation had offered to the respondents hawking licenses etc. under the scheme but the respondents are not accepting the same. It is also stated therein that the respondents were offered four alternative sites in plot No. 174 of the Town Planning scheme and that the

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same are suitable to carry on their businesses. On 7.2.92 learned counsel appearing for the respondents stated before this Court that they will choose any one of the alternative sites now offered by the appellant Corporation and move to the offered place. The matter was again adjourned. The respondents once again have come forward with the same kind of grievance and it is also submitted that they are not encroaching upon the public road and some other shops similarly situated are not being shifted and that the sites offered by the Corporation are not suitable. We have heard both the parties at length and we are satisfied that the respondents have been trying their best to thwart the implementation of the scheme which was examined by this Court as well as the High Court on more than one occasion. Therefore we allow this appeal with costs, set aside the order of the High Court in Civil Application No. 2857/89 in Appeal from Order No. 393/89 dated 27.9.90 and the interim injunction granted by the High Court stands vacated. We confirm the order of the City Civil Court dated 18.9.89 vacating the injunction. Consequently Appeal from Order No. 393/89 pending in the High Court stands dismissed.

V.P.R.

Appeal allowed.
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JUDIS