

IN THE HIGH COURT JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

D.B. CIVIL MISC. (STAY) APPLICATION NO. OF 2013

IN

D.B. WRIT PETITION (PIL) NO. 6623 OF 2012

1. **Centre for Civil Society**, New Delhi, a Trust registered under the Indian Trusts Act, 1882 having its registered office at B-12, Kailash Colony, New Delhi – 110016, operating from A-69, Hauz Khas, New Delhi – 110016, through its Senior Manager, Skills and Livelihood, Smt. Subha Duraiswamy.
2. **Centre for Policy Solutions**, Jaipur, a Society registered under the Registration of Societies Act, 1860 having its registered office at F-36, Alankar Plaza, Central Spine, Vidyadhar Nagar, Jaipur – 302023, Rajasthan, through its President, Mr. Sanjay Garg,
3. **Heritage City Thadi-Thela Union**, Jaipur, a Trade Union registered under the Trade Unions Act, 1926 having its registered head office at House No. E-402, Vaishali Nagar, Jaipur, Rajasthan through its President Mr. Banwari Lal Sharma

....Petitioners

V E R S U S

1. **Jaipur Municipal Corporation**, through its CEO Mr. Loknath Soni, having office at Pandit Deendayal Upadhyay Parisar, Lal Kothi Tonk Road, Jaipur, Rajasthan.
2. **State of Rajasthan**, through its Secretary, Department of Urban Development and Housing and Local Self Government, Secretariat, Jaipur, Rajasthan.
3. **Jaipur Development Authority**, through its Commissioner, having office at Indira Circle, Jawahar Lal Nehru Marg, Jaipur.

....Respondents

STAY APPLICATION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

TO,

HON'BLE THE CHIEF JUSTICE SHRI ARUN KUMAR
AND HIS OTHER COMPANION JUDGES OF
RAJASTHAN HIGH COURT AT JAIPUR BENCH JAIPUR.

MAY IT PLEASE YOUR LORDSHIPS:

The Petitioners above named most respectfully submit the stay petition as under:-

1. That the Petitioners have preferred the above noted Writ Petition seeking directions from this Hon'ble Court against the Respondents not to disturb street vendors from continuing their business of street vending till the time the National Policy of 2009 or the Rajasthan Street Vendors Act 2011, which has come into force, is implemented by the Respondents in its letter and spirit. The humble Petitioners crave indulgence of this Hon'ble Court to treat such averments as part and parcel of this stay application and the Petitioners have every hope of their success in the present Writ Petition.
2. That from the bare perusal of the contents of the present Writ Petition it is clear that the Petitioners have a strong prima facie case in their favour and there is every likelihood of this Writ Petition being allowed by the Hon'ble Court.
3. That this Hon'ble Court was pleased to issue Notices to the Respondents.
4. That the facts leading upto the present stay application are enumerated below:
 - a) The Rajasthan Street Vendors Act (hereinafter referred to as "The Act") was passed on 29.08.2011 and came into force on 01.04.2012. A copy of the notification, dated 09.01.2012, bringing the Act into force, is enclosed herewith and marked as **Annexure P-1**.
 - b) Section 3 prescribes framing of a Street Vendors Scheme to implement the Act. Section 3(1)(n) of the Act specifically mandates Respondent No. 2 to provide for the procedure for impounding, destruction or seizure of stalls, goods and equipment and relocation of and compensation payable to evicted street vendors. However, no such scheme has been framed by the Respondents till date. On the contrary, the Respondents have failed to implement the Act, despite repeated reminders from the Petitioners (details of the representations made by the Petitioners are provided in the present Writ Petition). Evidently, the Respondents have not devised and implemented any Scheme as contemplated under Section 3 of the Act. It is due to this

inaction on part of the Government, that the Petitioners filed the present Writ Petition on 20.04.2012.

- c) Since August 2013, the Respondents have been harassing approximately 700-800 street vendors by conducting eviction raids in different areas of Jaipur. These eviction drives are being conducted on an ad-hoc basis according to the whim and fancy of the Respondents. There is no procedure being followed by way of issuing warnings, serving notice, providing an opportunity to be heard, providing an alternate place for vending, or compensation for eviction, as contemplated under the Act.
- d) Many street vendors' goods were also confiscated. It is pertinent to point that once goods are confiscated, it is virtually impossible for the street vendors to get them released. Due to this, a large number of street vendors have been put out of business and lost their only source of livelihood. Many vendors suffered losses due to their goods either being confiscated or damaged or lost during these drives. Evidently, these drives have not only had a severe adverse impact on the livelihood of the street vendors, but they have also had to face unwarranted humiliation at the hands of the Respondents. Moreover, these eviction drives are patently illegal and are being conducted without any authority under law.
- e) Due to the incessant harassment, the Petitioners served a notice, dated 26.08.2013, on the Respondents, whereby they informed the latter of their decision to hold a dharna, demanding for a) implementation of the Act and b) stay on all eviction drives against street vendors, pending implementation of the same. Copy of the notice, dated 26.08.2013, issued by the Petitioners to the Respondents, is hereto annexed and marked as **Annexure P-2**.
- f) Thereafter, the Petitioners went on a dharna for about 25 days. Copies of newspaper articles chronicling the aforesaid dharna are hereto annexed and marked as **Annexure P-3 (Colly)**. The Respondent No. 3 (through its Vigilance Commissioner), at one time, orally conceded to the demands of the Petitioners.
- g) In the meanwhile, the Hon'ble Supreme Court, in *Maharashtra Ekta Hawkers Union vs Municipal Corporation, Greater Mumbai, Civil Appeal Nos. 4156-4157 of 2009*, passed an order dated 09.09.2013, wherein it directed implementation of the National Policy of 2009 throughout the country. It further issued directions that all street vendors/hawkers shall be allowed to operate till the exercise of registration and creating of vending/hawking zones is completed in

terms of the 2009 Policy. These directions are applicable till an appropriate legislation is enacted by the Parliament or any other legislature and is brought into force. The operative portion of the Hon'ble Supreme Court's order is reproduced as below:

"15. In Gaiinda Ram's case (paragraph 78), this Court had directed that appropriate Government should enact a law on or before 30th June, 2011. Once the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2012 becomes law, the livelihood of millions would be saved and they will get protection against constant harassment and victimization which has so far been an order of the day. However, till the needful is done, it will be apposite for the Court to step in and direct that the 2009 Policy, of which the salient features are extracted below, are implemented throughout the country:

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5.1 If authorities come to the conclusion in any given instance that genuine public obstruction of a street, side walk etc. is being caused by street vending, there should be a mechanism of due notice to the street vendors. The vendors should be informed/warned by way of notice as the first step before starting the clearing up or relocation process. In the second step, if the space is not cleared within the notified time, a fine should be imposed. If the space is not cleared even after the notice and imposition of fine, physical eviction may be resorted to. In the case of vending in a 'No-vending Zone', a notice of at least a few hours should be given to a street vendor in order to enable him or her clear the space occupied. In case of relocation, adequate compensation or reservation in allotment of new vending site should be provided to the registered vendors.

5.2 With regard to confiscation of goods (which should happen only as a last resort rather than routinely), the street vendors shall be entitled to get their goods back within a reasonable time on payment of prescribed fee, determined by TVC.

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16. For facilitating implementation of the 2009 Policy, we issue the following directions:

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(xii) The State Governments, the Administration of the Union Territories and municipal authorities shall be free to amend the legislative provisions and/or delegated legislation to bring them in tune with the 2009 Policy. If there remains any conflict between the 2009 Policy and the municipal laws, insofar as they relate to street vendors/hawkers, then the 2009 Policy shall prevail.

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(xv) All the existing street vendors / hawkers operating across the country shall be allowed to operate till the exercise of registration and creation of vending / hawking zones is completed in terms of the 2009 Policy. Once that exercise is completed, they shall be entitled to operate only

*in accordance with the orders/directions of the concerned
Town Vending Committee.*

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17. The aforesaid directions shall remain operative till an appropriate legislation is enacted by Parliament or any other competent legislature and is brought into force."

Copy of the order dated 09.09.2013 passed by the Hon'ble Supreme Court in *Maharashtra Ekta Hawkers Union vs Municipal Corporation, Greater Mumbai*, Civil Appeal Nos. 4156-4157 of 2009, shall be produced before this Hon'ble Court at the time of arguments.

- h) On 12.09.2013, the Petitioners issued another letter to the Respondents reiterating their demands. Copy of the letter, dated 12.09.2013, issued by the Petitioners to the Respondents is hereto annexed and marked as **Annexure P-4**.
- i) On 16.09.2013, the Petitioners produced the order of the Hon'ble Supreme Court before the Respondents. The Respondents blatantly refused to abide by the said order. They not only disregarded the aforesaid order, but on 19.09.2013, abused their authority to harass and humiliate street vendors by way of manhandling them, confiscating their goods and money, and hurling verbal abuses at them.
- j) At the end of 25 days, the Petitioners no longer had the capacity to continue with the dharna. They had already lost a substantial amount of their goods and income, due to the events of past two months. In these circumstances, they entered into a compromise with the Respondents, wherein it was agreed that street vendors will be allowed to vend in different areas of Jaipur, within the limits of a demarcated line which shall be determined by Respondent No.1. It is stated that the Respondent No.1 has not determined any demarcation line, in pursuance of the aforesaid compromise.
- k) On 30.09.2013, the Petitioners issued a legal notice to the Respondents stating that their conduct towards and actions against the Petitioners is patently illegal (in terms of the Act and the order of the Hon'ble Supreme Court) and that all confiscated goods and money should be returned to them within seven days of receipt of the notice. The Respondents have not yet responded to the said notice. Copy of the notice, dated 30.09.2013, issued by the Petitioners to the Respondents is hereto annexed and marked as **Annexure P-5**.
- l) In spite of the above, eviction drives against street vendors and confiscation of their goods continues unabated. Copy of a receipt, dated 01.10.2013, issued by the Respondents for confiscation of

goods of one street vendor is hereto annexed and marked as **Annexure P-6**.

- m) Due to the aforesaid events, the street vendors are living under perpetual fear of evictions and confiscation of their goods.
 - n) It is firmly stated that the Respondents have refused to implement the Act, inspite of it coming into force. They have failed to devise any Scheme implementing a reasonable procedure for eviction and confiscation of goods of street vendors, as contemplated under the Act. They have also refused to abide by and shown blatant disregard for the order of the Hon'ble Supreme Court.
 - o) The eviction drives as are being conducted are without any authority under law, and are evidently according to the whim and fancy of the Respondents. These drives, having no semblance of a reasonable procedure, are not only violating the Act and the National Policy of 2009, but are also against principles of natural justice. They violate the fundamental rights of street vendors under Articles 14, 19(1)(g) and 21 of the Constitution.
5. That it is in this background that the Petitioners have preferred the present stay application against the Respondents before this Hon'ble Court, praying for a stay on these illegal eviction drives, confiscation of goods and undue harassment of street vendors in accordance with the directions of the Hon'ble Supreme Court dated 09.09.2013 till such time the Respondent No. 2 has framed the Street Vendors' Scheme mandated by the Act.
6. That if an appropriate stay order or interim order is not passed in favour of the Petitioners, then the Petitioners will suffer irreparable injury by way of loss of their livelihood which is a fundamental right guaranteed by the Constitution.

P R A Y E R

It is therefore, prayed that:

- (i) The present Stay Application may kindly be allowed during the pendency of the present Writ Petition.
- (ii) That an appropriate order maybe issued against the Respondents to allow the Petitioners to continue to operate their business, without any undue harassment by the Respondents, during the pendency of the present Writ Petition.
- (iii) Any other appropriate stay order or direction which this Hon'ble Court may deem just in the facts and circumstances of the case may also kindly be issued in favour of the Petitioners.

Humble petitioner
Through his counsel,

(INDRESH SHARMA)

Notes:

1. That PF/Notices/extra copies will be filed after orders of the Hon'ble Court.
2. That no such petition has earlier been filed either before this Hon'ble Court or in the Supreme Court of India.
3. That this petition has been typed by my private steno.
4. That pie papers were not readily available, hence, this been typed on stout papers.

Counsel for the petitioner