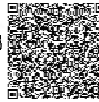




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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 10327 of 2022 (O&M)

Date of Decision: 23rd May, 2025

Malkit Singh and another

... Petitioners

Versus

State of U. T. Chandigarh and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Hardip Singh, Advocate, for the petitioners.

Mr. Sanjiv Ghai, Advocate, for respondent nos. 2 and 3.

SANJEEV PRAKASH SHARMA, J.

1. The petitioners are presidents of Manimajra Vyapar Mandal and residential welfare association, Manimajra. The concerned mandal and association have, by their resolution, resolved to file the writ petition on behalf of their members and it is stated in para-1 of the writ petition as quoted under:-

“1. That the petitioners are law abiding and peace loving citizens and have been lawfully carrying out their vocation in life for sustenance and survival. The petitioner No. 1 own Booth No. 902, Near Local Bus Stand, Mani Majra and is President of the Mani Majra Vyapar Mandal and the petitioner No. 2 President, of Residential Welfare Association, Main Bazar Mani Majra (regd.) and petitioners have been authorized vide Resolutions dated 28.4.22/25.4.22, for filing the present petition to solve the problems being faced by the petitioners, members of their Associations and public at large. The petitioners as well as the members of their



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Association have residential houses and shops/booths in the Markets located in the area of Mani Majra but the petitioners as well as members of their Associations are aggrieved from the inaction of the respondents for not removing the encroachments on public paths, roads and on public property made by fruit vendors, rehri vendors, hawkers, squatters and other vendors which are creating nuisance, traffic hazards, hindrances in free use of paths, road and public land by the public and badly impact the business of the petitioners as well as members of their Associations.”

2. It is alleged that the vendors, hawkers and squatters are members of *mafia* and are encroachers. It is also stated that they encroached on the commercial hubs, roads, parks and other public places and adversely affect the business of the petitioners and obstruct the open and free use of the roads, paths and public places. Photographs have been placed which reflect that the hawkers have set up their small shops selling fruits or stalls of water balls (commonly known as *golgappa/ pani poori*) and cane juice to the people who are coming to the market. There are some hawkers who were shown to be selling vegetables near the roads. These stalls are not in front of any of the shops but against back walls of the buildings. None of them has been impleaded as party to the present writ petition. It would be interesting to note the prayer made in the present writ petition, which is extracted below, and appears to have been encouraged on the basis of certain observations made with reference to encroachments of the shop keepers on the walkways, public paths and corridors by a Coordinate Bench of this Court in CWP No. 19675 of 2019- **Rajesh Kumar and others vs M. C. and others** vide order dated 25.07.2019 directing the administration to ensure



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that neither any show room owner, shop-keeper or booth owner placed material/ product in front of their premises nor hang the same outside their premises:-

“i) issue a writ in the nature of MANDAMUS directing the respondents for taking concrete/effective steps for redressal of grievances of the petitioners/residents/shop keepers of Manimajra, and the public at large for removal/stopping fruit vendors, rehri vendors, hawkers, squatters and other vendors putting their stalls on the public paths, roads and in front of shops in the area of Local Bus Stand, Rana Haweli, Primary School, Police Beat Box and Main Bazar, Manimajra which is not being done despite order dated 25.7.2019 passed by this Hon'ble Court (ANNEXURE P-1) and bringing the same into the notice of respondents by the petitioners vide their representation dated 8.2.2022, 21.2.2022 and legal notice dated 28.2.2022 (ANNEXURE P-2 TO ANNEXURE P-4) nor taken any decisions on the representation and legal notice issued by the petitioners;

ii) to prepare a crystal clear and effective enforcement staff and duly manned Beat Boxes in the area of Manimajra, conveniently approachable to the residents/shop keepers etc to make complaints against the defaulters;

iii) issue any other appropriate writ, order or direction which this Hon'ble Court may deems fit and proper in the facts and circumstances of the case.”

3. The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 was enacted to protect the street vendors', who are engaged in self-employment which alleviates urban poverty and provides



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affordable and convenient means of livelihood to majority of population who have shifted to the urban areas through street vending.

4. If we go into the legal history relating to encroachments, we notice that in **Pyare Lal etc. vs New Delhi Municipal Committee and another** AIR 1968 SC 133, the issue relating to selling of cooked food on public streets which created problems of unhygienic conditions came up before Hon'ble the Supreme Court in view of resolution of the New Delhi Municipal Committee restraining such sales. Hon'ble the Supreme Court held as under:-

“..... This argument is fallacious. The object of section 23(1) and the different sub-rules. under rules 50 was entirely different from that behind s. 173(1) of the Punjab Municipal Act. The object of the Food Adulteration Act, as its preamble shows, was to make provision for the prevention of adulteration of food and adulteration in this connection had a special significance under s. 2 of the Act. The object of this Act was to ensure that food which the public could buy was inter alia prepared, packed and stored under sanitary conditions so as not to be injurious to the health of the people consuming it. The rules framed thereunder would only over-ride rules or bye laws, if any, made by any municipality if they covered the same field. Under Section 173(1) of the Punjab Municipal Act it is open to a municipal committee to take steps to prevent sale of any cooked food however pure if the sale thereof on public streets would offer obstruction to passersby or create insanitary condition.,, because waste matter was bound to be thrown on the street an washing up of articles used in the trade introduce unhygienic conditions in the neighbourhood and create nuisance. We cannot accept the contention that Section. 173(1) had only the object of ensuring the free passage of



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persons and traffic along the public street and so long as there was no such obstruction powers under Section 173 could not be utilised for any oblique purpose like preventing person,, from carrying on a lawful trade.”

5. India, being essentially a country of people coming from the villages and cities being formed by their movement of villagers towards the townships for greener pastures, continues to remain an agrarian society. In fact, development of any city is on account of the reason of movement of the people from the villages to the towns and from towns to form cities. The approximate total population of Delhi, Mumbai, and Kolkata (then Calcutta) in 1947 was 15,13,000 which has been now increased to approximately 28,00,000 as on today. Thus, there is exodus from a village to influx in a city. More and more people came to the city in search of employment and earning. All cannot get employment, however, a human mind always searches one or other source of earning. There may be good means of earning or bad means of earning. Both of them prosper in a city. So, we have more number of crimes in a city and, at the same time, more number of opportunities of earning. These opportunities are formed in the manner of doing small business of selling of eateries or small items of day-to-day uses. Best example is of people selling *namkeens*, etc., in the trains.

6. Though of lately, such instances are only found in the trains connecting between local cities or where there is dense population like Bihar, U.P., etc. While, of course, in trains like Vande Bharat, one may not find such instances and, at the same time, people travelling in Vande Bharat trains, if required for any reason to travel in a passenger train which stops at



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each and every small railway station, he cannot object to such kind of people selling small items, although he may not like it.

7. We cannot close our eyes to the fact that there is an elite class still following the Britishers, who looks down upon their own countrymen doing small business and treat them as if they are mafias, as stated in the present writ petition, or encroachers who cause chaos in commercial hubs.

8. The Judiciary has to rise itself above from such impressions which such elite class carries. Gone are the days when we had British Judges sitting in Courts, looking at justice to be delivered for people who rule. We are a country, who are now having homogenous class of Indians. A Tribal lady of a remote village can now be the President of India, and a worker from the grass-root level may reach up to the highest echelons of the administration. There are scores of examples of such employees who are presently working on various posts and are ably helping in the administration as well as Judiciary in the country. Even in the Judiciary, we have had examples of persons who worked as *Munshis*/ Clerks with lawyers and rose upto the level of Chief Justices. In the aforesaid background, if we look at the present case, we find that Hon'ble Supreme Court in **Gainda Ram and others vs M. C. D. and others** 2010 (10) SCC 715 wherein it noticed the paradigm shift from **Pyare Lal's** case (supra) to the case of **Sodan Singh and others vs New Delhi Municipal Committee and others** 1989 (4) SCC 155, holding that streets in India are vested in the Municipality and they have to be used by the Municipalities as trustees. The relevant part of the judgment and the concurring view of Hon'ble Mr. Justice Kuldeep Singh are extracted as under:-



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“16. As to what will constitute public nuisance and what can be included in the legitimate user can be ascertained only by taking into account all the relevant circumstances including the size of the road, the amount of traffic and the nature of the additional use one wants to make of the public streets. This has to be judged objectively and here comes the role of public authorities.

*17. So far as right of a hawker to transact business while going from place to place is concerned, it has been admittedly recognised for a long period. Of course, that also is subject to proper regulation in the interest of general convenience of the public including health and security considerations. What about the right to squat on the road side for engaging in trading business? As was stated by this Court in *Bombay Hawkers Union and others v. Bombay Municipal Corporation and others*, [1985] 3 SCR 528, the public streets by their nomenclature and definition are meant for the use of the general public: they are not laid to facilitate the carrying on of private business. If hawkers were to be conceded the right claimed by them, they could hold the society to ransom by squatting on the busy thoroughfares, thereby paralysing all civic life. This is one side of the picture. On the other hand, if properly regulated according to the exigency of the circumstances, the small traders on the said walks can considerably add to the comfort and convenience of general public, by making available ordinary articles of every day use for a comparatively lesser price. An ordinary person, not very affluent, while hurrying towards his home after day's work can pick up these articles without going out of his way to find a regular market. If the circumstances are appropriate and a small trader can do some business for personal gain on the pavement to the advantage of the general public and without any discomfort or annoyance to the others, we do not see any*



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objection to his carrying on the business. Appreciating this analogy the municipalities of different cities and towns in the country have been allowing such traders. The right to carry on trade or business mentioned in Article 19(1)(g) of the Constitution, on street pavements, if properly regulated cannot be denied on the ground that the streets are meant exclusively for passing or re-passing and for no other use. Proper regulation is, however, a necessary condition as otherwise the very object of laying out roads-to facilitate traffic--may be defeated. Allowing the right to trade with- out appropriate control is likely to lead to unhealthy competition and quarrel between traders and travelling public and sometimes amongst the traders themselves resulting in chaos. The right is subject to reasonable restrictions under clause (6) of Article 19. If the matter is examined in this light it will appear that the principle stated in Saghir Ahmad's case in connection with transport business applies to the hawkers' case also. The proposition that all public streets and roads in India vest in the State but that the State holds them as trustee on behalf of the public, and the members of the public are entitled as beneficiaries to use them as a matter of right, and that this right is limited only by the similar rights possessed by every other citizen to use the pathways, and further that the State as trustee is entitled to impose all necessary limitations on the character and extent of the user, should be treated as of universal application.”

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26. We as a Court in a welfare State do realise the hardship to which many of the petitioners may be exposed if they are prevented from carrying on the business. The only solution for this is the adoption of the policy of full employment, which even according to leading economists like Keynes will alleviate the problems of the unemployed to some extent. But as students of



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economics we also realise that every human activity has the 'optimum point' beyond which it becomes wholly unproductive. It is for the Government to take reasonable steps to prevent movement of people from rural areas to urban areas. That can be done by the development of urban centers in rural areas removed from each other at least by one hundred miles. This is more a matter of executive policy than for judicial fiat. We hope and trust that in administering the laws in force the authorities will keep in view humane considerations. With these observations we dispose of these petitions and remit them to the appropriate Division Bench for final disposal in accordance with this judgment.

KULDIP SINGH, J. I have read the erudite judgment of L.M. Sharma, J, wherein it has been held that street trading, whether as an itinerant vendor/hawker or from a stationary position/receptacle/ kiosk/foot-path, is a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. The said right is obviously subject to reasonable restrictions imposed by the State under Article 19(6) of the Constitution. It has further been held that there is no fundamental right of a citizen to occupy a particular place in any street for the purpose of engaging himself in 'street trading.' I respectfully agree with these findings arrived at by Sharma, J. I may, however, add few words to support these findings.

28. The guarantee under Article 19(1)(g) extends to practice any profession, or to carry on any occupation, trade or business. 'Profession' means an occupation carried on by a person by virtue of his personal and specialised qualifications, training or skill. The word 'Occupation' has a wide meaning such as any regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged. 'Trade' in its wider sense includes any bargain or sale, any occupation or business carried on for subsistence or



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profit, it is an act of buying and selling of goods and services. It may include any business carried on with a view to profit whether manual or mercantile. 'Business' is a very wide term and would include anything which occupies the time, attention and labour of a man for the purpose of profit. It may include in its form trade, profession, industrial and commercial operations, purchase and sale of goods, and would include anything which is an occupation as distinguished from pleasure. The object of using four analogous and overlapping words in Article 19(l)(g) is to make the guaranteed right as comprehensive as possible to include all the avenues and modes through which a man may earn his livelihood. In a nut-shell the guarantee takes into fold any activity carried on by a citizen of India to earn his living. The activity must of course be legitimate and not anti-social like gambling, trafficking in women and the like.

29. *Street trading is an age-old vocation adopted by human beings to earn living. In the olden days the venue of trading and business has always been the public streets but, in the course of time fairs, markets, bazars and more recently big shopping complexes and fashionable plazas have come up. In spite of this evolution in business and trade patterns the 'street trading' is accepted as one of the legitimate modes of earning livelihood even in the most affluent countries of the world."*

11. In view of the observations of Hon'ble the Supreme Court, highlighting importance of framing Regulations, the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, has come into force. The Act received the assent from Hon'ble the President of India on 04.03.2014 and was published in the Gazette on 05.03.2014. It was an Act as per the Preamble to protect the rights of the street vendors and to regulate street vending activities for matters connected therewith or



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incidental thereto and define ‘street vendor’ as “a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use of offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to place and includes hawkers, peddlers, squatters and all other synonymous terms which may be local or region specific”; and the words ‘street vending’ with their grammatical variations and cognate expressions, shall be construed accordingly. Thus, the Act recognizes any person who would be performing the aforesaid work to be a street vendor.

12. Regulations have been laid down for street vending with the Town Vending Committee to conduct survey after every five years binding them to ensure that all who have been surveyed are accommodated in the vending zones subject to certain conditions. No street vendor is to be evicted or re-located till their survey is completed and a certificate of vending is issued to all the street vendors. As the vendors have a right to receive a certificate once they are identified in the survey.

13. The Act provides other several regulations and dispute redressal mechanism. However, in the nutshell, we notice that Hon’ble the Supreme Court as well as the Act allows them to be protected and no writ would lie seeking their eviction.

14. In **Maharashtra Ekta Hawkers Union and another vs Municipal Corporation, Greater Mumbai and others** 2014 (1) SCC 490, Hon’ble the Supreme Court held as under:-



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“14. We have considered the respective arguments / submissions. Learned counsel for the parties are ad–idem that the orders passed by this Court from time to time have not solved the problems of the street vendors / hawkers and the residents of the cities of Delhi and Mumbai and almost every year they have been seeking intervention of this Court by filing interlocutory applications. The experience has, however, shown that it is virtually impossible for this Court to monitor day to day implementation of the provisions of different enactments and the directions contained in the judgments noted hereinabove. Therefore, it will be appropriate to lift the embargo placed on the entertaining of matters by the High Courts and we order accordingly. Paragraph 45 of the judgment reported in (2009) 17 SCC 151 shall stand modified and the street vendors / hawkers, the residents and others adversely affected by street vending / hawking shall henceforth be entitled to invoke the jurisdiction of the concerned High Courts for redressal of their grievance.”

15. Hon’ble the Supreme Court in **Gainda Ram**’s case (supra) had lamented on the rise of the aspirations of people as there is more inflow of wealth and held as under:-

“77. This Court is giving this direction in exercise of its jurisdiction to protect the fundamental right of the citizens. The hawkers' and squatters' or vendors' right to carry on hawking has been recognized as fundamental right under Article 19(1)(g). At the same time the right of the commuters to move freely and use the roads without any impediment is also a fundamental right under Article 19(1)(d). These two apparently conflicting rights must be harmonized and regulated by subjecting them to reasonable restrictions only under a law. The question is, therefore, vitally important to a very large section of people, mostly ordinary men and women. Such an



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issue cannot be left to be decided by schemes and which are monitored by this Court from time to time.”

16. We find that even after 12 years of the said judgment passed by Hon’ble the Supreme Court, there is an attempt through this writ petition to evict the vendors who are admittedly carrying out vending since long in the area where the members of the union falls. We are told that Manimajra, which has been now included as part of urbanized area of U.T. Chandigarh and was earlier a village of Chandigarh, has local market with the street vendors selling their food items, etc. since long.

17. Before we close the case, we are of the firm view that the street vendors and their families, who are depositing fee with the Municipal Corporation for the certificate being given to them for vending, also need to be provided some social protection. The amount so recovered by the Municipal Corporation should, therefore, be used for their benefits alone and should be kept in a separate budget head, and as a suitable insurance for them, including medical facilities, should be provided by the Municipal Corporation, U.T. Chandigarh, and Rules in this regard should be framed.

18. At the same time, this Court also notices that the Street Vending Act and the benefits which it meant to give to the genuine street vendors is also being misused by a certain set of persons, and even the shopkeepers themselves setup hawkers’ stall in front of their shops selling their own items. At the same time, a certain group of people use wrongful means to get their name entered in the survey registers and illegally get sites registered for hawkers purposely. Such misuse of law deserves to be dealt



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particular cell of

the legal forum for

... vendors. We can
... is, accordingly,
... to be depos

(SANJEEV PRAKASH SHARMA)
JUDGE

23rd May, 2025
VS

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No