

(2017) 11 BOM CK 0185
In the Bombay High Court
Case No : 652 of 2017

Azad Hawkers Union & Ors.

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 01-11-2017

Acts Referred:

Constitution of India, Article 14, Article 14, Article 41, Article 41, Article 19(1)(g), Article 19(1)(g), <a href=

Citation : (2017) 11 BOM CK 0185

Hon'ble Judges : B.R. Gavai, M.S. Karnik

Bench : DIVISON BENCH

Advocate : Priyanka Kothari, Usha Chandrashekhar, Suvarna Joshi, Ram U. Singh, Firdaus Moosa, Prakash Mahadik, M.M. Vashi, Aparna Deokar, M. P. Vashi, Anil Sakhare, Joel Carlos, Rohan S. Mirpury, Raviraj S. Shinde

Judgement

1. Rule. Rule is made returnable forthwith. Respondents waive service. Heard, by consent of the parties. 2. All these Petitions are either by the Associations of Hawkers or Hawkers in their individual capacity, from various parts of the State, within the territorial jurisdiction of Principal Seat of this Court, including the City of Greater Mumbai. The Petitioners have initially approached this Court seeking various reliefs, including the relief to restrain all Municipal Commissioners and Chief Officers and local authorities all over Maharashtra from evicting, imposing fines and harassing the existing street vendors as on 01/05/2014 from the places/sites where they are carrying vending profession as street vendors. 3. Petitioners have thereafter amended the Petition and have also challenged the Order issued by Respondent No.1 dated 01/12/2015 purportedly under Section 39 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (Hereinafter referred to as "the said Act" for brief). 4. Petitioners have also challenged the validity of Rule 15 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending (Maharashtra) Rules,

2016 (For short "the said Rules") being ultra vires of the said Act. 5. Petitioners have also challenged the scheme purportedly framed under the provisions of Section 38 of the said Act vide Government Resolution dated 09/01/2017. 6. Petitioners have also challenged the Government Resolution dated 09/01/2017, which has issued directions for appointment of first Vending Committee without representation to vendors and thereafter Election of Representatives for existing street vendors. 7. Petitioners have also challenged the Registered Voters List, as published under the provisions of the said Rules. Prayer is also made, directing the Respondent - State not to publish the Scheme under Section 38 of the said Act without consulting the statutorily constituted Town Vending Committee (For short "TVC"). 8. Several interim reliefs have also been prayed in the Petitions, in effect directing the Respondents - Authorities not to take any coercive steps against the hawkers / vendors, who are carrying on their business in various Cities in the State. 9. We have extensively heard Mr. B.A. Desai, learned Senior Counsel, Mrs. Gayatri Singh, learned Senior Counsel, Mr. M.M. Vashi, learned Senior Counsel and also Mrs. Neeta Karnik, Mr. R.U. Singh, Mr. Vishal Kanade, Mr. Firdoz Musa, Mr. Avinash Belge, learned Counsel for the Petitioners. We have also heard Mr. Sakhare, learned Senior Counsel who appears on behalf of Respondent - Municipal Corporation of Greater Mumbai (For short "MCGM") and Mr. Kumbhakoni, the learned Advocate General for the State. CONTENTIONS 10. Mr. Desai, learned Senior Counsel who led the arguments on behalf of the Petitioners, submitted that various judgments of the Hon'ble Apex Court and now the said Act, have recognized rights of street vendors to be a right to life emanating from Article 21 of the Constitution of India. The learned Senior Counsel submitted that a perusal of the Statement of Objects and Reasons of the said Act itself would reveal that the said Act has been enacted to recognize rights of street vendors as a source of self-employment. He submitted that right to street vending serves two purposes viz (i) it provides self-employment to vast majority of unemployed people and (ii) it enables majority of population to buy goods at affordable prices at convenient vending places. He submitted that the said Act has been enacted so as to give effect to National Policy of Urban Street Vendors, 2009, which aims at securing right of the citizens to have adequate means of livelihood as enshrined in Articles 14, 19(1)(g), 38(2), 39(a), 39(b) and 41 of the Constitution. He further submitted that the said enactment aims at fostering a congenial environment for the urban street vendors to carry out their activities, without harassment from any quarter. 11. The learned Senior Counsel further submits that Division Bench of this Court in Vile Parle Kelvani Mandal and Ors v. Municipal Corporation of Greater Mumbai and Others, 2015(6) AIR Bom R 609 has categorically held that in view of the said Act coming into force, the directions issued by the Apex Court from time to time, in Maharashtra Ekta Hawkers Union have ceased to apply and all existing street vendors as on 01/05/2014, would be entitled to protection against eviction and relocation in view of the provisions of Section 2 and Section 3 of the said Act. The learned Senior Counsel submits that all the Petitioners or members of the Petitioners - Associations are having valid documents to show that they have been carrying

out their vending activities on or prior to 01/05/2014 and, as such, they are duly protected in view of the provisions of the said Act. He submitted that in spite of this legal position, Municipal Commissioner of MCGM as well as Municipal Commissioners and Chief Officers of other Municipal Corporations and Municipal Councils are harassing vendors / hawkers and trying to evict them, though, as per law, they are entitled to continue their vending business. The learned Senior Counsel therefore submitted that such an act is totally illegal. 12. The learned Senior Counsel further submitted that Rule 15 of the said Rules, which empowers the Municipal Commissioner or Chief Officer to publish Voters List of Registered Street Vendors, is also ultra vires the provisions of clause (c) of Section 2 of the said Act. He submitted that, if a correct interpretation is to be placed on the provisions of the said Act, the Voters' List is to be published by the Local Authority and the Local Authority cannot be permitted to delegate the said power to the Municipal Commissioner. He submitted that the Scheme which is published by the State Government vide Government Resolution dated 01/12/2015 ("the said Scheme") is also in contravention of Section 38 of the said Act. The learned Senior Counsel submitted that the Scheme cannot be framed unless there is consultation with the Local Authority and the TVC. The learned Senior Counsel submitted that, as a matter of fact, TVC itself has not been established and, as such, there can be no question of consultation with TVC. 13. The learned Senior Counsel further submitted that an attempt is being made by the Respondents to form truncated TVCs having members, who are either ex-officio members and other nominated members, so as to keep out members representing the street vendors. He submitted that unless 40% of the members of the TVC representing street vendors are elected by street vendors themselves, the constitution of TVC is not complete. It is submitted that the Government Resolution dated 09/01/2017 (hereinafter referred to as "the said G.R."), which gives certain instructions with regard to implementation of the Scheme and permits TVC without having representation of vendors, to conduct the survey is totally illegal. 14. Mr. Desai, learned Senior Counsel submitted that perusal of the said Act itself would reveal that functioning of the TVC is paramount and unless the TVC is formed, neither the Plan as required under Section 21 nor a Scheme as required under Section 38 can be prepared. The learned Senior Counsel further submitted that even the survey which is required to be conducted under Section 3, is required to be conducted by TVC. The learned Senior Counsel further submitted that unless TVC is established, neither there can be survey nor preparation of plan nor framing of a scheme. The learned Senior Counsel further submitted that the Order passed by Respondent No.1 purportedly under the provisions of Section 39 is also without jurisdiction. 15. Mr. Desai, the learned Senior Counsel further submitted that after the said Act has come into effect, the "non-vending zones" have ceased to exist and all the hawkers in the Cities are entitled to carry out their vending activities anywhere in the Cities, if they were carrying on such activities as on 01/05/2014. Mr. Desai relied on the judgment of Division Bench of the Madras High Court in Writ Petition No.18397 of 2014 alongwith companion matter dated 30/09/2015 and on the judgment of the learned Single Judge of

Kerala High Court in WP (C) No.33114 of 2014 (L) dated 05/03/2015 and various interlocutory orders passed by various Benches of this Court, in support of the said proposition. 16. All other learned Counsel, in effect, have made similar arguments, as have been advanced by Mr. Desai, learned Senior Counsel. 17. Mr. Sakhare, the learned Senior Counsel appearing on behalf of MCGM, submitted that the Respondent - MCGM, in order to give effect to the directions issued by the Hon"ble Apex Court in Maharashtra Ekta Hawkers Union v. MCGM, 2013 (6) BCR 481 dated 09/09/2013 had formed TVC as per directions of the Apex Court. He submitted that in the TVC which was formed under the Chairmanship of the Commissioner of MCGM, there were 30 members. Out of 30 members, 12 were representatives of various Association of hawkers / vendors, 11 were official members representing the Corporation, MMRDA, Police Authorities, Railways etc and rest were representatives of Residents Welfare Association, NGOs, Lawyers, Town Planners, Retail Traders Welfare Association, Banks etc. He submitted that various meetings of the said TVC were held on 23/01/2014, 15/02/2014, 15/04/2014 and 07/07/2014. He submitted that in one of these meetings dated 07/07/2014, it was resolved to form 241 teams for conducting survey of street vendors. The said teams were to consist of Officer of the Corporation from Licensing / Encroachment Department, representatives of Vendors" Associations, representatives of NGOs / Residents" Association / Traders" Association / Security Guard of the Corporation and local Police Officer. He submitted that after following the requisite procedure as was detailed out by the TVC, entire survey has been conducted. He submitted that the total number of applications that were issued for registration were 1,28,443 out of which 99,435 applicants were found to be eligible in the said survey. 18. The learned Senior Counsel for the MCGM further submitted that perusal of the said Act, would show that it does not provide for quorum for conducting meetings of the TVC. The learned Senior Counsel submitted that, however, in view of the provisions of sub-rule (2) of Rule 22 of the said Rules, all the Resolutions of TVC are required to be passed by two-thirds of the members present and voting. The learned Senior Counsel submitted that out of 20 members, five are official members and seven are required to be nominated by the State Government. He submitted that the process of nominating those seven members has already commenced. The learned Senior Counsel, therefore, submitted that if 12 members of the TVC are permitted to function, the mandate of Rule 22(2) shall stand followed and, as one time measure, TVC, which is consisting of official members and nominated members without there being representatives of street vendors, should be permitted to function. He submitted that if such a course is not permitted then the entire Act would become unenforceable. Relying on the judgment of N. Kannadasan v. Ajoy Khose and Others, (2009) 7 SCC 1, the learned Senior Counsel submitted that if a plain meaning assigned to section, results in absurdity or anomaly, literal meaning would not be applied and resort should be taken to purposive construction so as to give complete and effective meaning to the statutory provision. He submitted that if the Act is to be implemented as it is, then very purpose for which the Act is enacted i.e for

protecting the right of street vendors on one hand and also for balancing the right of the citizens who are using the roads and pavements on the other hand, cannot be given effect to. He therefore submitted that it will have to be read into the provisions of the Act, that the TVC consisting of five official and seven nominated members, will have to be permitted to function without there being a representation of the vendors. He also relied on the judgment of the Apex Court in the case of *American Home Products Corporation v. Mac Laboratories Pvt. Ltd* and another, AIR 1986 SC 137 and in the case of *State of M.P. v. M/s. Azad Bharat Finance Co.* and another, AIR 1967 SC 276 in support his submission. 19. Mr. Sakhare also relied on the judgment of the learned Single Judge of the Delhi High Court in the case of *Vaiso Jain v. NDMC* and Anr passed in Writ Petition (Civil) No. 3574 of 2011 dated 25/05/2011 to counter the argument of Mr. Desai, that after the said Act has come into effect, the non-vending zones have ceased to exist and all the hawkers in the Cities are entitled to carry out their vending activities anywhere in the Cities, if they were carrying on such activities as on 01/05/2014. He relied on the judgment of the Division Bench of the Delhi High Court in the case of *Vyapari Kalyan Mandal Main Pushpa and Anr. v. South Delhi Municipal Corporation and Ors.* dated 03.07.2017 delivered in W.P.(C)2556/2015 for the same purpose. 20. Mr. Kumbhakoni, the learned Advocate General appearing on behalf of the State, has made similar arguments, as have been advanced by Mr. Sakhare, the learned Senior Counsel for MCGM. JUDGMENTS OF THE SUPREME COURT ON THE ISSUE 21. For appreciating the controversy in issue, we will have to go through various judgments of Their Lordships of the Apex Court. *Bombay Hawkers Union and Others* had approached Their Lordships of the Apex Court, in a Petition under Article 32, claiming therein that they have fundamental right to carry on their business and that the Respondents including the then Bombay Municipal Corporation were unlawfully interfering with that right. It was claimed that the Respondents including the BMC arbitrarily refused to grant or renew license for hawkers, which rendered the hawkers liable to be removed alongwith their goods, from the places where they were doing their business. Petitioners in that case had asked for a declaration that provisions of Sections 313, 313-A, 314(3) and 497 of the BMC Act were void since they confer upon the respondents an arbitrary and unguided power, to refuse to grant or renew licenses for hawking and to remove the goods without affording an opportunity to be heard, to the hawkers. 22. It appears that during the pendency of the said Petition before Their Lordships of the Apex Court, several suggestions were made to explore the possibility of evolving satisfactory solution to the problem faced by both sides. It further appears that a consensus emerged between the parties that the Municipal Commissioner should frame a scheme, for regulating the grant of licences to hawkers and for creating hawkers' zones wherever necessary. It also further appears that in pursuance thereof, several meetings were held of the Hawkers Committee, consisting of the Officers of the then BMC and the Representatives of Hawkers, of which the Mayor of the Bombay was the Chairman. Initially, the Scheme was prepared by the Municipal Commissioner. However, since the Hawkers' Union did not respond to the

proposed Scheme, no decision could be taken thereon. Their Lordships of the Apex Court, therefore, passed an order dated 05/08/1983, specifying therein that if the members of the Hawkers' Committee do not come to any decision by consensus, the Commissioner of Bombay Municipal Corporation will be free to frame a scheme. In pursuance of the order passed by Their Lordships of the Apex Court, a meeting was held to discuss the proposal prepared by the Municipal Commissioner. However, no agreement could be reached on the same. It further appears that on 23/11/1983 an application for directions was filed by the Petitioners, praying for directions to the Municipal Commissioner to formulate a scheme for the licensing of hawkers in Greater Bombay by creating hawking zones. It appears that, finally, the scheme was prepared by the Municipal Commissioner vide Order dated 30/09/1983. It will be relevant to refer to the salient features of the said Scheme, which read thus :- "The following restrictions/conditions shall be imposed on such hawkers: (i) They should do their hawking business only on an area of 1 Mt. ? 1 Mt. on the footpath wherever it exists or on the extreme sides of the carriage way, in such a manner that the vehicular and pedestrian traffic is not obstructed and access to shops and residences is not blocked. (ii) They should not put up any stall or place any table, stand or such other thing or erect any type of structure whatsoever on the pitch on which they are conducting their hawking business nor should they hawk on handcarts. They should also not put up any cloth, plastic sheet, chaddar, tarpaulin etc. as shelter. (iii) They should not hawk within 100 metres from any place of worship, holy shrine, educational institution and general hospital and within the periphery of 150 metres from any Municipal or other market. (iv) They should not create any noise for attracting the public/customers. (v) They should not hawk any cooked food articles, cut fruits etc. (vi) They should do their hawking business only between 7 a.m. and 9 p.m. on the day on which the prescribed daily fee is recovered. In other words, payment of the prescribed daily fee shall not be deemed to authorise them to do their hawking business beyond the aforesaid hours. (vii) They should extend full co-operation to Municipal conservancy staff for cleaning the streets and footpaths and also to other Municipal staff for carrying out any Municipal work. They should also cooperate with other Government and public agencies such as the B.E.S.T. Undertaking, Bombay Telephones, B.S.E.S. Ltd., etc. for laying cables or for doing any repair/development work. (viii) Recovery of prescribed daily fee shall not bestow on them any right whatsoever over the space used by them for hawking on the day on which the fee is recovered." The said Scheme came up for consideration before Their Lordships in the case of Bombay Hawkers' Union and Others v. Bombay Municipal Corporation and Others, (1985) 3 SCC 528. It will be relevant to refer to paragraph 10 of the said Judgment which reads thus :- "10. We have considered carefully the eight conditions mentioned above, subject to which the Commissioner proposes to grant licences to the hawkers. No exception can be taken to conditions (i), (ii), (iii), (iv), (vii) and (viii) except that conditions (ii) and (viii) require a little clarification. The first part of condition (ii) beginning with the words "They should not put up any stall" and ending with the words "nor

should they hawk on handcarts" may stand. But, the second part of that condition should not be construed to mean that the hawkers will not be entitled even to protect their wares against the sun, rain, wind and so on, by spreading a cloth, plastic sheet, chaddar, tarpaulin etc. The object of that condition is to ensure that no construction is put up and no handcarts are used. Insofar as condition (viii) is concerned, all that it should be understood to mean is that the fact that a daily fee is charged will not confer upon the hawker the right to do his business at any particular place. That is because, the daily fee is a kind of licence fee to do business; it is not a fee charged for doing business at any particular place. The Commissioner will, therefore, be free to impose conditions (i), (ii), (iii), (iv), (vii) and (viii) while granting licences to the hawkers in the Hawking Zones, after making the necessary clarifications in conditions (ii) and (viii). Condition (v) is an unreasonable restriction on the hawkers' right to carry on their trade or business and must be dropped. There are several working families in Bombay, belonging to different strata of society, which depend upon the food supplied by hawkers. We do not see any valid reason why hawkers should not be allowed to sell cooked food, cut fruits and the like. That will, of course, not confer upon them the licence to sell adulterated or unhygienic food. They shall have to comply, like any other vendor of food, with the Municipal licensing regulations and the provisions of the Prevention of Food Adulteration Act, 1954. Lastly, the hours of business mentioned in condition (vi) should be from 7 a.m. to 10 p.m. instead of 7 a.m. to 9 p.m. In cities like Bombay, nights are quite young at 10 p.m." It could thus be seen that Their Lordships did not find it necessary to interfere with most of the conditions which formed part of the Scheme. Their Lordships found that insofar as condition No.(ii) is concerned, which even prevented the hawkers putting up any cloth, plastic sheet, chaddar, tarpaulin etc as shelter against the rain, wind and sun, could not be approved. Their Lordships further found that Condition No. (v) which prevented hawking in food articles, cut fruits etc was also unreasonable inasmuch as there were several working families in Bombay belonging to different strata of the Society, which depended upon the food supplied by hawkers. However, Their Lordships observed that such hawkers shall have to comply, like any other vendor of food, with the Municipal licensing regulations and the provisions of the Prevention of Food Adulteration Act, 1954. Insofar as condition No. (vi) is concerned, Their Lordships observed that hours of business in the said condition should be from 7 a.m to 10 p.m instead of 7 a.m to 9 p.m. Insofar as Hawking and Non-Hawking Zones are concerned, Their Lordships observed thus :- "11. Insofar as Hawking and Non-Hawking Zones are concerned, the Commissioner should adopt the following modalities: (a) As far as possible, there should be one Hawking Zone for every two contiguous Municipal Wards in Greater Bombay. (b) The Non-Hawking Zones may be fixed by the Municipal Commissioner in his discretion, in consultation with the Bombay Municipal Corporation. (c) In areas other than the Non-Hawking Zones, licences should be granted to the hawkers to do their business on payment of the prescribed fee. That will be without prejudice to the right of the Commissioner to extend the limits of the Non-Hawking Zones in the interests of

public health, sanitation, safety, public convenience and the like. (d) Hawking licences should not be refused in the Hawking Zones except for good reasons. The discretion not to grant a hawking licence in the Hawking Zone should be exercised by the Commissioner reasonably and in public interest. (e) In future, before making any alteration in the scheme, the Commissioner should take into confidence all public interests, including the hawkers, the Commissioner of Police and representative associations of the public such as the one which appeared before us. Hawkers have the right to do their business, subject to reasonable restrictions in the interests of the general public. The Police Commissioner is in the best position to speak about the law and order problem as well as the traffic hazards created by street trading. The general public has a stake in showing how and why the hawking trade should be regulated. The power conferred upon the Commissioner by Section 313-A of the Act to grant licences to hawkers is in the nature of a discretion coupled with a duty. It is therefore essential that the said power should be exercised by consulting all concerned interests and guided by considerations of what is in the interests of the general public. The scheme framed by the Commissioner will have a binding effect on all concerned. The scheme shall be framed, as far as possible, before October 31, 1985." (Emphasis supplied) It could thus be seen that Their Lordships empowered the Municipal Commissioner in consultation with Bombay Municipal Corporation to fix Non-Hawking Zones. It could further be seen that Their Lordships further recognized right of the Commissioner to extend the limits of the Non-Hawking Zone in the interest of public health, sanitation, safety, public convenience and the like. It could further be seen that Their Lordships observed that while exercising power under Section 313-A, the Commissioner should exercise the same by consulting all concerned interests and guided by considerations of what is in the interests of the general public. 23. It could further be seen that issue, with regard to rights of the hawkers / vendors to carry on trade of hawking / vending again fell for consideration along with right of slum dwellers before the Constitution Bench of the Hon'ble Apex Court in *Olga Tellis and Others v. Bombay Municipal Corporation and Others*, (1985) 3 SCC 545. In the said case, a preliminary objection was raised on behalf of the Corporation that the Petition filed directly under Article 32 was not tenable. Their Lordships, however, rejected the said contention. It was held by Their Lordships that if the Petitioners were evicted, they were likely to lose their right of livelihood, which would be included in Article 21 and, as such, the challenge could directly be entertained by the Apex Court under Article 32. 24. Their Lordships considered the provisions of Section 314 of the BMC Act. Their Lordships considered as to whether the procedure prescribed by Section 314 of the BMC Act, for removal of encroachment on the footpaths and pavements over which public have right to passage or access, can be considered as unreasonable, unfair or unjust. The contention was specifically rejected by Their Lordships of the Apex Court. It would be relevant to reproduce the following observations of the Constitution Bench in *Olga Tellis* (supra):- "43. In the first place, footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for

private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public streets. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements. There is no substance in the argument advanced on behalf of the petitioners that the claim of the pavement dwellers to put up constructions on pavements and that of the pedestrians to make use of the pavements for passing and repassing, are competing claims and that, the former should be preferred to the latter. No one has the right to make use of a public property for a private purpose without the requisite authorisation and, therefore, it is erroneous to contend that the pavement dwellers have the right to encroach upon pavements by constructing dwellings thereon. Public streets, of which pavements form a part, are primarily dedicated for the purpose of passage and, even the pedestrians have but the limited right of using pavements for the purpose of passing and repassing. So long as a person does not transgress the limited purpose for which pavements are made, his use thereof is legitimate and lawful. But, if a person puts any public property to a use for which it is not intended and is not authorised so to use it, he becomes a trespasser. The common example which is cited in some of the English cases (see, for example, *Hickman v. Maisey* [(1900) 1 QB 752 : 1900 WN 72 (CA)]) is that if a person, while using a highway for passage, sits down for a time to rest himself by the side of the road, he does not commit a trespass. But, if a person puts up a dwelling on the pavement, whatever may be the economic compulsions behind such an act, his user of the pavement would become unauthorised. As stated in *Hickman* [(1900) 1 QB 752 : 1900 WN 72 (CA)] it is not easy to draw an exact line between the legitimate user of a highway as a highway and the user which goes beyond the right conferred upon the public by its dedication. But, as in many other cases, it is not difficult to put cases well on one side of the line. Putting up a dwelling on the pavement is a case which is clearly on one side of the line showing that it is an act of trespass. Section 61 of the Bombay Municipal Corporation Act lays down the obligatory duties of the Corporation, under clause (d) of which, it is its duty to take measures for abatement, of all nuisances. The existence of dwellings on the pavements is unquestionably a source of nuisance to the public, at least for the reason that they are denied the use of pavements for passing and repassing. They are compelled, by reason of the occupation of pavements by dwellers, to use highways and public streets as passages. The affidavit filed on behalf of the Corporation shows that the fall-out of pedestrians in large numbers on highways and streets constitutes a grave traffic hazard. Surely, pedestrians deserve consideration in the matter of their physical safety, which cannot be sacrificed in order to accommodate persons who use public properties for a private purpose, unauthorizedly. Under clause (o) of Section 61 of the B.M.C. Act, the Corporation is under an obligation to remove obstructions upon public streets and other public places. The counter-affidavit of the Corporation shows that the existence

of hutments on pavements is a serious impediment in repairing the roads, pavements, drains and streets. Section 63(k), which is discretionary, empowers the Corporation to take measures to promote public safety, health or convenience not specifically provided otherwise. Since it is not possible to provide any public conveniences to the pavement dwellers on or near the pavements, they answer the nature's call on the pavements or on the streets adjoining them. These facts provide the background to the provision for removal of encroachments on pavements and footpaths." (Emphasis supplied) In para 46, Their Lordships rejected the contention of the Corporation that no notice be given. Further in para 51, Their Lordships have observed that, though, normally, they would have directed the BMC to offer an opportunity to the Petitioners to show that the encroachment committed by them on pavements and footpaths should not be removed, but since the opportunity was granted by Their Lordships in ample measure, it was not necessary to do so. Their Lordships, after considering the rival contentions, held that the Commissioner was justified in directing removal of encroachments committed by the Petitioners on pavements, footpaths or accessory roads. 25. Again, in the case of *Sodan Singh and Others v. New Delhi Municipal Committee and Others*, 1989(4) SCC 155, Their Lordships considered the claim of vendors / hawkers of trading on the pavements and roads in the City of Delhi. It would be relevant to refer to the following observations of Their Lordships in para 17 of the said Judgment which read as under:- "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 roadside for engaging in trading business? As was stated by this Court in *Bombay Hawkers' Union v. Bombay Municipal Corporation* [(1985) 3 SCC 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 sidewalks can considerably add to the comfort and convenience of general public, by making available ordinary articles of everyday 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 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 without 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) or Article 19. If the matter is examined in its light it will appear that the principle stated in *Saghir Ahmad case* [AIR 1954 SC 728 : (1955) 1 SCR 707] 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." (Emphasis supplied) It could thus be seen that the Constitution Bench of Their Lordships held that right of hawker to transact business while going from place to place is concerned, the same has been admittedly recognized for a long period, however that also is subject to proper regulation in the interest of general convenience of the public including health and security considerations. Their Lordships have reiterated the view taken in *Bombay Hawkers Union* (cited supra), that the public streets by their nomenclature and definition are meant for the use of the general public and they are not laid to facilitate the carrying on of private business. Their Lordships held that 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. However, Their Lordships further held that if such a right is properly regulated, according to the exigency of the circumstances, the small traders on the sidewalks can considerably add to the comfort and convenience of general public, by making available ordinary articles of everyday use for a comparatively lesser price. While recognizing such a right, Their Lordships held that proper regulation is necessary condition, as otherwise very object of laying out roads to facilitate traffic - may be defeated. It has been held that the right as mentioned in Article 19(1)(g), if properly regulated, cannot be denied. However, the same is subject to reasonable restrictions under clause (6) of Article 19. In para 18, Their Lordships observed that provisions of Municipal Acts, in case of ambiguity, should receive a beneficial interpretation. On the one hand, they may enable the municipalities to liberally exercise their authority both, in granting permission to individuals for making other uses of the pavements, and, for removal of any encroachment which may, in their opinion, be constituting undesirable obstruction to the travelling public. 26. It is further to be noted that it was sought to be asserted on behalf of the Petitioners in *Sodan Singh* (cited supra) that they have fundamental right to occupy the places on pavements to carry on their business. Negating the said submission, Their Lordships observed thus :- "19. The controversy in the present cases, however,

cannot be settled by what has been said earlier. The claim of the petitioners before us is much higher. They assert the right to occupy specific places on road pavements alleging that they have been so doing in the past. As has been stated earlier, the facts have been disputed and individual cases will be considered separately in the light of the present judgment. The argument, however, which has been pressed on behalf of the petitioners is that they have their fundamental rights guaranteed by Articles 19 and 21 of the Constitution to occupy specific places demarcated on the pavements on a permanent basis for running their business. We do not think there is any question of application of Article 21 and we will be briefly indicating our reasons therefor later. But can there be at all a fundamental right of a citizen to occupy a particular place on the pavement where he can squat and engage in trading business? We have no hesitation in answering the issue against the petitioners. The petitioners do have the fundamental right to carry on a trade or business of their choice, but not to do so on a particular place. The position can be appreciated better in the light of two decisions of this Court in *Fertilizer Corporation Kamgar Union v. Union of India* [(1981) 1 SCC 568 : (1981) 2 SCR 52] and *K. Rajendran v. State of T.N.* [(1982) 2 SCC 273 : (1982) 3 SCR 628]" (Emphasis supplied) It would further be relevant to refer to para 24 of the said Judgment, which reads thus :- "24. We would, however, make it clear that the demand of the petitioners that the hawkers must be permitted on every road in the city cannot be allowed. If a road is not wide enough to conveniently manage the traffic on it, no hawking may be permitted at all, or may be sanctioned only once a week, say on Sundays when the rush considerably thins out. Hawking may also be justifiably prohibited near hospitals or where necessity of security measures so demands. There may still be other circumstances justifying refusal to permit any kind of business on a particular road. The demand on behalf of the petitioners that permission to squat on a particular place must be on a permanent basis also has to be rejected as circumstances are likely to change from time to time. But this does not mean that the licence has to be granted on the daily basis; that arrangement cannot be convenient to anybody, except in special circumstances." (Emphasis supplied) In para 25 of the said Judgment, Their Lordships further observed that the authorities, while adopting a scheme, should also consider the question as to which portions of the pavements should be left free for pedestrians and number of the squatters to be allowed on a particular road. 27. It would appear from the record, that pursuant to the judgment of Their Lordships of the Apex Court in *Bombay Hawkers' Union (supra)*, BMC constituted an Advisory Committee composing of officials of the Corporation, representatives of residents' associations, NGOs, elected representatives of the traffic police and representatives of hawkers. A draft scheme was framed on 12/08/1996 under which 488 zones were shown as hawking zones. The said draft scheme came to be challenged before this Court by way of Writ Petition. Under the said scheme, 49,000 hawkers were to be accommodated. Under the said draft scheme, 28 sites, in different wards, were earmarked for construction of hawkers' plazas. Under the said scheme, highways, arterial and trunk roads, footover bridges,

subways, certain distance around railway stations, certain radius around municipal markets, religious places, educational institutions, medical institutions and large traffic junctions, were totally banned for hawkers. It further appears that the BMC had also got undertaken survey by Tata Institute of Social Sciences and Youth for Unity and Voluntary Action, which disclosed that there were approximately 1,03,000 hawkers out of which 15,000 were licensed hawkers and approximately 22,000 were issued daily receipts or "pautis" under a scheme known as "Unauthorized Occupation-cum-Refuse Removal Charges". During the pendency of Writ Petitions before this Court, BMC had filed modified scheme on 31/07/1999 vide which number of hawkers zones were brought down to 377 from 488. The number of hawkers, who could be accommodated was also brought down to 38,000. The proposal for construction of hawking plazas on 28 sites was deleted. On 01/03/2000, this Court constituted a Committee consisting of the Additional Municipal Commissioner in charge of the scheme, representative of the Bombay Hawkers' Association, representative of some of the residents' association and NGO. This Committee heard and considered representations from various persons. The Committee, thereafter, made its recommendations, reducing number of hawking zones to 187. The High Court, vide its judgment dated 05/07/2000 sanctioned the Scheme with few modifications. The said judgment came to be challenged before the Apex Court. 28. The Apex Court considered the issue in *Maharashtra Ekta Hawkers Union and Another v. Municipal Corporation, Greater Mumbai and Others*, (2004) 1 SCC 624 (hereinafter referred to as "2004 Ekta Judgment") Perusal of the said judgment, particularly para 12, reveals that though Their Lordships attempted to go through the scheme, street by street, it was found that it was appropriate that the Court approves the conditions of the scheme and certain roads/streets on which hawking was to be permitted and thereafter Committee must be appointed as was done in the case of *Sodan Singh (supra)*. Their Lordships observed that the Committee could decide whether any particular road/street is to be declared as non-hawking zone. Para 13 of the said Judgment would reveal that Their Lordships included 49 additional roads in addition to the 187 which were already approved. However, while doing so, BMC was directed to ensure that there was no impediment or hindrance to vehicular traffic or pedestrians. The approval of additional 49 roads was subject to approval/NOC from the traffic police. Their Lordships further observed that the restrictions with regard to distance from railway station, hospital, educational institutions, places of worship etc. would continue to apply. Their Lordships in para 14 laid down various restrictions/conditions on which the hawkers were to conduct their business. It will be relevant to refer to para 14 of the said judgment, which reads thus :- "14. The restrictions/conditions on which the hawkers shall do business are: (1) An area of 1 m ? 1 m on one side of the footpath wherever they exist or on an extreme side of the carriageway, in such a manner that the vehicular and pedestrian traffic is not obstructed and access to shops and residences is not blocked. We further clarify that even where hawking is permitted, it can only be on one side of the footpath or road and under no circumstances on both sides of the

footpaths or roads. We, however, clarify that aarey/sarita stalls and sugarcane vendors would require and may be permitted an area of more than 1 m ? 1 m but not more than 2 m ? 1 m. (2) Hawkers must not put up stalls or place any tables, stand or such other thing or erect any type of structure. They should also not use handcarts. However, they may protect their goods from the sun, rain or wind. Obviously, this condition would not apply to aarey/sarita stalls. (3) There should be no hawking within 100 metres from any place of worship, holy shrine, educational institutions and hospitals or within 150 metres from any municipal or other markets or from any railway station. There should be no hawking on footbridges and overbridges. Further, certain areas may be required to be kept free of hawkers for security reasons. However, outside places of worship hawkers can be permitted to sell items required by the devotees for offering to the deity or for placing in the place of worship e.g. flowers, sandalwood, candles, agarbattis, coconuts etc. (4) The hawkers must not create any noise or play any instrument or music for attracting the public or the customers. (5) They can only sell cooked foods, cut fruits, juices and the like. We are unable to accept the submission that cooking should be permitted. We direct that no cooking of any nature whatsoever shall be permitted. Even where cooked food or cut fruits or the like are sold, the food must not be adulterated or unhygienic. All Municipal Licensing Regulations and the provisions of the Prevention of Food Adulteration Act must be complied with. (6) Hawking must be only between 7.00 a.m. and 10.00 p.m. (7) Hawking will be on the basis of payment of a prescribed fee to be fixed by BMC. However, the payment of prescribed fee shall not be deemed to authorize the hawker to do his business beyond the prescribed hours and would not confer on the hawker the right to do business at any particular place. (8) The hawkers must extend full cooperation to the municipal conservancy staff for cleaning the streets and footpaths and also to the other municipal staff for carrying on any municipal work. They must also cooperate with the other government and public agencies such as BEST Undertaking, Bombay Telephones, BSES Ltd. etc. if they require to lay any cable or any development work. (9) No hawking would be permitted on any street which is less than 8 metres in width. Further, the hawkers also have to comply with the Development Control Rules, thus, there can be no hawking in areas which are exclusively residential and where trading and commercial activity is prohibited. Thus hawking cannot be permitted on roads and pavements which do not have a shopping line. (10) BMC shall grant licences which will have photos of the hawkers on them. The licence must be displayed, at all times, by the hawkers on their person by clipping it on to their shirt or coat. (11) Not more than one member of a family must be given a licence to hawk. For this purpose BMC will have to computerize its records. (12) Vending of costly items e.g. electrical appliances, video and audio tapes and cassettes, cameras, phones etc. is to be prohibited. In the event of any hawker found to be selling such items his licence must be cancelled forthwith. (13) In areas other than the non-hawking zones, licences must be granted to the hawkers to do their business on payment of the prescribed fee. The licences must be for a period of 1 year. That will be without prejudice to the right of the

Committee to extend the limits of the non-hawking zones in the interests of public health, sanitation, safety, public convenience and the like. Hawking licences should not be refused in the hawking zones except for good reasons. The discretion not to grant a hawking licence in the hawking zone should be exercised reasonably and in public interest. (14) In future, before making any alteration in the scheme, the Commissioner should place the matter before the Committee who shall take a decision after considering views of all concerned including the hawkers, the Commissioner of Police and members of the public or an association representing the public. (15) It is expected that citizens and shopkeepers shall participate in keeping non-hawking zones/areas free from hawkers. They shall do so by bringing to the notice of the ward officer concerned the presence of a hawker in a non-hawking zone/area. The ward officer concerned shall take immediate steps to remove such a hawker. In case the ward officer takes no action, a written complaint may be filed by the citizen/shopkeeper to the Committee. The Committee shall look into the complaint and if found correct, the Committee will with the help of police remove the hawker. The officer in charge of the police station concerned is directed to give prompt and immediate assistance to the Committee. In the event of the Committee finding the complaint to be correct it shall so record. On the Committee so recording an adverse remark re failure to perform his duty will be entered in the confidential record of the ward officer concerned. If more than three such entries are found in the record of an officer it would be a ground for withholding promotion. If more than six such entries are found in the records of an officer it shall be a ground for termination of service. For the work of attending to such complaints BMC shall pay to the Chairman a fixed honorarium of Rs. 10,000 p.m. (16) The scheme framed by us will have a binding effect on all concerned. Thus, apart from those to whom licences will now be issued, no other person/body will have any right to squat or carry on any hawking or other business on the roads/streets. We direct that BMC shall bring this judgment to the notice of all courts in which matters are now pending. We are quite sure that the court(s) concerned shall then suitably vacate/modify its injunction/stay order." 29. In the said Judgment, Their Lordship did not approve of the principle that all major, trunk and arterial roads should automatically be excluded from hawking zones. Their Lordships observed that the Committee would be entitled to examine, on receipt of a proposal whether hawking can be permitted on such roads. It was also observed that if without too much hindrance to vehicular and pedestrian traffic hawking can be permitted, it must be so permitted. Their Lordships further observed that it would be open for BMC to set up hawking plazas. The Committee which came to be appointed by Their Lordships, consisted of a retired Judge of the Bombay City Civil Court at Bombay and other members. 30. It further appears that the matter again came before Their Lordships and Their Lordships passed an order on 30/07/2004. Vide said order, it was directed that since Their Lordships were seized of the matter, no other Court could hear the matter and only Apex Court would hear the matter. Their Lordships further found that since number of applications received by the Committee were large in number, it was necessary to appoint two more

Committees. Their Lordships further directed that all unauthorized hawkers and hawkers other than the licensed hawkers must be removed in a phase-wise manner from non-hawking zones. The Senior Police Officers of the Traffic Department were directed to render all assistance to the Bombay Municipal Corporation for such removal. 31. The matter again came up before Their Lordships on 01/04/2005. Vide the order passed on the said date, Their Lordships were pleased to direct the police to give full and complete protection to the Municipal staff as and when they go to clear the hawkers as per the directions of the Court. The Police Commissioner was also directed to ensure that there was regular patrolling to ensure that once the hawkers were removed from a particular place, they did not come back again to the same place. 32. The matter again came up for consideration before Their Lordships of the Apex Court, which was considered vide judgment in the case of Maharashtra Ekta Hawkers Union v. Municipal Corporation, Greater Mumbai, (2009) 17 SCC 151 (hereinafter referred to as "2009 Ekta Judgment") Their Lordships considered the recommendations of the three Committees which were constituted by Their Lordships as per earlier orders. It was sought to be contended before Their Lordships, that Committees had interfered with 187 plus 49 roads which were approved by Their Lordships as hawking-zone, by reducing the same. It was submitted that the same was not permissible. Their Lordships rejected the said contention by observing thus : "17. Reading paras 13 and 16 of our order conjointly, would clearly show that although we have in principle approved 187 roads as hawking zones, we have permitted the Committees to further consider whether hawking can be permitted on such road/street or not. In our view, therefore, the contention of the petitioners that the Committees had reduced the roads, which had been declared the hawking zones by this Court, without any authority, must be rejected. In our view, the Committees had exercised their powers in consonance with the directions issued by this Court." (Emphasis supplied) It further appears from the said judgment, that out of the 248 roads recommended by the Hawking Committees, 27 roads fell within 100/150 meters from the places of worship and educational institutions. The Committees had suggested for modification of Direction No.3 in 2004 Order. However, the said request was rejected. Twenty seven roads were directed to be reduced. As such total roads available as hawking zones, were approved to be 221. Their Lordships further observed that, as recommended by the Committee, 5555 licensed hawkers are allowed to continue their business irrespective of draw of lots. Their Lordships further directed that 2083 licensed hawkers hawking in hawking zones shall be allowed to continue the hawking irrespective of draw of lots. 7521 licensed hawkers who were in non-hawking zones were directed to shift to hawking zones and allowed to continue hawking. All these were subject to regulations to be framed by the Government of Maharashtra. There were also certain other directions issued by Their Lordships with regard to allotment of pitches etc. Certain recommendations made with regard to hawkers plaza by Committees, were accepted by Their Lordships and the BMC was to undertake immediate steps for making the infrastructure available. Their Lordships took into

consideration the National Policy on Urban Street Vendors which was framed as far back as in 2004. Their Lordships observed that Section 10 of the said Policy deals with the role of the State Governments. Upon direction by Their Lordships, an affidavit came to be filed by the State Government, stating therein that in order to implement the National Policy on Urban Street Vendors in the State, a Committee had been appointed under the Chairmanship of the Principal Secretary II, Urban Development Department, which also consisted eight other Officers. Petitions were disposed of by directing the State Government to frame regulations in order to solve the problems of hawkers, without being influenced by any scheme framed by the Court or any direction issued by the Court. 33. Again in *Gainda Ram and Others v. Municipal Corporation of Delhi and Others*, (2010) 10 SCC 715, Their Lordships of the Apex Court considered the issue with regard to right of hawkers to do their vending business on the streets situated within the jurisdiction of Municipal Corporation of Delhi. Their Lordships had an occasion to consider the new National Policy on Urban Street Vendors, 2009. Their Lordship also considered that the Bill called the Model Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill, 2009 was also finalized. Their Lordships therefore disposed of the Writ Petition with a direction that problems of hawking and street vending may be regulated by the present scheme framed by the MCD till 30/06/2011. Before that date, the appropriate Government was directed to enact and bring out the law to regulate hawking and the hawkers' fundamental right. 34. Their Lordships vide Order dated 30.11.2010 in *Maharashtra Ekta Hawkers' Union* case, directed discontinuance of Three Members Committees, after observing that finalization of hawking and non-hawking zones was already done. Their Lordships further observed that the functions of issuing licences to hawkers as contemplated in the judgment dated 9.12.2003 read with the judgment dated 12.2.2007 will be discharged by a Senior Officer of the Municipal Corporation to be designated by the Municipal Commissioner. 35. Lastly, in the case of *Maharashtra Ekta Hawkers Union & anr. v. Municipal Corporation, Greater Mumbai & Ors.*, 2013(6) Bom.C.R. 481 (hereinafter referred to as "2013 Ekta Judgment"), Their Lordships have again considered the said issue. In para 14, Their Lordships have lifted the embargo which they had put earlier on High Courts on entertaining the issue and observed that 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. Their Lordships, in para 15, noticed that in *Gainda Ram's* case, Their Lordships had directed the appropriate Government to enact the law on or before 30th June, 2011. It has been observed by Their Lordships that 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. Their Lordships, however, observed that till the needful is done, it will be apposite for the Court to step in and direct that 2009 policy should be implemented throughout the country. Operative part of the said judgment reads thus :- "16.

For facilitating implementation of the 2009 Policy, we issue the following directions: (i) Within one month from the date of receipt of copy of this order, the Chief Secretaries of the State Governments and Administrators of the Union Territories shall issue necessary instructions/directions to the department(s) concerned to ensure that the Town Vending Committee is constituted at city/town level in accordance with the provisions contained in the 2009 Policy. For the cities and towns having large municipal areas, more than one Town Vending Committee may be constituted. (ii) Each Town Vending Committee shall consist of representatives of various organisations and street vendors/hawkers. 30% of the representatives from the category of street vendors/hawkers shall be women. (iii) The representatives of various organisations and street vendors/hawkers shall be chosen by the Town Vending Committee by adopting a fair and transparent mechanism. (iv) The task of constituting the Town Vending Committees shall be completed within two months of the issue of instructions by the Chief Secretaries of the State and the Administrators of the Union Territories. (v) The Town Vending Committees shall function strictly in accordance with the 2009 Policy and the decisions taken by it shall be notified in the print and electronic media within next one week. (vi) The Town Vending Committees shall be free to divide the municipal areas in vending/hawking zones and sub-zones and for this purpose they may take assistance of experts in the field. While undertaking this exercise, the Town Vending Committees constituted for the cities of Delhi and Mumbai shall take into consideration the work already undertaken by the municipal authorities in furtherance of the directions given by this Court. The municipal authorities shall also take action in terms of Paras 4.2(b) and (c). (vii) All street vendors/hawkers shall be registered in accordance with Para 4.5.4 of the 2009 Policy. Once registered, the street vendor/hawker, shall be entitled to operate in the area specified by the Town Vending Committee. (viii) The process of registration must be completed by the municipal authorities across the country within four months of the receipt of the direction by the Chief Secretaries of the States and Administrators of the Union Territories. (ix) The State Governments/Administration of the Union Territories and municipal and local authorities shall take all the steps necessary for achieving the objectives set out in the 2009 Policy. (x) The Town Vending Committee shall meet every month and ensure implementation of the relevant provisions of the 2009 Policy and, in particular, Paras 4.5.1(b) and (c). (xi) Physically challenged who were allowed to operate PCOs in terms of the judgment reported in *Maharashtra Ekta Hawkers Union v. Municipal Corpn., Greater Mumbai* [(2009) 17 SCC 231] shall be allowed to continue to run their stalls and sell other goods because running of PCOs is no longer viable. Those who were allowed to run Aarey/Sarita shall be allowed to continue to operate their stalls. (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. (xiii) Henceforth, the parties shall be free to approach the

jurisdictional High Courts for redressal of their grievance and the direction, if any, given by this Court in the earlier judgments/orders shall not impede disposal of the cases which may be filed by the aggrieved parties. (xiv) The Chief Justices of the High Courts are requested to nominate a Bench to deal with the cases filed for implementation of the 2009 Policy and disputes arising out of its implementation. The Bench concerned shall regularly monitor implementation of the 2009 Policy and the law which may be enacted by Parliament. (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 Town Vending Committee concerned. (xvi) The provisions of the 2009 Policy and the directions contained hereinabove shall apply to all the municipal areas in the country." In para 17 of the said Judgment, Their Lordships observed that the aforesaid directions shall remain operative, till an appropriate legislation is enacted by Parliament or any other competent legislature and is brought into force. 36. After the said judgment was delivered by Their Lordships of the Apex Court on 09/09/2013, the said Act has been enacted by the Parliament which received the assent of the President on 04/03/2014 and has been brought in to force on 01/05/2014. THE SCHEME OF THE ACT AND CONSIDERATION THEREOF BY THE DIVISION BENCH OF THIS COURT 37. It will be relevant to refer to clauses (b), (j), (l), (m) and (n) of Section 2 of the said Act. Clause (b) defines "holding capacity" to mean the maximum number of street vendors who can be accommodated in any vending zone and has been determined as such by the local authority on the recommendations of the Town Vending Committee. Clause (j) defines "scheme" to mean a scheme framed by the appropriate Government under Section 38. Clause (l) defines the term "street vendor", Clause (m) defines "Town Vending Committee" to mean the body constituted by the appropriate Government under Section 22. Clause (n) defines "vending zone" to mean an area or a place or a location designated as such by the local authority, on the recommendations of the Town Vending Committee, for the specific use by street vendors for street vending and includes footpath, side walk, pavement, embankment, portions of a street, waiting area for public or any such place considered suitable for vending activities and providing services to the general public. 38. Section 3 of the said Act reads thus :- "3. Survey of street vendors and protection from eviction or relocation.- (1) The Town Vending Committee shall, within such period and in such manner as may be specified in the scheme, conduct a survey of all existing street vendors, within the area under its jurisdiction, and subsequent survey shall be carried out at least once in every five years. (2) The Town Vending Committee shall ensure that all existing street vendors, identified in the survey, are accommodated in the vending zones subject to a norm conforming to two and half per cent. Of the population of the ward or zone or town or city, as the case may be, in accordance with the plan for street vending and the holding capacity of the vending zones. (3) No street vendor shall be evicted or, as the case may be, relocated till the survey specified

under sub-section (1) has been completed and the certificate of vending is issued to all street vendors." It could thus be seen that sub-section (1) of Section 3 requires TVC to conduct survey of all existing street vendors within the area under its jurisdiction within such period and in such manner as may be specified in the scheme. It further provides that subsequent survey shall be carried out at least once in every five years. Sub-section (2) of Section 3 provided that TVC shall ensure that all existing street vendors, identified in the survey, are accommodated in the vending zones subject to a norm conforming to two and half per cent of the population of the ward or zone or town or city, as the case may be, in accordance with the plan for street vending and the holding capacity of the vending zones. Sub-section (3) of Section 3 provides that no street vendor shall be evicted or relocated till the survey specified under sub-section (1) has been completed and the certificate of vending is issued to all street vendors. 39. Sub-section (1) of Section 4 provides that every street vendor, identified under the survey carried out under sub-section (1) of section 3, who has completed the age of fourteen years shall be issued a certificate of vending by the TVC. Proviso to sub-section (1) of Section 4 entitles a person who has been issued a certificate of vending before the commencement of the Act, whether known as licence or any other form of permission, to be deemed to be a street vendor in that category, for the purpose for which he has been issued such certificate of vending, irrespective of, even if such a person is not included under the survey carried out under sub-section (1) of Section 3. 40. Section 21 mandates that a local authority, in consultation with the planning authority and on the recommendations of the TVC shall prepare a plan to promote the vocation of street vendors once in every five years. The plan so prepared is required to be submitted to the appropriate Government for its approval. It further provides that Government shall, before notifying the plan, determine the norms applicable to the street vendors. 41. Section 22 of the said Act reads thus :- "22. Town Vending Committee. -(1) The appropriate Government may, by rules made in this behalf, provide for the term and the manner of constituting a Town Vending Committee in each local authority: Provided that the appropriate Government may, if considers necessary, provide for constitution of more than one Town Vending Committee, or a Town Vending Committee for each zone or ward, in each local authority. (2) Each Town Vending Committee shall consist of :- (a) Municipal Commissioner or Chief Executive Officer, as the case may be, who shall be the Chairperson; and (b) such number of other members as may be prescribed, to be nominated by the appropriate Government, representing the local authority, medical officer of the local authority, the planning authority, traffic police, police, association of street vendors, market associations, traders associations, nongovernmental organisations, community based organisations, resident welfare associations, banks and such other interests as it deems proper; (c) the number of members nominated to represent the nongovernmental organisations and the community based organisations shall not be less than ten per cent.; (d) the number of members representing the street vendors shall not be less than forty per cent. who shall be elected by the street vendors

themselves in such manner as may be prescribed: Provided that one-third of members representing the street vendors shall be from amongst women vendors: Provided further that due representation shall be given to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, minorities and persons, with disabilities from amongst the members representing street vendors. (3) The Chairperson and the members nominated under sub-section (2) shall receive such allowances as may be prescribed by the appropriate Government." Sub-section (1) of Section 22 enables the appropriate Government to provide, in the rules for the term and the manner of constituting TVC in each local authority. The proviso thereto enable the appropriate Government to provide for constitution of more than one TVC or TVCs for each zone or ward, in each local authority. Clause (a) of sub-section (2) thereof provides that Municipal Commissioner or Chief Executive Officer shall be the Chairperson of the Committee. Clause (b) thereof provides that the Committee shall also consist of such number of other members as may be prescribed to be nominated by the appropriate Government, representing the local authority, medical officer of the local authority, the planning authority, traffic police, police, association of street vendors, market associations, traders associations, nongovernmental organisations, community based organisations, resident welfare associations, banks and such other interests as it deems proper. Clause (c) thereof provides that number of NGOs and the community based organisations shall not be less than ten percent. Clause (d) provides that number of members representing the street vendors shall not be less than forty percent, who shall be elected by the street vendors themselves in such manner as may be prescribed. The first proviso to clause (d) provides that one-third of members representing the street vendors shall be from amongst women vendors and the second proviso provides that due representation shall be given to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, minorities and persons with disabilities in the said category. 42. Section 33 provides that, the provisions of the said Act shall have overriding effect notwithstanding anything inconsistent therein contained in any other law for the time being in force or any instrument having effect by virtue of any law other than the said Act. 43. Section 34 enables the appropriate Government to delegate such powers and functions as it may deem necessary to the local authority or TVC. However, it provides that power under Section 38 and 36 cannot be delegated. Section 36 is rule making power which empowers the appropriate Government to frame, within one year from the date of commencement of the Act, by notification, Rules for carrying out the provisions of the said Act. Clause (h) of sub-section (2) of Section 36 deals with the term and the manner of constituting the TVC under sub-section (1) of Section 22. Clause (I) deals with the number of other members of the TVC under clause (b) of sub-section (2) of Section 22. Clause (j) deal with election amongst street vendors under clause (d) of sub-section (2) of Section 22. 44. Section 38 of the said Act reads thus :- "38. Scheme for street vendors.-(1) For the purposes of this Act, the appropriate Government shall frame a scheme, within six months from the date of commencement of this Act, after due consultations with the

local authority and the Town Vending Committee, by notification, which may specify all or any of the matters provided in the Second Schedule. (2) A summary of the scheme notified by the appropriate Government under sub-section (1) shall be published by the local authority in at least two local news papers in such manner as may be prescribed." Section 38 mandates that the appropriate Government shall frame a scheme within six months from the date of coming into force of the rules framed under section 36 after due consultation with the local authority and the TVC. It requires that such a scheme has to be framed by issuing a Notification and requires to specify all or any of the matters provided in the Second Schedule in the said scheme. Sub-section (2) of Section 38 provides that a summary of the scheme notified by the appropriate Government under sub-section (1) shall be published by the local authority in at least two local news papers in such manner as may be prescribed. 45. In the case of Vile Parle Kelvani Mandal and Ors v. Municipal Corporation of Greater Mumbai and Others, 2015(6) AIR Bom R 609, provisions of the said Act fell for consideration before the Division Bench. The Division Bench in para 43 considered apathy on the part of State Government in not framing the Rules and scheme within stipulated time period. It holds that in view of sub-section (3) of Section 3, no existing street vendor as on 1st May, 2014 can be evicted or relocated. Division Bench of this Court (Coram: A.S. Oka & Revati Mohite Dere, JJ) disposed of the Petitions by the following order:- "ORDER (i) We hold that with effect from 1st May, 2014 the directions issued by the Apex Court from time to time in Civil Appeal Nos. 4156-4157 of 2002 (Maharashtra Ekta Hawkers Union and others v. Municipal Corporation of Greater Mumbai and others) shall cease to apply and all existing street vendors as on 1st May, 2014 who are covered by the definition of clause (1) of Section 2 of the Street Vendors Act are entitled to protection against eviction and relocation as provided under Sub-section (3) of Section 3 thereof. No Street Vendors who were carrying on business as on 1st May, 2014 and who are covered by the definition of Street Vendor under clause (1) of Section 2 shall be evicted or relocated by the Mumbai Municipal Corporation till the survey as specified under Sub- Section (1) of Section 3 of the Street vendors Act is carried out and the certificates of vending are issued to all Street Vendors in accordance with Sub-section (1) of Section 4 by the Town Vending Committee. This protection is applicable only to those Street Vendors who were carrying on business as on 1st May 2014; (ii) Those Street Vendors who have started street vending after the said date shall be evicted by the Mumbai Municipal Corporation in accordance with law. The action of eviction shall be initiated as expeditiously as possible; (iii) We declare that a Street Vendor who is engaged in cooking or preparation of food items in a street, lane, side walk, footpath, pavement, public park or any other public place or private place either from a temporary built structure or by moving from place to place is not covered by the definition of street vendor under clause (1) of Section 2 of the Street Vendors Act and consequently such a vendor shall not be entitled to protection under Sub-section (3) of Section 3 so long as he is indulging in cooking or preparation of food items; (iv) We, therefore, direct the Mumbai

Municipal Corporation to initiate action of eviction in accordance with law against Street Vendors who are engaged in preparation/cooking of food items in street, lane, side walk, footpath, pavement, public park or any other public place or private area either from a temporary built structure or by moving from place to place and who do not stop cooking or making food within the time specified in a notice served to them. Action of eviction shall be initiated by the Mumbai Municipal Corporation after following due process of law against such Street Vendors immediately on expiry of a period of two months from today; (v) We direct the Municipal Corporation to ensure that when such action of eviction is proposed, caveats shall be filed in appropriate Courts and the Municipal Corporation shall take prompt steps to contest the proceeding if filed for challenging the action of eviction. We direct the Municipal Corporation to create a tracking system for all such litigations so that the same are promptly attended to; (vi) We direct the Traffic Police to take necessary action in accordance with law for preventing indiscriminate parking of vehicles by the customers of the stalls on the said Gulmohar road and nearby streets. Sufficient Traffic Police shall be deployed on the said roads during the rush hours; (vii) We direct the Principal Secretary of the Urban Development Department of the State Government to file affidavit setting out the outer limit within which the following actions shall be completed by the State Government: (a) Formulation of the scheme for street vendors under Sub-section (1) of Section 38 of the Street Vendors Act; (b) Framing of the Rules in accordance with Section 36 of the Street Vendors Act; and (c) Constitution of Town Vending Committees in each local authority; (viii) The aforesaid affidavit shall be filed within a period of one month from today. Before setting out the outer limit, the State Government shall make a note that the time provided to the State Government under the Street Vendors Act has expired long back; (ix) We direct the Mumbai Municipal Corporation to file an affidavit setting out the outer limit within which the plan for street vending shall be prepared from the date on which the Town Vending Committee is constituted for the said local authority. Such affidavit shall be filed within the period of six weeks from today. The compliance affidavit reporting compliance with the directions issued in terms of clauses (ii) and (iv) shall be filed on or before 31st January, 2016; (x) For considering the compliance affidavits to be filed by the State Government and the Municipal Corporation, the Petition shall be listed on 21st December, 2015; (xi) We direct the Mumbai Municipal Corporation to take steps for implementation of order dated 21st January, 2002 in Writ Petition No. 1799 of 2001 immediately on expiry of a period of two months from today. Affidavit of compliance on this aspect shall be filed on or before 31st January, 2016; (xii) The suits listed in paragraph 51 above pending in the City Civil Court at Dindoshi shall be disposed of as expeditiously as possible and in any event within a period of one year from. This direction be communicated by the Registrar (Judicial-I) to concerned Court; (xiii) Rule issued in the above Petitions is made partly absolute on above terms. There will be no order as to costs; (xiv) All Chamber Summons and Notice of Motion, if any, are disposed of accordingly."

46. In view of the judgment of the Division Bench of this Court in Vile Parle

Kelvani Mandal (supra), all such vendors, existing as on 01/05/2014, are entitled to protection against eviction. The division Bench has categorically held that no Street Vendors who were carrying business on 01/05/2014 and who were covered by the definition of the term "street vendor" under clause (1) of Section 2 shall be evicted or relocated till the survey as specified under Sub-section (1) of Section 3 of the Street Vendors Act is carried out and the certificates of vending are issued to all Street Vendors in accordance with Sub-section (1) of Section 4 by the Town Vending Committee. The Division Bench has also held that those Street Vendors who have started street vending after the said date are not entitled to the protection of the said Act. Not only that, the Division Bench mandated the Corporation to initiate action of eviction against such vendors as expeditiously as possible. CONSIDERATIONS 47. However, the question that we are faced with in the present case is totally different. No doubt, in view of provisions of Section 33 of the said Act, which gives the Act an overriding effect and in view of para 17 of 2013 Ekta Judgment[14*], provisions of the said Act would apply and all such directions issued by the Apex Court shall cease to operate. However, the question that we are faced with is, as to whether survey as provided under sub-section (1) of Section 3 of the said Act could be conducted in the absence of TVCs being constituted under the provisions of Section 22 of the said Act and in the absence of a scheme as contemplated under the provisions of Section 38 of the said Act or not. [14* 2013(6) Bom. C.R. 481] 48. Another question that would be required to be answered is, as to whether, till the vending zones and non-vending zones are identified by TVC and declared so by local authority, the vendors would be entitled to continue their business even in the zones which are identified to be non-hawking/ non-vending zones or not. 49. We may, at the outset, confess that the answer to the first question is very difficult. However, with great respect to the legislature, we may say that the difficulty arises on account of defective legislation. Mr. Desai has argued that unless the TVCs having representation of the street vendors as per Section 22 are constituted, the survey under sub-section (1) of Section 3 cannot be conducted. However, in the same breath, he submitted that unless the survey, as required under sub-section (1) of Section 3 is conducted, elections of the representatives of the street vendors cannot be conducted. The question that poses thus is; which comes first, the chicken or the egg. 50. As has been rightly argued on behalf of the Petitioners that the said Act has been enacted with an object to enable the street vendors to earn a livelihood through creation of good working conditions as enshrined in Articles 14, 19(1)(g), 38(2), 39(a), 39(b) and 41 of the Constitution and fostering a congenial environment for the urban street vendors to carry out their activities without harassment from any quarter. At the same time, the Act also recognizes right of street vendors, without causing obstruction to the public. It also aims at providing a mechanism for regulation of street vending activities to avoid congestion on sidewalks and to ensure free flow of traffic on roads by a legislative framework, to enable street vendors to pursue a honest living without harassment. As already discussed hereinabove, the legislative intent is to give importance to the TVC right from conducting survey of

all existing street vendors, issuing certificates of vending as also cancellation of certificates of vending. Not only that, but the local authority, while declaring a zone to be a part of no vending zone for any public purpose, is required to act on the recommendations of the TVC. The plan for street vending is required to be prepared by the local authority on the recommendations of the TVC and in consultation with the Planning Committee. The TVC is required to maintain up to date records of registered street vendors and street vendors to whom certificate of vending has been issued containing all the details. Even under Section 38, scheme is required to be framed by the State Government only after consultation with the local authority and the TVC. The scheme is required to specify all or any of the matters provided in the Second Schedule. It will be relevant to note that clause (a) of the Second Schedule specifically provides for the manner of conducting survey. 51. We find that, if the contention of the Petitioners that, unless survey is conducted, elections of the representatives to be elected under Section 22 cannot be conducted and that, at the same time, unless the TVCs are duly established by including elected representatives of the vendors, survey cannot be conducted under sub-section (1) of Section 3 is to be accepted; it will lead to nothing else but unworkability of the said Act. 52. We are of the considered view that both things cannot go hand in hand. No doubt that it would have been apt that the appropriate legislature while enacting the said Act, ought to have made some transitory provision, so that the provisions in the said Act become active and march towards the object for which it has been enacted. The question that we are faced with is ; whether to declare that the provisions in the said Act are self-contradictory and hold that the Act is unworkable or to take resort to a pragmatic interpretation to find out the solution, so that the Act comes into play and travels towards its noble object. 53. The aforesaid position as pointed out by us hereinabove, about the apparent conflict of sub-section (1) of section 3 on one hand and section 22 of the said Act on the other hand reminds us of the following observations of Justice Krishna Iyer in the judgment of the Constitution Bench of seven Judges in the case of State of Karnataka and another etc v. Ranganatha Reddy and another etc., AIR 1978 SC 215 Justice Krishna Iyer in his inimitable style observes in para 48 as under:- "48. Before entering the thorny thicket of debate on the questions arising in this batch of appeals a cautionary word may be uttered, without disrespect, about the unwitting punishment of the community by our legislative draftsmen whose borrowed skills of Westminster vintage and hurried bills without sufficient study of their economic project, occasionally result in incomprehensibility and incongruity of the law for the lay and the legal. Francis Bennion [Laws Are Not for Laymen-Guardian Miscellany, May 29, 1975] , commenting on the Renton Committee Report, writes: "The Renton Committee points out that the problem of obscure statute law is important to every citizen. "There is hardly any part of our national life or of our personal lives that is not affected by one statute or another. The affairs of local authorities, nationalised industries, public corporations and private commerce are regulated by legislation. The life of the ordinary citizen is affected by various provisions of the statute book from cradle

to grave." The committee might have added that the rule of law and parliamentary democracy itself are imperilled if laws are incomprehensible. They did say that it is of fundamental importance in a free society that the law should be readily ascertainable and reasonably clear, and that otherwise it is oppressive and deprives the citizen of one of his basic rights. It is also needlessly expensive and wasteful. Reed Dicerson, the famous American draftsman, said it cost the Government and the public `many millions of dollars annually'." It must be said in fairness to both sides that Shri Lal Narain Sinha whole-heartedly agreed with Shri Asoke Sen (they appeared on opposite sides) that the legislation was ill-drafted and made a big draft on the creative imagination and linguistic tolerance of the Judges, to reconcile the verbal deficiencies and semantic difficulties besetting the text. Shri Sinha told the Court that a clarificatory bill was going before the House shortly as an amending exercise in this behalf. Our draftsmen handle foreign know-how meant for different circumstances, and without full grasp of the economic regulation or the leisure and facilities for such study." We find that present case is a classic case to which observations made by Justice Krishna Iyer aptly apply. We have no doubt that the Bill which is translated into Act has resulted in incomprehensibility and incongruity of the law. However, we find that the aforesaid judgment which points out the problem, also gives a direction towards the solution . It will be appropriate to refer to following observations of the eminent jurist in para 53 of the said Judgment:- "53..... Codified law is legislatively crystallised politico-economics and so the search of the jurist has to be wider and deeper and interlaced. Take care of the basics, the specifics will take care of themselves. So we have to go behind the legal facade to respond to the rhythm of the pulsating text of the Constitution, which casts heavy developmental responsibilities on the Welfare State.....This is no argument for abdication of judicial power; for where legislation is colourable, measures make-believe or orders mala fide, the judges are the masters of the situation, and this Court, under Art. 141, declares the law in that supreme spirit. But courts must be circumspect not to rush in where serious reflection will make them fear to tread nor to resort to adroit circumvention because of economic allergy to a particular legislative policy." It could thus be seen that Justice Krishna Iyer observed that, codified law is legislatively crystallised politico-economics. It has been further emphasized that, therefore an attempt has to be made to widen and deepen the search and interlaced. His Lordship further observes that no doubt that where legislation is found to be colourable and mala fide, judges can very well declare the law to be unconstitutional. However, his Lordship further gives a word of caution that the Court must be circumspect not to rush in where serious reflection will make them fear to tread nor to resort to adroit circumvention because of economic allergy to a particular legislative policy. It will be further appropriate to refer to the following observations in the same judgment in para 54. "54.A panoramic sociological view - not a narrow legal peep - alone can invest Judicial power with capability to help solve the myriad problems of Mankind and Mother Earth." 54. In the case of Carew and Company Ltd v. Union of India, AIR 1975 SC 2260, Their Lordships were

considering the meaning to be given to the term "undertaking" as was used in the Monopolies and Restrictive Trade Practices Act, 1969. Again, in his inimitable style, in para 20, Justice Krishna Iyer, observes thus :- "20. The law is not "a brooding omnipotence in the sky" but a pragmatic instrument of social order. It is an operational art controlling economic life, and interpretative effort must be imbued with the statutory purpose. No doubt, grammar is a good guide to meaning but a bad master to dictate. Notwithstanding the traditional view that grammatical construction is the golden rule, Justice Frankfurter used words of practical wisdom when he observed [Massachusetts S and Insurance Co.v.U.S., (1956) 352 US 128 at p. 138] : "There is no surer way to misread a document than to read it literally." In para 23 of the said Judgment, His Lordship further observes thus:- "23. If the language used in a statute can be construed widely so as to salvage the remedial intendment, the Court must adopt it. Of course, if the language of the statute does not admit of the construction sought, wishful thinking is no substitute and then, not the Court but the Legislature is to blame for enacting a damp squib statute. In my view, minor definitional disability, divorced from the realities of industrial economics, if stressed as the sole touchstone, is sure to prove disastrous when we handle special types of legislation like the one in this case. I admit that viewed from one standpoint the logic of Shri Gupte is flawless, but it also makes the law lifeless, since the appellant is thereby enabled neatly to nullify the whole object of Chapter III which is to inhibit concentration of economic power. To repeat for emphasis, when two interpretations are feasible, that which advances the remedy and suppresses the evil, as the Legislature envisioned, must find favour with the Court. Are there two interpretations possible? There are, as I have tried to show and I opt for that which gives the law its claws." (Emphasis supplied) It could thus be seen that, it has been observed by His Lordship that if the language used in a statute can be construed widely, so as to salvage the remedial intendment, the Court must adopt it. It has further been observed that if the language of the statute does not admit of the construction sought, then the legislature is to blame for such statute. However, it has been observed that minor definitional disability, divorced from the realities of industrial economics, if stressed as the sole touchstone, is sure to prove disastrous when the Court handles special types of legislation. 55. In the case of Bhudan Singh and Another v. Nabi Bux and Another, 1969 (2) SCC 481, Their Lordships had an occasion to consider as to whether the word "held" as used in U.P. Zamindari Abolition and Land Reforms Act, 1950 could be read as "lawfully held". Their Lordships observed in para 9 thus :- 9. Before considering the meaning of the word "held" in Section 9, it is necessary to mention that it is proper to assume that the law makers who are the representatives of the people enact laws which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on "Statutory Constructions" that the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every peace of legislation. Consequently where the suggested

construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instance, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the law makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent." (Emphasis supplied) It could thus be seen that Their Lordships observed that the law makers who are the representatives of the people, enact laws which the society considers as honest, fair and equitable. It has been observed that the object of every legislation is to advance public welfare and that the legislative process is influenced by considerations of justice and reason. It has been observed that where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instance, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the law makers. Making the aforesaid observation, the Court specifically rejected the interpretation that was sought to be raised by adopting literal principle of interpretation that the term "held" also included "possession" even by a trespasser. Their Lordships interpreted the word "held" to be "lawfully held". 56. In the case of K.P. Varghese v. Income Tax Officer, Ernakulam and Another, (1981) 4 SCC 173, Their Lordships had an occasion to consider interpretation of sub-section (2) of Section 52 of the Income Tax Act, 1961. It was sought to be urged on behalf of revenue that plain and literal meaning should be given to the provision. Per contra, it was sought to be urged on behalf of the assessee that the said provision of sub-section (2) could not be invoked, unless the words "understatement of consideration in respect of transfer" were read into the statutory provision. In the said case, Their Lordships observed as under:- "6.We must therefore eschew literalness in the interpretation of Section 52 sub-section (2) and try to arrive at an interpretation which avoids this absurdity and mischief and makes the provision rational and sensible, unless of course, our hands are tied and we cannot find any escape from the tyranny of the literal interpretation. It is now a well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction (vide *Luke v. Inland Revenue Commissioner* [(1963) AC 557]). The Court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision. We think that, having regard to this well-recognised rule of interpretation, a fair and reasonable construction of Section 52 sub-section (2) would be to read into it a condition that it would apply only where the consideration for the transfer is understated or in other words, the assessee has actually received a larger consideration for the transfer than what is declared in the instrument of transfer and it would have no application in case of a bona fide transaction where the full

value of the consideration for the transfer is correctly declared by the assessee. There are several important considerations which incline us to accept this construction of Section 52 sub-section (2)." (Emphasis supplied) It could thus be clearly seen that, Their Lordships keeping aside literal rule of interpretation, held that the words "where the consideration for the transfer is understated" have to be read into the provisions of sub-section (2) of section 52 of the said Act, so as to achieve the obvious intention of the legislature. 57. In the case of *New India Assurance Company Ltd. v. Nusli Neville Wadia*, (2008) 3 SCC 279, while considering the provisions of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, Their Lordships observed thus :- "49. Section 5 of the Act, on a plain reading, would place the entire onus upon a noticee. It, in no uncertain terms, states that once a notice under Section 4 is issued by the Estate Officer on formation of his opinion as envisaged therein it is for the noticee not only to show cause in respect thereof but also adduce evidence and make oral submissions in support of his case. Literal meaning in a situation of this nature would lead to a conclusion that the landlord is not required to adduce any evidence at all nor is it required even to make any oral submissions. Such a literal construction would lead to an anomalous situation because the landlord may not be heard at all. It may not even be permitted to adduce any evidence in rebuttal to the one adduced by the noticee nor it would be permitted to advance any argument. Is this contemplated in law? The answer must be rendered in the negative. When a landlord files an application, it in a given situation must be able to lead evidence either at the first instance or after the evidence is led by the noticee to establish its case and/or in rebuttal to the evidence led by the noticee." "50. The literal interpretation of the statute, if resorted to, would also lead to the situation that it would not be necessary for the landlords in any situation to plead in regard to its need for the public premises. It could just terminate the tenancy without specifying any cause for eviction." "51. Except in the first category of cases, as has been noticed by us hereinbefore, Sections 4 and 5 of the Act, in our opinion, may have to be construed differently in view of the decisions rendered by this Court. If the landlord being State within the meaning of Article 12 of the Constitution of India is required to prove fairness and reasonableness on its part in initiating a proceeding, it is for it to show how its prayer meets the constitutional requirements of Article 14 of the Constitution of India. For proper interpretation not only the basic principles of natural justice have to be borne in mind, but also principles of constitutionalism involved therein. With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled, which in turn would lead the beneficiary under the statutory scheme to fulfil its constitutional obligations as held by the Court *inter alia* in *Ashoka Marketing Ltd.*

[(1990) 4 SCC 406]" (Emphasis supplied) "54. The provisions of the Act and the Rules in this case, are, thus required to be construed in the light of the action of the State as envisaged under Article 14 of the Constitution of India. With a view to give effect thereto, the doctrine of purposive construction may have to be taken recourse to. (See *Oriental Insurance Co. Ltd. v. Brij Mohan* [(2007) 7 SCC 56 : (2007) 3 SCC (Cri) 304 : (2007) 7 Scale 753].) 58. We may also gainfully refer to observations in para 27 of the Judgment of the Apex Court in *N. Kannadasan v. Ajoy Khose and Others*, (2009) 7 SCC 1, which read thus :- "27 Interpretative tools of constitutional provisions and the statutory provisions may be different. Whatever interpretative tool is applied, the Court must not forget that its job is to find out the intention of the legislature. It can be gathered from the words used. However, if plain meaning assigned to the section results in absurdity or anomaly, literal meaning indisputably would not be applied. It is also well settled that the Court may have to change the interpretative tool in the event it is necessary to give effective contextual meaning to the Act." (Emphasis supplied) We may also refer to the following observations of their Lordships of the Apex Court in para 54 and 55 of the said judgment, which read thus:- "54. A case of this nature is a matter of moment. It concerns public interest. Public information about independence and impartiality of the judiciary would be in question. The duty of all organs of the State is that the public trust and confidence in the judiciary may not go in vain. Construction of a statute would not necessarily depend upon application of any known formalism. It must be done having regard to the text and context thereof. For the aforementioned purpose, it is necessary to take into consideration the statutory scheme and the purpose and object it seeks to achieve." "55. Construction of a statute, as is well known, must subserve the tests of justice and reason. It is a well-settled principle of law that in a given case with a view to give complete and effective meaning to a statutory provision, some words can be read into; some words can be subtracted. Provisions of a statute can be read down (although sparingly and rarely)." (Emphasis supplied) 59. It could thus be seen from the aforesaid judgments that Their Lordships have consistently held that if, by giving a plain literal meaning to statutory provision, it leads to absurdity and unworkability of the statute then the Court must resort to the principle of purposive interpretation. It has been held that, the Court must make an attempt to find out the obvious intention of the legislature and must make an attempt to interpret the statute in such a manner, so as to give effect to the intention of the legislature. It has been held that presumption is that the legislature has enacted the statute, for giving effect to the purpose for which it has been enacted. As has been discussed, very purpose of the Act is to recognize rights of the vendors to do vending business without any harassment from any quarters and also to regulate the hawking, so that no inconvenience is caused to the citizens. As has been argued before us on behalf of the Counsel for the Petitioners, there is continuous harassment to the Petitioners from the police and Corporation machineries. It could thus be seen that the Act has been enacted with an avowed purpose of ensuring employment to the millions of unemployed, save them from

harassment and, at the same time regulate business of hawking, so that inconvenience is not caused to the citizens. The intention of the legislature is to ensure participation of the stake holders while taking ultimate decision in the matter. The Government Authorities, the representatives of the Local Authorities, the representatives of the street vendors, so also the representatives of the residents, the traders, the NGOs, are all expected to participate in the decision making process. As can be seen from 2013 Ekta Judgment of the Apex Court, that Their Lordships observe that once the said Act comes into effect, the livelihood of millions would be saved and they would get protection against constant harassment and victimization which has so far been an order of the day. 60. It will not be out of place to mention that the said Act has been enacted on account of constant directions issued by Their Lordships of the Apex Court. It will also be pertinent to note that right from 1983, it is Their Lordships of the Apex Court, who have from time to time, made an attempt to give solution to this unending problem. It could thus be seen that the very purpose of the enactment is to find out permanent solution to the problems of vendors from constant harassment on one hand and striking balance between rights of the vendors and rights of other citizens on the other hand. We are therefore of the considered view that if we adopt pedantic approach and declare the statute to be unworkable, it will lead to nothing else but continuation of problem which has remained unresolved for more than four decades. We are of the considered view that this is one enactment wherein, we must resort to a pragmatic approach, so as to give effect to the intention of the legislature to solve this longstanding issue. CONCLUSIONS 61. In the Light of this legal position, we find that in order to make the Act workable, the first elections to the TVC will have to be conducted on the basis of surveys which were conducted under the 2009 policy. It could be noted that in 2013 Ekta Judgment[21*], Their Lordships observed that till 2012 Bill becomes law, it will be apposite for the Court to step in and direct that the 2009 Policy should be implemented throughout the country. It could be seen that under sub-clause (a) of Clause 4.5.1 of the said policy, there is a provision for TVC. Clause (a) provides for constitution of the Committee, which includes the Municipal Commissioner / Chief Executive Officer of the urban local body as Chairperson. It also provides for representatives of the local authority, planning authority, police, associations of street vendors, resident welfare associations and Community Based Organisations. Clause 4.5.2 deals with functions of TVCs. Clause (a) deals with undertaking periodic survey / census to assess the increase or decrease in the number of street vendors. Clause (b) deals with registration of the street vendors and issuance of Identity Cards. It will also be relevant to refer to clause (vii) of operative part of the aforesaid Judgment in para 16, which mandates that all street vendors/hawkers shall be registered in accordance with paragraph 4.5.4 of the 2009 Policy. It further mandates that once registered, the street vendor / hawker, shall be entitled to operate in the area specified by the Town Vending Committee. [21* 2013(6) Bom. C.R. 481] 62. It will be appropriate to refer to Rule 29 of the said Rules, which reads thus:- "29 Any work performed by local authority such as survey of street vendors, issuing

certificate of vending, plan of street vending and the resolutions of Town Vending Committee which are in consistent with the provisions of the Act. And were done as per the directions of Hon. Supreme Court of India in Civil Application No.41564157 of 2002 shall be deemed to have been done under the provisions of these rules." The said Rule provides that any work performed by the local authority such as survey of street vendors, issuing certificate of vending, plan of street vending and the resolutions of TVC which are consistent with the provisions of the Act and were done as per the directions of Hon. Supreme Court of India in Civil Application No.41564157 of 2002 shall be deemed to have been done under the provisions of the said Rules. 63. No doubt that such a provision ought to have found place in the main enactment itself, which would have resolved the entire issue. However, it has to be taken into consideration that issue with regard to rights of hawkers is in a fluid state for a period of more than forty years. Their Lordships of the Apex Court, right from 1983, have been dealing with the issue and issuing directions from time to time. It is only after the directions were issued by Their Lordships of the Apex Court, that the said Act has been enacted. We find that if the solution as we have hereinafter enumerated, is not to be accepted, it will further protract the delivery of benefits of the Act to the citizens, for whom the same is enacted. It has to be noted that even after the said Act has come into force, the scheme, as mandated to be framed within six months from the date of the Act coming into force and the Rules to be framed within one year, could not be framed. The situation has been lamented by the Division Bench of this Court in Vile Parle Kelvani Mandal (supra) in para 43 of its judgment. However, a difficulty again may arise as to how a scheme could be framed in the absence of TVCs, unless they are duly constituted under Section 22 of the said Act and which are required to be mandatorily consulted as per the provisions of Section 38 of the said Act. As a matter of fact, it is even the argument of learned Counsels for the Petitioners that unless the TVC, as provided under Section 22 of the said Act is duly constituted, the Scheme under Section 38 cannot be framed. 64. It is pertinent to note that, in effect, the directions as contained in para 16 of 2013 Ekta Judgment, are almost similar to the provisions contained in the said Act. As a matter of fact, under clause (i) of para 16, Their Lordships had issued directions to the Chief Secretaries of the State Governments and Administrators of the Union Territories to ensure that TVCs are constituted in accordance with the provisions contained in 2009 Policy. Their Lordships have further directed that the representatives of various Organizations and street vendors/hawkers shall be chosen by adopting the fair and transparent mechanism. Clause (xii) of para 16 further reveals that, though the State Governments, the Administration of Union Territories and Municipal Authorities were given permission to amend the legislative provisions and or delegated legislation, it was to bring them in tune with the 2009 Policy. However, it was further clarified that even if there is a conflict between 2009 Policy and the Municipal Laws, insofar as they relate to street vendors/hawkers, then 2009 Policy shall prevail. It could thus be seen that the enactment, which has been enacted, is in furtherance to take forward the mandate as contained in

para 16 of 2013 Ekta Judgment. The 2013 Ekta Judgment as well as the said Act emphasize on participation of representatives of street vendors at every stage. We, therefore, find that if TVCs, as constituted as per 2009 Policy, are entrusted the work of the first survey, the legislative intent, as contained in Section 22 of the said Act of giving 40% representation to the representatives of the vendors, shall stand given effect to. 65. The procedure that we propose to direct with regard to conducting the first survey under sub-section (2) of Section 3 of the said Act and first elections to TVCs, in our view, takes care of giving effect to the legislative intention of having participation of representatives of vendors at every stage. If the survey is conducted by the TVCs constituted under 2009 policy and elections are held to elect the members under clause (d) of sub-section (2) of Section 22 from the registered voters, the duly constituted TVCs under the said Act can discharge their duties which we have already enumerated hereinabove. Needless to state that if the duly constituted TVCs having elected representatives from the street vendors category, find that fresh survey is required to be conducted, there is no embargo under the statute. The only requirement under sub-section (1) of Section 3 is that the subsequent survey is required to be carried out at least once in every five years. However, there is no prohibition for conducting a fresh survey, prior to such period of five years if duly constituted TVCs find it necessary. 66. As a matter of fact in pursuance of the aforesaid directions in 2009 Ekta Judgment[22*], the MCGM has already constituted TVC as per 2009 Policy under the Chairmanship of Commissioner of the Mumbai Municipal Corporation. The said Committee consists of Commissioner, MMRDA, Police Commissioner, Joint Commissioner of Police (Traffic), Chief Fire Officer, Health Officer, 12 representatives of residents' associations, NGOs, Lawyers, Town Planning, representatives of Banks, retail traders welfare association and respected citizens. It has 12 members, who are representatives of various hawkers' associations. It could thus be seen that out of 30 members, representation to the hawkers is forty percent. It will not be out of place to mention that some of the representatives of some of the Petitioner associations, are also the members of the said Committee. It could thus be seen that forty percent representation which is even mandated by the said Act, is given to the representatives of the hawkers. It could further be seen that meetings of the said Committee have been held from time to time. The views of the representatives of the hawkers have been duly reflected in the various minutes of the meetings. It further appears that in the meeting conducted on 07/07/2014, the Committee had passed a Resolution to form 241 teams for conducting survey of the vendors. Each squad was to consist of Inspector of Corporation from Encroachment / Licensing Department, representatives of hawkers, representatives of NGOs/ residents association/traders association, the Guard of the Municipal Corporation, local police constable. A detailed programme for conducting survey was also finalized in the said meeting. The survey as scheduled was conducted by MCGM. The number of applications issued were 1,28, 443. The applications which were found to be acceptable were 99,435 and expected eligible applicants were found to be 2908. It could thus be seen that a detailed procedure wherein

representative of hawkers were also involved was followed by the Respondent - MCGM. Mr. Sakhare has also placed on record one of the sample applications. Perusal of the sample application would reveal that while conducting survey, teams have also done necessary documentation including photographing process. [22* (2009) 17 SCC 151] 67. We are therefore of the view, that insofar as MCGM is concerned, survey is admittedly conducted after 1st May, 2014. We therefore find that, there should be no impediment in considering the survey conducted by the MCGM to be a first survey, as contemplated under sub-section (1) of Section 3 of the said Act and that the elections under category (d) of sub-section (2) of Section 22 be conducted on the basis of the same. 68. In so far as other Corporations are concerned, the learned Advocate General has made a statement that, in most of the Corporations, TVCs have been constituted as per 2009 Policy. It would be therefore appropriate that in such Municipal Corporations, if the surveys are not yet conducted, survey should be conducted on the pattern of MCGM. In so far as Municipal Corporation and Municipal Council wherein TVCs are not yet formed, it will be appropriate to direct all such Municipal Corporations and Municipal Council to constitute TVCs in accordance with 2009 Policy and conduct first survey as required under sub-section (1) of section 3 of the said Act, in the light of what has been observed hereinabove. 69. It is further to be noted that Rule 15 of the said Rules, takes care of the concern of the vendors, whose names are not included in the vendors list. It will be relevant to refer to Rule 15, which reads thus:- "15 Voters List - (1) The Municipal Commissioner or the Chief Officer, as the case may be, shall publish the voters list of registered street vendors three months before the scheduled date of election. The suggestions or objections shall be called within fifteen days and shall be decided by the Municipal Commissioner or the Chief Officer as the case may be, one month before the scheduled date of election. For purpose of election of street vendors to the Town Vending Committee, the list of registered street vendors so finalized shall be the voters list. (2) The Municipal Commissioner or the Chief Officer, as the case may be, shall provide the final voters list of registered street vendors to the Labour Commissioner for the purpose of electing representatives amongst the registered street vendors." It could thus be seen that, under the said Rules, Municipal Commissioner or Chief Officer is required to publish voters' list of registered voters three months before the scheduled date of election. The suggestions and objections are required to be called within 15 days and they are further required to be decided by the Municipal Commissioner / Chief Officer, one month before the scheduled date of elections. It could therefore be seen that, if any of the street vendors, who finds that though his name was entitled to be included in the registered voters' list and it was not included, he could raise an objection to that effect, which the authorities under the rules would be bound to consider. 70. In so far as challenge to Rule 15 of the said Rules is concerned, it is the contention of the learned Counsel for the Petitioners that Rule 15, which empowers the Municipal Commissioner or Chief Officer to publish voters' list of registered street vendors, the same is not sustainable. According to the learned Counsel for the Petitioners, the said exercise can only be carried out by the local

authority. We find that the said contention is without any substance. Clause (j) of sub-section (2) of Section 36 enable the State Government to make Rules for the manner of elections amongst the street vendors under clause (d) of sub-section (2) of Section 22. It could thus be seen that the said Rule is within the rule making power of the State Government. In any case, the contention that the said exercise has to be carried out only by local authority is totally impracticable. It will not be humanly impossible for the local authority, which consists of elected members to collectively carry out such a survey. Such a survey is to be carried out by some executive authority, under the said local authority. The Commissioner and CEO being highest executive authorities in the Municipal Corporations and Municipal Council, can very well be entrusted with such duty. Apart from that, as already discussed hereinabove in the preceding paragraph, the Rule provides for an opportunity to a street vendor who is aggrieved by his non-inclusion. In that view of the matter, we find that challenge to Rule 15 would not be sustainable. 71. The next question is with regard to challenge to the said scheme. In the affidavit in reply filed on behalf of the State Government, it is submitted that the scheme which is published by the said G.R DATED 09/01/2017 was found necessary, since under sub-section (1) of Section 3 for conducting survey of existing town vendors, there has to be a scheme for the guidance of the TVC. The tenor of the affidavit itself would reveal that, the said scheme is a general scheme with suggestive guidelines and is applicable to entire State of Maharashtra. The tenor of the affidavit, would further reveal that the said scheme is not a scheme as contemplated under Section 38, but a general scheme for guidance of local authorities and TVCs. It has to be noted that Section 38 mandates a scheme to be framed, after due consultation with the local authority and the TVCs. Admittedly, the said scheme is not framed after consultation with the local authorities and TVCs. We are therefore of the view that the said Scheme cannot be considered to be a scheme under Section 38 of the said Act. 72. The next challenge is with regard to the Government Resolution dated 09/01/2017, which enables all the local authorities to constitute TVCs and allied matters. We find that perusal of the said Act would reveal that TVCs have been given an important role. TVC under the Act is to constitute of forty percent of members from the category of street vendors, to be elected by them. We are of the considered view that the Government Resolution dated 09/01/2017 which directs the TVCs to be constituted without there being representation of street vendors, would defeat the very purpose of the Act, which emphasises on participation of representatives of street vendors at all important stages and, as such, the said Government Resolution, which provides for doing away with the said mandatory requirement, would not be sustainable. 73. In so far as the contention of the Petitioners that the Order dated 01/12/2015 issued by Respondent No.1 thereby substituting the words "within six months from the date of commencement of this Act," by the words "within six months from the date of coming into force of the rules framed under section 36" is concerned, we find that by the Order of Joint Secretary purportedly under sub-section (1) of Section 39 of the said Act, the same could not have been done and is totally

unsustainable. The said Order virtually amounts to amending the Act which, in no case, could have been done by the Executive Authority under the provisions of sub-section (1) of Section 39 of the said Act. The said Order is therefore liable to be quashed and set aside. 74. That leads us to the last question, as to whether after coming into force of the said Act, non-vending zones, which were recognized earlier have ceased to exist or not and as to whether hawkers would be entitled to carry on their vending activities on any streets, even if they fall in the part of non-hawking/non-vending zones recognized earlier. We may gainfully refer to the following observations of the Division Bench of this Court in Vile Parle Kelvani Mandal (supra). "50 Section 33 gives overriding effect to the provisions of the Street Vendors Act over the provisions of any other law for the time being in force or any other instrument having effect by virtue of any other law. However, Section 33 does not override the orders of the Court which were passed earlier and therefore, the said orders can be implemented notwithstanding the applicability of the Act. Therefore, order dated 21st January, 2002 passed in Writ Petition No.1799 of 2001 can be always implemented subject to prohibitory orders passed by the City Civil Court or any other Court of law. The said order has become final as even the vendors who are fully aware of the order have not challenged the same." (Emphasis supplied) It could thus be seen that Division Bench of this Court has itself observed that, though Section 33 gives overriding effect to the provisions of the said Act, it does not override orders of the Court which have been passed earlier and that the said orders can be implemented notwithstanding the applicability of the Act. 75. It is pertinent to note that in 2004 Ekta Judgment[23*], Their Lordships of the Apex Court while approving 187 roads selected for hawking also added 49 roads for being included in the hawking zone. However, while doing so, BMC was to ensure that there was no impediment or hindrance for vehicular traffic or pedestrians. The approval of those 49 roads was subject to approval/NOC of traffic police. It could thus be seen that vide the said order hawking was to be restricted to 187 plus 49 roads. However, hawking in those 49 additional roads was also subject to the same not causing any impediment or hindrance for vehicular traffic or pedestrians and subject to approval/NOC from traffic police. [23* (2004) 1 SCC 625] 76. It could further be seen that in 2009 Ekta Judgment[24*], it was sought to be contended that out of 49 roads, the Committee had reduced certain roads, which was not permissible in view of the said 2004 Ekta Judgment. However, in para 17 of the 2009 Ekta Judgment, the said contention is specifically rejected. It could further be seen that when the matter was considered by the Apex Court while delivering 2009 Ekta judgment, 248 roads were recommended as hawking zone. The Committees had however recommended that insofar as 27 roads are concerned, they fall in restrictive zone as earmarked by clause (3) of para 14 of 2004 Ekta Judgment[25*], as they were within 100 meters from the place of worship, holy shrine, educational institutions and hospitals or within 150 metres from any municipal or other markets or from any railway station. A request was made to relax Direction No.3 insofar as those 27 roads are concerned. However, in para 20 of 2009 Ekta Judgment, Their Lordships have specifically rejected the said

prayer. [24* (2009) 17 SCC 151] [25* (2004) 1 SCC 625] 77. It could further be seen that right from the first judgment in *Bombay Hawkers Union* (supra), the Apex Court has consistently recognized the concept of hawking zones and non-hawking zones. Not only that, in 2009 *Ekta* Judgment, Their Lordships of the Apex Court have clearly specified that total roads as hawking zone shall remain only 221. We are therefore of the considered view that insofar as area coming under the jurisdiction of MCGM is concerned, till new vending and non-vending zones are earmarked and notified by local authorities, in consultation with the duly constituted TVCs, the hawking activity can be continued, only in areas which are identified as hawking zones, as approved by the Apex Court and, in no case, such activity can be permitted in non-hawking zone. 78. There is another angle to it. Right from the Judgment of the Constitution Bench in *Olga Tellis* case (supra), it has been held that footpath and pavements are public properties, which are intended to serve convenience of general public. They are not laid for private use and their use for private purpose frustrates the very object for which they are carved out from portions of the public roads. The claim of the pavement dwellers, that they have a right to put up constructions on pavements and that of the pedestrians to make use of the pavements for passing and repassing, are competing claims and that, the former should be preferred to the latter, has been specifically rejected by the Constitution Bench. The Constitution Bench in the case of *Sodan Singh* (supra) further holds that while recognizing right of hawker to transact business, it is subject to proper regulation in the interest of general convenience of the public, including health and security considerations. It has been held that 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. However, on the other hand, if such right is properly regulated according to the exigency of the circumstances, the small traders on the sidewalks can considerably add to the comfort and convenience of general public, by making available ordinary articles of everyday use for a comparatively lesser price. It has been held that for recognizing right of the hawkers to hawk on roads, proper regulation is necessary, otherwise the very object of laying roads to facilitate traffic may be affected. The contention that a citizen has fundamental right to occupy a particular place on the pavement, where he can squatt and engage in trading business has been specifically negated. 79. Perusal of para 24 of the Judgment of the Apex Court in *Sodan Singh* (supra), would reveal that the demand of the Petitioners that the hawkers must be permitted to carry out their trade on every road has been categorically rejected. It has been held that if a road is not wide enough to conveniently manage the traffic on it, no hawking could be permitted at all or may be sanctioned only once in a week, like Sunday, when the traffic would be lesser. It has further been held that hawking may also be justifiably prohibited near hospitals or where necessity of security measures, so demands. 80. In 2004 *Ekta* Judgment, Their Lordships have specifically put a restriction, that there should be no hawking within 100 metres from any place of worship, holy shrine, educational institutions and hospitals and within 150 metres from any municipal

or other markets or from any railway station. It has further been held that there should be no hawking on footbridges and overbridges. In 2009 Ekta Judgment, recommendation of the Committee, to relax the said condition insofar as 27 roads are concerned, is specifically rejected. 81. We are in respectful agreement with the view taken by the Division Bench of the Delhi High Court in the case of Vyaparti Kalyan Mandal Main Pushpa (supra) and of the learned Single Judge of the Delhi High Court in the case of Vaiso Jain (supra), holding that no hawking can be permitted in non-hawking zones. We find that the views taken in both the judgments lay down the correct position of law. 82. Insofar as judgment of the learned Single Judge of the Kerala High Court in the case of Thankappan Poonthoppil v. The District Collector, Trivandrum, delivered in WP(C) No.33114 of 2014 (L) is concerned, the perusal of the said judgment would reveal that, it has not taken into consideration the earlier judgments rendered on the issue, by Their Lordships of the Apex Court. As such we are of the considered view that the said judgment, is of no assistance to the case of the Petitioners. 83. Insofar as the Judgment of the Chennai High Court in the case of B. Noor Ahmed and Ors v. State of Tamilnadu, delivered in Writ Petition No.18397 of 2014 is concerned, the same is again interpreting the provisions of the said Act and the directions which are given, are identical in terms with the directions, that are issued by Division Bench of this Court, in Vile Parle Kelvani Mandal (supra). We have already observed hereinabove, that Division Bench protects such of the vendors who were existing on 01/05/2014. As such, there cannot be quarrel with the view taken by the Chennai High Court. 84. We are therefore of the considered view that while considering the rights of the hawkers to conduct their vending business on streets, we will have to balance the rights of the pedestrians to walk on the footpaths and the citizens to use the roads for the purpose of plying their vehicles. If the contention of the Petitioners, that after coming into effect of the Act, now there are no non-hawking zones and they are permitted to hawk anywhere in the City and Respondents - Authorities should be issued mandamus, not to come in the way of their so doing, is to be accepted, it will create a chaos in all the cities. If the argument is to be accepted, then there will be no regulations till the same are framed in accordance with the said Act; the operation of which is still in limbo. 85. It will not be out of place to mention a recent unfortunate incident, which has occurred in the City of Mumbai on a narrow footover bridge. On account of mad rush of the passengers, there was commotion on the bridge, which led to loss of 22 precious human lives. The presence of the large number of hawkers on the footover bridge is said to be one of the major contributing factor in the said mishap. As discussed hereinabove, we are faced with a situation to balance the rights of the hawkers to do vending business to earn their livelihood on one hand and rights of the citizens to use the footpaths and roads without causing any obstruction and also ensure their security on the other hand. We ask a question to ourselves as to what would be the effect if the contention of the Petitioners that they are free to do hawking anywhere in the City, is to be accepted. There will be no regulations to regulate the business of hawking. The Authorities will be powerless to take action against

the hawkers, even if the business of hawking causes threat to free-flow of traffic and also causes threat to the security of citizens. Imagine a situation wherein entrance of the hospital is flooded with the hawkers thereby even preventing access to a serious patient in the hospital. Imagine a situation wherein fire takes place in busy locality and on account of encroachment of hawkers on the roads, fire brigade is not in a position to reach the spot. Obviously, the legislative intent could not have been to permit all this. We are therefore of the considered view that the contention that now there are no non-hawking zones and the hawkers are free to do their vending business anywhere in the city, is without merit and therefore deserves to be rejected. 86. In the result the following order: ORDER (i) The first survey of all street vendors, who existed on 01/05/2014, as provided in sub-section (1) of Section 3 of the said Act, shall be conducted by TVCs, which are constituted as per Policy of 2009 as directed by the Hon"ble Supreme Court in 2013 Ekta judgment[26*]. [26* 2013(6) Bom. C.R. 481] (ii) Wherever such surveys are conducted after 01/05/2014 by TVCs, as constituted under 2009 Policy, they shall be construed to be the first surveys as contemplated under sub-section (1) of Section 3 of the said Act. (iii) All Municipal Corporations and Municipal Councils where TVCs are not yet established as per 2009 Policy, are directed to constitute TVCs as per 2009 Policy, having due representation to the various stake holders, including the representatives of the street vendors as provided under the said policy within a period of six weeks from today. (iv) In such Municipal Corporations or Municipal Councils where no survey is conducted after 01/05/2014, the survey of street vendors, as provided under sub-section (1) of Section 3 of the said Act, shall be conducted adopting the MCGM procedure within a period of three months from the date on which TVCs as per 2009 Policy are constituted. (v) The street vendors who are found eligible as per survey conducted under clauses (i), (ii) and (iv) above, shall form electorate for conducting first elections of the members from the category earmarked in clause (d) of sub-section (2) of Section 22. (vi) The challenge to the validity of Rule 15 is rejected. However, it is directed that Municipal Commissioners and the Chief Officers, as the case may be, shall publish voters" list of registered street vendors on the basis of survey conducted under clauses (i),(ii) & (iv) hereinabove. (vii) It is held and declared that Government Resolution dated 09/01/2017 vide which a scheme is framed purportedly under section 38 of the said Act, cannot be treated as scheme as contemplated under Section 38 of the said Act. However, there should be no impediment in the same being construed as general guide line to frame scheme under Section 38 of the said Act, after consultation with the local authority and the Town Vending Committee. (viii) The Government Resolution dated 09/01/2017, which provides for constitution of TVCs without there being representation to the members from category mentioned in clause (d) of sub-section (2) of Section 22, is held to be ultravires to the said Act and therefore quashed and set aside. (ix) The contention of the Petitioners that after coming into force of the said Act, there are no non-hawking zones and that the hawkers are entitled to carry on their vending activities on all the roads in cities is rejected. (x) It is held and declared that insofar as area

falling under MCGM is concerned till the vending and non-vending zones are duly notified in accordance with the said Act, the hawking activities would be permitted only on roads which have been approved as hawking zones in 2009 Ekta Judgment of the Apex Court[27*]. [27* (2009) 17 SCC 151] (xi) In the areas, other than the areas falling under the jurisdiction of the MCGM, if the hawking and non-hawking zones are already notified earlier, either under executive order or judicial order then till the vending and non-vending zones are duly notified in accordance with the said Act, hawking activities will only be permitted in hawking zones and no hawking activities shall be permitted in non-hawking zones. (xii) It is further directed that in view of the direction issued by the Hon"ble Supreme Court in 2004 Ekta Judgment, which is duly reiterated by the Hon"ble Supreme Court in 2009 Ekta Judgment, no hawking would be permitted within 100 metres from any place of worship, holy shrine, educational institutions and hospitals or within 150 metres from any municipal or other markets or from any railway station. It is also directed that no hawking would be permitted on footbridges and overbridges. (xiii) It is clarified that outside places of worship hawkers can be permitted to sell only such items as are required by the devotees for offering to the deity or for placing in the place of worship e.g. flowers, sandalwood, candles, agarbattis, coconuts etc. (xiv) Rule is partly made absolute in the aforesaid terms with no order as to costs. (xv) In view of the disposal of all the above Petitions, all interlocutory applications, Notices of Motion, Chamber Summons taken out therein also stand disposed off.