HAWKING & NON-HAWKING ZONES
IN GREATER MUMBAI

EVERYTHING YOU WANT TO KNOW

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Citizens' Forum for Protection of Public Spaces

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For Private Circulation only

January 2004

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CitiSpace's Role in Hawking & Non-Hawking Zones in Greater Mumbai

CitiSpace (Citizens' Forum for Protection of Public Spaces) established in June 1998 is a NGO, which networks over 500 Resident Associations, Community Based Organisations (CBOs), NGOs, Trade/ Commercial Establishments and individuals in most of Mumbai's 24 Wards. Our creed is the protection of all Public Open Spaces such as Footpaths, Playgrounds, Recreation Grounds, Gardens, No Development Zones, Beaches, Mangroves etc. and advocacy of their rightful use.

CitiSpace's first major activity was to file a Public Interest Litigation in the Bombay High Court in November 1998 asking the bench to direct the MCGM to implement the 1985 Supreme Court Judgment on the subject of Hawking & Non-Hawking Zones for Mumbai. It had been 13 years and no concrete steps had been taken towards implementation of the Scheme by the MCGM.

The legal proceedings lasted over five years.

The Bombay High Court heard over 80 petitioners, respondents and intervenors through 27 hearings, gave 13 orders and the case lasted two and a half years.

In 2001 the matter moved to the Supreme Court where 15 hearings took place,16 orders were given and an operative judgment pronounced on December 9, 2003. The MCGM has to now report to the Court in six months i.e. on July 23rd 2004 the status of the implementation of this judgment.

Looking at the various judgments CitiSpace is pleased to state that the Courts have accepted many of CitiSpace's recommendations.

Five long years in the High Court and Supreme Court have been full of hard work, sweat and toil for CitiSpace, its former Steering Committee and current Core Committee members. Convenor, Neera Punj and Co-Convenor, Nayana Kathpalia, between them, attended every hearing in the Bombay High Court and in the Supreme Court. The grand finale in the Supreme Court had CitiSpace successfully defending 280 additional roads of Mumbai which were sought to be included as Hawking zones by several Hawker Unions.

The CitiSpace Core Group would like to place on record, with deep gratitude, the active participation and support, both moral and financial, of the citizens of Mumbai, individually or through their Resident/ Trade /

Business Associations, without whom none of this would have been possible. We wanted this system in place – and together we have done it!

CitiSpace has taken the initiative of making the Supreme Court judgment user-friendly for the citizen in this booklet. Although the substantive judgment and its directives are unlikely to be altered the operational details may change from time to time and CitiSpace will accordingly keep you informed. The list of roads declared as Hawking Zones by this judgment and those which require a NOC from traffic police are inserted in the pocket of this booklet.

It is now time to come out in large numbers and work collectively to make the system, as laid down by the Supreme Court, work. CitiSpace is confident that the history of non-performance after the 1985 judgment will not be repeated. This is because this time the citizens of Mumbai, including the hawkers (whose work will now be legitimised), must show themselves ready to upgrade the quality of their lives. Let us all continue to work together.

Supreme Court Judgement, December 9, 2003

Relevant Excerpts

How many Roads are designated as Hawking Zones?

The Supreme Court Judgement of December 9, 2003 has approved 187 roads as Hawking Zones. (However CitiSpace has sought a clarification/ modification with respect to this number, as in the Bombay High Court Order of 3rd May 2001, 56 of these 187 roads had been deleted reducing the accepted Hawking Zones to 131.)

An additional 49 roads were also approved, however, subject to NOC from the traffic police. These 49 roads were arrived at in the following manner: Several Hawker Unions in various Special Leave Petitions in the Supreme Court had asked for the inclusion of 280 additional roads of which the BMC approved 105. However as 56 of these did not meet the requisite guidelines they were deleted. Thus there remained 51 roads on the BMC's approved list. Of these the Supreme Court has approved 49 stating that:

"The approval of these 49 roads is subject to approval/NOC from the traffic police". .... "The roads we have excluded are Pandey Road in A Ward and Deodhar Road in F/N Ward as they appear to be residential areas with no shopping line. We further clarify that amongst the 49 roads there are some roads e. g. Mahatma Gandhi Marg in A Ward which are already included in the hawking zones but on which BMC now proposes to accommodate additional hawkers. Whilst doing so BMC will ensure that there is no impediment or hindrance to vehicular traffic or pedestrians"

What are the Restrictions & Conditions by which the Hawkers will do their business ?

"It must also be clarified that even though a road may be within a hawking zone the restrictions, set out hereunder, regarding distances from railway stations, hospitals, educational institutions, places of worship etc. on that road, if any, would continue to apply.

"The restrictions/conditions on which the hawkers shall do the business are:

(1) An area of 1 mtr x 1 mtr on one side of the footpath wherever they exist or on an extreme side 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. 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 1Mt. by 1Mt but not more than 2 MT. by 1 Mt.;

(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 meters from any place of worship, holy shrine, educational institutions and hospitals or within 150 meters from any municipal or other markets or from any railway station. There should be no hawking on foot-bridges and over-bridges. 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 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 am and 10.00 pm;

(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 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 cables or any development work;

(9) No Hawking would be permitted on any street which is less than 8 meters in width. Further the hawkers also have to comply with 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 hawker 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. are 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 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 of hawkers. They shall do so by bringing to the notice of the concerned ward officer the presence of a hawker in a non-hawking zone/area. The concerned ward officer 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 concerned police station 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 concerned ward officer. 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 6 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 Judgement to the notice of all Courts in which matters are now pending. We are quite sure that the concerned Court/s shall then suitably vacate/modify its injunction/stay order.

"We do not approve of the principle that all major, trunk and arterial roads should automatically be excluded from hawking zones. The committee will also be entitled to examine, on receipt of a proposal whether hawking can be permitted on such roads. If without too much hindrance to vehicular and pedestrian traffic hawking can be permitted, it must be so permitted. For example we see no reason why hawking should not be permitted on J. Tata Road or Barrister Rajni Patel Marg in A Ward. Of course hawking cannot be permitted on these roads in the vicinity of Sachivalaya and Vidhan Bhavan. The Committee will consider whether some portion of these roads can be declared as a hawking zone."

Are Hawking Plazas feasible?

"We also do not approve of the findings of the Bombay High Court that hawking plazas are not to be permitted. It will be open for the BMC to set up hawking plazas. However when BMC sets up a hawking plaza the allotment of 1 Mt. X 1 Mt. pitches in those hawking plazas must be made on the above terms and conditions including no fixed site, timing from 7 a.m. to 10 p.m. etc. and only by issuing advertisement in three local newspapers, one in Marathi, one in Hindi and one in English. Out of the applications received the allotment must be by draw of lots by the Chairman of the Committee. Even in hawking plazas the licence should not exceed one year"....."BMC will also inform us how many and where they intend to locate hawking plazas and by what date they hope to set them up."

Who will constitute 'The Committee' and what is its Role?

"We appoint a Committee consisting of a retired Judge of the Bombay City Civil Court at Bombay (to be nominated by the Chief Justice of Bombay High Court), who shall be the Chairman of the Committee, a senior officer of BMC (who shall be nominated by the Municipal Commissioner) and a senior police officer from the traffic department (who shall be nominated by the Police Commissioner). For the present the Officers will be deputed full time to work on the Committee. BMC shall forthwith make available to the Chairman and the Committee all facilities like office space, secretarial staff etc. BMC shall also make available to the Chairman a chauffeur driven car which is to be used for this work only. Any person or organization who feels, that roads/streets apart from those designated as non

hawking zones are suitable for hawking, may apply to this committee, for having that road/street designated as a hawking zone. Similarly any person or organisation who feels that any road/street designated as hawking zone should be a non hawking zone may apply to the Committee for having that road/street designated as a non hawking zone. The person or organization so applying must deposit along with the application a sum of Rs. 1500/- per road/street in respect of which they want a decision. BMC shall add to that sum of Rs. 1500/- per road/street. The sum of Rs. 3000/- per road/street shall be handed over to the Chairman of the Committee as his honorarium. The Committee shall then cause a notice to be placed in the concerned ward office and in prominent places on that road/street inviting objections/suggestions in respect of that proposal. Undoubtedly the Committee shall visit the road/street and also hear all concerned parties including residents associations, shop owners in that road/street etc. The Committee shall then decide whether or not such road/street should be a hawking zone or not. The committee will also decide how many hawkers can be accommodated on that road/street if it is to be a hawking zone. We clarify that merely because in the scheme, as sanctioned, an area has been shown as a hawking zone or a non hawking zone, will not preclude the committee from considering whether hawking can be permitted on that road/street. We have no doubt that the Committee shall ensure that the above mentioned criteria are fulfilled before a road/street is declared as a hawking zone and that if the criteria are met then that road/street is not kept out of a hawking zone. In the event of any differences between the Committee members, the decision of the Chairman of the Committee shall prevail. The decision of the Committee shall be final and binding on all."

What are the Restrictions & Conditions by which Roving Hawkers will do their business ?

"We clarify that the scheme framed above and the guidelines are not applicable to hawkers who do not sit in any one place but who travel from place to place carrying their wares with them. However, even such hawkers shall require to obtain a licence on payment of prescribed fees and display that licence on their shirt/coat at all times. Such hawkers will be allowed even in residential areas and areas where there are no shopping lines. They shall not sell costly items and will only vend articles of immediate requirement i.e. articles of convenience shopping. They shall not hawk within 100 meters of any place of worship, holy shrine, educational institutions or hospital or within 150 meters of any municipal or other markets or from any railway station."

What are the Restrictions & Conditions by which Cobblers will do their business?

"By Judgement dated, 3rd May 2001 certain suggestions regarding cobblers have been accepted by the Bombay High Court. We confirm that finding of the Bombay High Court, but clarify that the existing cobblers pitches in non hawking zones can be continued. However no further pitches can be added in non hawking zones."

What is the Method of Issuing Licences?

"BMC shall now give wide publicity in the city of Mumbai and invite applications for allocation of licences. Each application must state the area where a pitch is sought and the type of items proposed to be sold. Each applicant can give a choice of not more than 3 locations indicating his 1st, 2nd, and 3rd choice. All applications will then be categorised road/street wise. If the number of applicants, for a road/street, do not exceed the number of hawkers who can be accommodated on that road/street, then licences will be issued to them on receipt of requisite licence fee. If the number of applicants, are more than the number of places available then those applications will be placed before the Committee. The Chairman of the Committee shall then allot licences on basis of a draw of lots by him. Those who do not get a licence will be placed on a waiting list. As and when any other road/street gets declared as a Hawking Zone, lots will be drawn from the wait list and places allotted."

What is the Time Frame for Implementation ?

"We realize that it will take some time for the above exercise to be completed. We hope that the above exercise shall be completed within 6 months from today. In the meantime licences may be issued and hawkers may be located in zones already approved by us by a draw of lots as indicated above. We now adjourn these matters to 23rd July 2004. On that date BMC will inform us, on affidavit, how many more roads/streets have been declared as hawking zones and how many licences have already been issued and how many more hawkers are likely to be accommodated."

The Citizen's Role

This must become the single most important aspect of all citizens of Mumbai if they wish to have clean and orderly surroundings. If every citizen group looks after its immediate neighbourhood Bombay will be a changed city.

This booklet is specifically designed by CitiSpace to accelerate people's involvement to use the guidelines listed below to protect and look after their immediate surroundings and upgrade the quality of their lives.

The current Judgment has also recognised the importance of the citizens and actively seeks their help, including that of shopkeepers, and it is in our interest to be pro-active on a continues and sustained basis. The following guidelines will help you in your mission -

1. Communicate in writing with your Assistant Municipal Commissioner in your Ward office and complain about persistent illegal hawkers.
2. Play the role of a "watch dog" by being very vigilant.
3. Disseminate information, acquired through this booklet widely.
4. Convince your Society/NGO/Stake holders - that collective action is a must to keep the area hawker free.
5. Buy only from licensed hawkers and NEVER from unlicensed hawkers in Non-Hawking zones.
6. Be informed and inspired. Connect with CitiSpace.
7. When the Court appointed Committee is set up exercise your right
    - to keep your Non-Hawking Zone free of hawkers.
    - to keep your Hawking Zone limited and within the Supreme Court guidelines.

ACKNOWLEDGEMENTS

CitiSpace could not have fought this case and brought it to fruition without the help, guidance and support of very many people. We acknowledge our deepest gratitude to them for their unstinting help.

Our lawyers, Mr. T. Andhyarujina, Senior Advocate, Mr. Anil Divan, Senior Advocate, Mr. Shyam Divan, Mrs. Madhavi Divan, Mr. Z. Jariwalla, Mr. Arun Kathpalia, Mr. Subrat Birla and Mr.Pradeep Kumar Bakshi who gave of their time and expertise with the utmost patience and commitment and as a labour of love and who found their vision in ours. A special thanks to Mr. A. Sahu, the court clerk of Orr, Dignam and Co., without whom we would have been lost in the procedural maze of the Supreme Court.

Our benefactors, Mahindra & Mahindra, AFL Pvt. Ltd., Blue Star Foundation, IHAR (Indian Hotel & Restaurant Association), AHAR (Association of Hotels & Restaurants), Oval Cooperage Residents' Association and their members, M. Karve Rd. Resident Association & their members, H(W) Federation and their members, Clean Mumbai Foundation, Andheri (W) Shopkeepers Association, Mr. H. S. D'Lima, Mr. Bhanu Desai, Mr. Gaurang Vora and many many other people who believed in CitiSpace and its cause and came forward with financial support at every stage to cover a variety of expenses.

Our architect, Rohan Shivkumar, who willingly and spontaneously conducted studies and surveys so crucial to our case, at minimum cost.

CitiSpace members and citizens of Mumbai, whose constant optimism and support for this shared vision, both financial and moral keeps us going.

The many media persons, who disseminated the information related to the case.

The NAGAR staff, who happily worked long hours to meet impossible deadlines.

The Hawkers Role in Hawking & Non-Hawking Zones In Greater Mumbai

This part of the booklet is specially designed to guide the informal sector and facilitate their absorption into the mainstream of legitimate economic activity in Mumbai.

The Supreme Court Judgment has taken special care of the hawkers of Mumbai and provided clear and defined rules for hawking in Hawking Zones and Non-hawking Zones. The Order provides specific Guidelines for -

a) hawkers to hawk in Hawking Zones (Refer to pgs 4 - 6, points 1 – 12) and
b) roving hawkers to hawk moving from door to door in Non-Hawking Zones (pg 8, para 2).

Thus by this Order licensed Hawkers will be those who are stationary in the designated Hawking Zone and roving hawkers will be allowed to hawk door to door. **However as stated in the Order in all cases there shall be no hawking allowed in the restrictions set out by the Court (pg.4, para 4)**

The following points will be of help to the hawkers in this mission:

1. Formation of a committee, as decreed by the Supreme Court, is a prerequisite for clarifying hawkers' rights. Pressurise the MCGM to formulate this committee.
2. Hawkers must demand correct information from MCGM about -
   a) implementation of this scheme in both Hawking and Non-hawking Zones.
   b) which hawkers are entitled to be a part of this scheme and who are not.

3. All proposals by the MCGM in the implementation of this scheme must always be in writing and signed and sealed by the relevant authority in MCGM.

4. It must be noted that there will be different criteria for stationery hawkers and for those providing services door to door. The booklet provides information on both -

- Clear rules for stationery hawkers in Hawking Zones are quoted from the Order and are as stated above.
- Rules for those moving from door to door in Non-hawking zones are quoted from the Order and are as stated above.

CitiSpace urges hawkers to help themselves and become part of Mumbai's legitimate economy, by actively participating for the successful implementation of the Hawking & Non – Hawking Zone Scheme.