

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 10.10.2013

+ **LPA 986/2004**

B-BLOCK [PART-II] RESIDENTS WELFARE
ASSOCIATION, NARAINA VIHAR, NEW DELHI AND
ANR. Appellants

versus

MUNICIPAL CORPORATION OF DELHI & ANR.

..... Respondents

+ **LPA 1185/2004**

NARAINA VIHAR RESIDENTS WELFARE ASSOCIATION
..... Appellant

versus

MUNICIPAL CORPORATION OF DELHI & ORS.

..... Respondents

Through: Sh. Bharat Gupta, Advocate, for
Appellants (5 and 6).

Sh. Ajay Arora with Sh. Kapil Dutta,
Advocates, for Respondents (5 and 6).

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. The present appeal is directed against an order of the learned Single Judge of 08.10.2004, disposing off a batch of writ petitions which had sought for directions with respect to prohibition from hawking from a residential locality, i.e. B-Block, Part-I and Part-II, Naraina Vihar, which is stated to be a residential locality and weekly markets are not permitted, which is disputed. Learned Single Judge,

by the impugned order, noticed various existing policies and in the operative portion of the judgment ordered as follows:

“28. Writ petitions are disposed of with the following directions:

(i) MCD and SHO, P.S. Naraina Vihar shall ensure that no unlicenced hawker sits in the weekly bazaar at Narain Vihar.

(ii) Licenced hawker keeps himself within the bounds of the area he is permitted to occupy.

(iii) No hawker sells his goods from the road. He would restrict himself to the pavement.

(iv) Hawker violating direction (ii) and (iii) would not be permitted to hawk from the site in future.

(v) Office bearers of the petitioners would be co-opted when policing would be done to ensure compliance at directions (i) to (iv) above.

(vi) Night sweeping of the area be done by MCD after closing time of the weekly bazaar.

2. Learned counsel for the parties submit that during the pendency of these proceedings, by the judgment and order of the Supreme Court in *Maharashtra Ekta Hawkers Union and Anr. v. Municipal Corporation, Greater Mumbai and Ors.* C.A. Nos. 4156-4157/2002, various directions with regard to regulation of hawkers and street vendors, including regulation of weekly *haats* were issued. A copy of the said judgment and order has been produced and is relied upon by both parties.

3. It is argued by learned counsel for the appellants that despite the impugned directions, the material on record demonstrates that the MCD has not even cared to maintain a list of hawkers. He referred to enquiries made to the MCD under the RTI Act and the ultimate order of the Central Information Commission (CIC) which discussed the untenability of the MCD's position that no such list of vendors and hawkers had been maintained. Learned counsel for the appellants also highlighted that the existing arrangement is highly unsatisfactory and has led to the vendors as well as their customers blocking public streets and even ingress and egress to and from individual homes and residences. It was submitted that besides, the cleanliness of the locality is a matter of grave concern since the MCD, despite collecting *Tehbazari* charges from the vendors has not complied with the impugned directions.

4. Learned counsel for the MCD submits that the Corporation is, in terms of the Supreme Court's judgment, bound to implement various requirements spelt-out, within four months and that steps towards formulating the guidelines have been made.

5. The judgment of the Supreme Court has specifically dealt with various aspects such as the need to demarcate vending zones. The Court, while referring to it quoted extensively from the 2009 policy formulated by the Central Government and highlighted the need to frame regulations in that regard. This is evident from para 16(vi), (vii) and (ix). The 2009 policy also pertinently states in this regard as follows:

“4.2 Demarcation of Vending Zones

The demarcation of ‘Restriction-free, Vending Zones’, ‘Restricted Vending Zones’ and ‘No-vending Zones’ should be city/town specific. In order to ensure that the city/town master/development plans provide for adequate space for street vendors to run their activities, the following guidelines would need to be adhered to:

(a) Spatial planning should take into account the natural propensity of street vendors to locate in certain places at certain times in response to the patterns of demand for their goods/services. For this purpose, photographic digitalized surveys of street vendors and their locations should be conducted by competent professional institutions/agencies. This is to be sponsored by the concerned Department of State Government/Urban Development Authority/Local Authority.

(b) Municipal Authorities should frame necessary rules for regulating entry of street vendors on a time sharing basis in designated vending zones keeping in view three broad categories – registered vendors who have secured a license for a specified site/stall; registered street vendors in a zone on a time sharing basis; and registered mobile street vendors visiting one or the other vending zone;

(c) Municipal Authorities should allocate sufficient space for temporary ‘Vendors’ Markets’ (e.g. Weekly Haats, Rehri Markets, Night Bazaars, Festival Bazaars, Food Streets/Street Food Marts etc.) whose use at other times may be different (e.g. public park, exhibition ground, parking lot etc.). These ‘Vendors Markets’ may be established at suitable locations keeping in view demand for the wares/services of street vendors. Timing restrictions on vending should be in accordance with the need for ensuring non-congestion of public

spaces/maintaining public hygiene without being ad hoc, arbitrary or discriminatory. Rationing of space should be resorted to if the number of street vendors exceeds the number of spaces available. Attempts should also be made to provide ample parking areas for mobile vendors for security of their vehicles and wares at night on payment of suitable fees.

(d) Mobile vending should be permitted in all areas even outside the ‘Vendors Markets’, unless designated as ‘No-vending Zone’ in the zonal, local area or layout plans under the master/development plan of each city/town. ‘Restricted Vending’ and ‘No Vending Zones’ may be determined in a participatory manner. ‘Restricted Vending Zones’ may be notified in terms of both location and time. Accordingly, a particular location may be notified as ‘No-Vending Zone’ only at particular times of the day or days of the week. Locations should not be designated as ‘No-vending Zones’ without full justification; the public benefits of declaring an area/spot as ‘No-vending Zone’ should clearly outweigh the potential loss of livelihoods and non-availability of ‘affordable’ and ‘convenient’ access of the general public to street vendors.”

6. The Supreme Court also took note of the work done by various municipal authorities, specially in metropolises like Delhi and Mumbai and directed that the process should continue in line with 2009 policy.

7. In view of the above development, the Court hereby directs that MCD shall proceed to implement the 2009 policy as required of by the Supreme Court. At the same time, it shall ensure at all times the cleanliness is maintained and that the weekly bazaars and *haats* in the concerned locality of which the present appeal is subject matter, is

clearly demarcated and suitably informed to all concerned, especially the residents of the locality. Equally, it shall also take effective measures to ensure:

(i) that there is no obstruction to ingress and egress into the residences/homes in the petitioners' colony and harassment is not caused to individual residents at any time because of such weekly *haats* and vending and;

(ii) that minimum sanitation are provided having regard to the extent of area. Any such violation by the *Tehbazari* holders shall be appropriately dealt with in accordance with the existing guidelines and rules.

8. The appeals are disposed off in the above terms. Order dasti.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

OCTOBER 10, 2013