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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 4716/2014 & C.M. No.9381/2014
SANJAY SHAH

..... Petitioner
Through Mr.Ramesh K.Mishra and
Mr.Mrisha K.Mishra, Advocates.

versus

SOUTH DELHI MUNICIPAL COUNCIL AND ANR

..... Respondents
Through Ms.Mini Pushkarana, Standing
Counsel with Ms.Anushruti,
Ms.Namrata Mukim and
Ms.Vasundhara Nayyar and
Ms.Mohita Yadav, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
% **03.11.2016**

Petitioner is aggrieved by the action of the SDMC/respondent no.1. His submission is that the respondent no.1 should be restrained from imposing any fine or forfeiting his saleable items and interfering with his vending activities which he is carrying out from his site.

Record shows that the petitioner is stated to be a vender vending along footpath above SDMC drainage near Gate No.14 of the apartment constructed on plot bearing no.C-8, Vasant Kunj. Admittedly, at the time of the filing of this petition, the petitioner had no licence in his favour permitting him to vend from the aforementioned site. He was challaned on various dates i.e. on 25.8.2007 and again in

the year 2010 followed by challan which were issued to him in 2001. His submission is that after the promulgation of the Street Vendors (Protection and Livelihood and Regulation of Street Vending) Act, 2014 he had adequate protection under Section 3(3) of the said Act and he cannot be removed from the site.

Counter affidavit had been filed by the respondent. The stand of the Department was that the petitioner was using a LPG cylinder; he was creating hazardous condition in the vicinity. Several complaints of private persons had been received showing that the petitioner even allowed anti social elements to visit his shop and liquor is consumed in the area. This was noted in the order dated 27.9.2016. The petitioner was also changing his vending sites from one place to other; he had no fixed vending site. This was also noted in the order dated 27.9.2016.

On the same date, learned counsel for the petitioner stated that he was not using any LPG cylinder any more but earlier he was using an LPG cylinder. His submission was that he should be permitted to vend from the said site. On 27.9.2016 a direction was given to the Station House Officer of the concerned area to file a status report after inspection. The inspection report has now been placed on record. This is dated 06.10.2016. This status report which is accompanied by photographs clearly shows that on inspection of the site on 27.9.2016, the petitioner was found cooking food at the site. He was selling samosas, pakoras and tea with the help of an LPG cylinder; his activities were hazardous; on asking he brought forward a tehbazari permission which had been issued to him by the SDMC on

15.01.2016; which was issued during the pendency of this petition. The conditions noted in that tehbazari permission have also been recorded in this status report.

Vehement contention of the learned counsel for petitioner is that he has not flouted any of these conditions and he should be permitted to vend from the site as he is earning his daily bread from that site by selling samosas and pakoras.

This Court notes that on an earlier date i.e. 27.9.2016 a positive statement has been made by learned counsel for petitioner that he is not using any LPG cylinder; this is clearly contrary to the photographs which have been filed along with the status report which evidence that the petitioner is using a LPF cylinder. The fact that he is using an LGP cylinder is also not denied by the petitioner. The tehbazari conditions definitely do not give a right to the petitioner to carry out vending activities which are not only hazardous to the individuals in the vicinity but also to himself. This permission to vend does not include a permit him to use an LPG cylinder.

It has also been held by a catena of judgments that the right to vend may a right available to the petitioner but reasonable restrictions have to be imposed upon such vending. If such a vending permission cannot be a blanket permission; it should cause any harm or create dangerous/hazardous conditions which have been created in the instant case. This is clear from the report of the Station House Officer. This Court also notes that this report also contradicts the stand taken up by the petitioner on 27.9.2016 wherein he had positively stated that he is not using an LPG cylinder.

The attitude of the petitioner appears to be audacious. After making a categorical submission that he was not using the LPG cylinder, he again had the audacity to use the LPG cylinder. This is clear from the report SHO.

A Bench of this Court in WP(C) 6087/2012 NDSE (I) Resident Welfare Association Vs. South Delhi Municipal Corporation and Ors. while dealing with same contention wherein also street hawkers/vendors were using LPG cylinder had noted that the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 cannot be read to mean that such hawkers or vendors who are carrying on their trades in an illegal manner or that which is hazardous and dangerous to others can be permitted to do so. It had noted that use of LPG cylinders on streets has to be regulated and any vendor/hawker using same without necessary licence is liable to be evicted.

The petitioner deserves no sympathy from this Court. This petition is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

NOVEMBER 03, 2016
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