$~12, 14-19, 34-39

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

% **DECIDED ON: 18.05.2016**

\+ **LPA 136/2016, CM APPL.7661-7663/2016**

BHOLA RAM PATEL ..... Appellant

versus

NEW DELHI MUNICIPAL COUNCIL & ANR ..... Respondents

LPA 233/2016, CM APPL.13277-13279/2016, 15459/2016

JAG MOHAN ..... Appellant

versus

NEW DELHI MUNICIPAL COUNCIL & ORS ..... Respondents

LPA 256/2016, CM APPL.14770/2016

RANJEET & ORS ..... Appellants

versus

NDMC & ORS ..... Respondents

LPA 281/2016, CM APPL.16544-16547/2016

PAWAN KUMAR & ORS. ..... Appellant

versus

NEW DELHI MUNICIPAL COUNCIL & ORS. ..... Respondents

LPA 286/2016, CM APPL.17014-17016/2016

KAILASH SINGH & ORS ..... Appellants

versus

NEW DELHI MUNICIPAL COUNCIL THR CHAIRMAN & ANR ..... Respondents

LPA 291/2016, CM APPL.17308-17310/2016, 17313/2016

RIZWAN MIRZA & ORS ..... Appellants

versus

NEW DELHI MUNICIPAL COUNCIL & ANR ..... Respondents

LPA 292/2016, CM APPL.17337-17339/2016

MOHD MOHSIN & ORS ..... Appellants

versus

NEW DELHI MUNICIPAL COUNCIL & ANR ..... Respondents

LPA 245/2016, CM APPL.13706-13707/2016

MOHD ISMAIL & ORS ..... Appellants

versus

NEW DELHI MUNICIPAL COUNCIL & ORS ..... Respondents

LPA 303/2016, CM APPL.18274-18277/2016

JEET SEHGAL & ORS ..... Appellants

versus

NEW DELHI MUNICIPAL COUNCIL & ORS ..... Respondents

LPA 305/2016, CM APPL.18434-18436/2016

MANOJ KUMAR & ORS ..... Appellants

versus

NDMC & ORS ..... Respondents

LPA 310/2016, CM APPL.18452-18454/2016

NIRMALA DEVI (SINCE DECEASED THR LR) ..... Appellant

versus

NDMC & ORS ..... Respondents

LPA 312/2016, CM APPL.18628-18630/2016

GIRISH KUMAR SHARMA & ORS ..... Appellants

versus

NDMC & ORS ..... Respondents

LPA 315/2016, CM APPL.19060-19061/2016

DAYA RAM PATEL ..... Appellant

versus

NEW DELHI MUNICIPAL COUNCIL AND ANR. ..... Respondents

Appearance: Mr. Bhola Ram Patel, appellant in person in LPA 136/2016.
Mr. Viraj R. Datar, Advocate for appellants in LPA 233/2016 & LPA 303/2016.
Mr. S.K. Tripathi, Advocate for appellants in LPA Nos.256/2016, 305/2016, 310/2016 & 312/2016.

Mr. B.B. Sahni, Sr. Advocate with Ms. Indra Sahni and Mr. Aditya Shandilya, Advocates for petitioner in LPA 281/2016.
Mr. Kirti Uppal, Sr. Advocate with Mr. Shekhar Kumar, Ms. Wamika Trehan and Ms. Aastha Dhawan, Advocates for petitioners in LPA 286/2016.
Mr. Kirti Uppal, Sr. Advocate with Mr. Aman Bhalla, Advocate for petitioners in LPA 291/2016 & 292/2016.
Mr. Kirti Uppal, Sr. Advocate with Mr. S.K. Tripathi and Ms. Aastha Dhawan, Advocate for petitioners in 245/2016.
Mr. S.K. Tripathi, Advocate for petitioners in LPA Nos.305/2016, 310/2016 & 312/2016.
Ms. Daggar Malhotra, Advocate for petitioner in LPA 315/2016.

Mr. Sriharsha Peechara with Mr. Mananjay Mishra, Advocates for NDMC in all appeals.
Mr. Satyakam, Additional Standing Counsel for Govt. of NCT of Delhi, in all appeals.
Mr. Ashish Mohan, Advocate for Palika Bazar Shop Keepers Association.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J.(ORAL)

1. Issue notice in LPA 303/2016, 305/2016, 310/2016, 312/2016 & 315/2016. Mr. Harsha Peechara, Advocate appears for the New Delhi Municipal Council (hereafter referred to as "NDMC") and Mr. Satyakam, Advocate who appears for Govt. of NCT of Delhi accepts notice for it. In

all other appeals, notices had been issued previously. With consent of the counsel for the parties all these matters have been taken up for hearing.

2. The common question which arises for consideration in these appeals, is the true interpretation of Sections 3 and 4 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (hereafter called "the Act"). This enactment appears to be the first legislative measure to secure livelihoods of urban street vendors in public spaces in the cities and towns in India and at the same time, outlining the regulatory concerns which municipal and local authorities are to keep in mind, while ensuring that the members of the general public are not inconvenienced. In one sense, the Act is a first as far as it gives effect to the right to livelihood of street vendors, which had been declared by the Constitution Bench of the Supreme Court in *Sodan Singh v. New Delhi Municipal Council* (1989) 4 SCC 155.

3. All appellants in these proceedings are aggrieved by various orders and judgments of the learned Single Judges of this Court which had rejected their writ petitions. They had claimed directions to not be disturbed from continuing trade and carrying on business in the places where they were vending on public spaces (i.e pavements, etc). According to the appeal averments the appellants are vendors functioning in various New Delhi Municipal Council (NDMC) areas such as Palika Bazar, Janpath, Baba Kharag Singh Marg and Sarojini Nagar. They claim entitlement to be treated as street vendors under the Act. Substantial reliance is placed upon Section 3 (3) of the Act by the appellants who say thatthey are existing vendors, who cannot- till the completion of a survey in terms of Section 3

(3) of the Act- be evicted or in any way disturbed from plying their trade. It is urged that the scheme of enactment ie. Section 2 (l) and 2 (m), define who are vendors (i.e those who vend articles, goods, wares, food items or merchandise in certain common public spaces such as streets, lanes, sidewalks, footpath, pavement etc). The appellants urge that they cannot be disturbed until the survey is carried out by the appropriate authority, i.e., Town Vending Committee ("TVC") - constituted under Section 22 of the Act.

4. The appellants rely upon various previous proceedings arising out of writ petitions filed by many of them and say that they had carried on business as street vendors/*tehbazari*right holders- a fact known to the respondents especially the NDMC; that with the coming into force of the enactment, unless there is two-fold survey as to the feasibility of the area or areas and spaces where vending is permitted and there is settlement of rights of vendors, the existing *status quo*should continue. The appellants also rely upon the judgment of the Supreme Court reported as *Maharashtra Ekta Hawkers v. Municipal Corporation, Greater Mumbai & Ors.*, 2014 (1) SCC 490*(Maharashtra Ekta-4)*. It is contended that the Surpeme Court had noticed the previous binding rulings particularly the Constitution Bench judgment in *Sodan Singh v. NDMC*, (1989) 4 SCC 155, *Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai* 2004(1) SCC 625, *(Maharashtra Ekta-1)*, *Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai* (2009) 17 SCC 151, *(Maharashtra Ekta-2), Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai* (2009) 17 SCC 231 *(Maharashtra Ekta-3)*. It is submitted

that the cumulative effect of all these decisions was consolidated in the form of directions uniformly applicable to all urban authorities in the entire country, in *Maharashtra Ekta-4.*

5. The appellants particularly rely upon paragraph 16 & 17 of *Maharashtra Ekta-4* where the Supreme Court had indicated a time bound manner within which a survey had to be conducted by the State Government's local authorities with the aid and assistance of all other bodies to firstly locate suitable spaces where street vending could be conveniently carried out and secondly to determine who amongst the existing vendors were eligible to carry on such business or commercial activity. The appellants also stressed that the Supreme Court had clearly indicated that

> *"all 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 2009 policy. Once that exercise is completed they shall be allowed to operate only in accordance with the orders of the TVC".*

6. It is submitted by counsel appearing for the appellants that there is ample factual material on the record to establish that the petitioners were indeed functioning and had been permitted to do so. Consequently, till the steps taken in accordance with the provisions of the Act particularly Section 3 and 4 are completed, they cannot be disturbed.

7. Some counsel appearing for the appellants urged in addition that further to the orders of the Supreme Court, especially after *Sodan Singh* several directions were issued in the judgments of this Court. This led to the constitution of two Committees known as G.P. Thareja Committee and the

Chaturvedi Committee (the latter Committee being tasked with the responsibility of allotting spaces identified to those who are eligible according to the G.P. Thareja Committee report). It is submitted that by virtue of proviso to Section 4 (1) such of these individuals who had pre-existing rights and would continue to exercise them are deemed to be "street vendors" whose rights cannot be disturbed at all. It is emphasized by counsel, that regardless of the exercise carried out by the TVCs, the status of the pre-existing street vendors - which was established by the G.P. Thareja Committee and affirmed by the Chaturvedi Committee cannot be altered. It is submitted that as a matter of fact after the G.P. Thareja Committee's report and the subsequent Chaturvedi Committee's report were prepared – further to the decisions in *Sodan Singh (supra)* and *Gainda Ram vs. Municipal Corporation of Delhi* (2010) 10 SCC 715, there was a lull inasmuch as the NDMC had stopped issuing licenses for *tehbazari* and other like rights pursuant to the directions of the Supreme Court in a subsequent judgment reported as *Sodan Singh (supra)*.

8. Counsel emphasizethat all these issues were reconsidered especially in the light of the National Policy for Street Vendors, 2004 and for an improved policy of 2009 in the Maharashtra Ekta series of judgments. It is stated that the NDMC had formulated a scheme pursuant to these reported judgments in 2007 which was approved by the Supreme Court in *Sudhir Madan& Ors. v. MCD & Ors.* (2009) 17 SCC 332. The surveys carried out by the NDMC authorities were pursuant to these decisions and policies. As a result the appellants cannot be disturbed.

9. Counsel for the GNCTD informed the Court that by Notification dated 4.5.2016, the TVC for NDMC areas has been since set up in exercise of the powers conferred for this purpose under Rules 12 and 13 of the *Delhi Street Vendors* (*Protection of Livelihood and Regulation of Street Vending*)*Rules, 2016 (hereafter referred to as "Delhi Rules"). It is submitted that the Rules were notified on 7.1.2016. On the same date,* the Government of National Capital Territory of Delhi Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme, 2016 (hereafter referred to as "Scheme") was formulated.

10. NDMC does not deny the previous litigation, or that it had formulated a policy in 2007 pursuant to which a survey had been conducted- the last one being in 2011. It particularly emphasizes on Regulation-1 which spells out the manner of conducting surveys of street vendors. It is stated that the elaborate scheme of Regulation-1 envisions the scrutiny and collation of data with respect to the details of the street vendors, their gender, age and all other particulars including their identity. Regulation 1.1.12 spells out the eligibility of each applicant to be registered as Vendor. NDMC further relies upon Regulation 1.1.13 and 1.1.14 to submit that the applicant who seeks issuance of license has to satisfy his or her genuineness as to the eligibility terms. Furthermore, he has to furnish an undertaking under Regulation 2.15 in respect of the matter spelt there. Once the vending permission or license is granted, the other regulations with respect to the maintenance of public spaces and conditions imposed, the manner of conducting business and commercial activity are spelt out in Regulations 2.1.8 to 2.1.22. It is pointed

out that the pre-existing rights of those deemed eligible but not occupying any area or public spaces is not in any way guaranteed.

11. Learned counsel also submits that even proviso to Section 4 (1) confers limited protection but cannot be construed as the petitioners urge, i.e., as the blanket protection for all those carrying on business or even those who were granted some license or permission earlier. It is submitted that the Scheme of the Act, Delhi Rules and the Statutory Scheme envisions two kinds of survey. The first is to locate or identify spaces which are feasible for earmarking for the purposes of vending. Here, counsel submits that the publication of the Scheme has spelt out the minimum space required as well as the extent of public space for pavement, footpath and other areas to be left free from encroachment or occupation in any manner. Furthermore, the space hitherto marked for use by the tehbazari right holders and street vendors has to be considered. It was furthermore urged that under the Rules and the Scheme, the TVCs have to carry out transparent mechanism for survey after choosing the appropriate agencies in this regard.

Analysis and conclusions

12. The judgments of the Supreme Court in *Sodan Singh and Gainda Ram (supra)* are conclusive on the issue that those carrying on the activity of street vending have the right to do so. However, *Sodan Singh* also clarified at the same time that no-one has a fundamental right to insist to carry on business or commercial activity at a particular space and that it would be subject to suitable Regulations balancing the larger interest of general public. This much emerges from the following discussion and observations in the judgment:

"The right to carry on trade or business mentioned in Article 19 (1) (g) of the Constitution, on street pavements, if properly regulated cannot be denied on the ground that the streets are meant exclusively for passing or re-passing and for no other use. Proper regulation is, however, a necessary condition as otherwise the very object of laying out roads-to facilitate traffic--may be defeated. Allowing the right to trade with- out appropriate control is likely to lead to unhealthy competition and quarrel between traders and travelling public and sometimes amongst the traders themselves resulting in chaos. The right is subject to reasonable restrictions under clause (6) of Article 19. If the matter is examined in this light it will appear that the principle stated in Saghir Ahmad's case in connection with transport business applies to the hawkers' case also. The proposition that all public streets and roads in India vest in the State but that the State holds them as trustee on behalf of the public, and the members of the public are entitled as bene- ficiaries to use them as a matter of right, and that this right is limited only by the similar fights 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.

17. The provisions of the Municipal Acts should be construed in the light of the above proposition. In case of ambiguity, they should receive a beneficial interpretation, which 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. The provisions of the Delhi Municipal Corporation Act, 1957, are clear and nobody disputes before us that the Municipal Corporation of Delhi has full authority to permit hawkers and squatters on the side walks where they consider it practical and convenient. In so far the Punjab Municipal Act applying to the New Delhi area is concerned, the Bench constituted by three learned Judges observed in Pyare Lal's

case [1967] 3 SCR 747 that the provisions did not authorise the municipality to permit stalls to be set up in the streets except temporarily on special occasions, like festivals, etc. and that the permission to the petitioner in that case had been wrongly granted initially. We do not agree with these observations, although it appears that in the light of the other circumstances, indicated in the judgment, the decision was a correct one. The provisions of both ss. 173 and 188 should receive liberal construction, so that the New Delhi Municipal Committee may be in a position to exercise full authority. Indeed some of the documents on the records before us indicate that the Committee had been in the past actually permitting hawkers and squatters on pavements in certain areas.

18. 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 21and we will be briefly indicating our reasons therefore 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."

13. *Sudhir Madan* considered the schemes of MCD and NDMC and observed as follows:

"28. There has been no serious objection to the scheme submitted by the NDMC which is a comprehensive scheme Certain directions have, however, been sought for from this Court. We approve the scheme submitted by the NDMC.

29. It is submitted before us that the Schemes which have been approved by this Court must be subject to any Act or Rules that may be framed in consonance with the National Policy on Urban Street Vendors. It goes without saying that we have approved the schemes as framed by the MCD and NDMC. If the legislature intervenes and frames another scheme or regulations governing such schemes, that will certainly supersede the schemes prepared by the MCD and NDMC. It is well settled that any administrative action is always subject to law that may be framed by the competent legislature.

30. It was further submitted before us that the authorities must have due regard to the concept of a natural market. We agree. In implementing such schemes, the authorities cannot ignore the concept of a natural market, but many interests have to be balanced so as to cause least inconvenience to the public at large. There is no reason for us to doubt that the authorities concerned will ignore all such relevant considerations in working a scheme of this nature.

31. It was also submitted that the authorities may be directed to identify the non-hawking areas only and rest of the areas should be permitted as hawking areas. In our view such a course will not be practicable. In any event, that is a matter for the concerned authorities to consider and we can express no opinion in the matter. We may, however, observe that since a National Policy on Urban Street Vendors has been formulated, the authorities concerned will have due regard to the said policy in the implementation of the schemes regulating tehbazari/vending sites etc.

14. *Maharashtra Ekta-4* sought to consolidize the existing law by noticing all previous judgments as well as the policy paradigm spelt out in

National Policy for Street Vendors of 2004 and 2009. The Supreme Court indicated a self-contained mechanism whereby each city was to constitute a Town Vending Committee to decide on various aspects pertaining to regularizing street vendors.

15. Parliamentary intervention through the Act has resulted in a clear cut enunciation of the appropriate principles and the statutory framework which governs the rights and obligations of the street vendors on the one hand and the concerns of local authorities/State Governments etc. Section 2 (l) which defines street vendors reads as follows: -

> *"(l) "street vendor" means a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to place and includes hawker, peddler, squatter and all other synonymous terms which may be local or region specific; and the words "street vending" with their grammatical variations and cognate expressions, shall be construed accordingly"*

The Town Vending Committees under Section 2 (m) are constituted under Section 22 of the Act; the nature of the composition of the TVC is spelt out in Section 2 (2). In furtherance of this statutory mandate, the Delhi Rules were framed early in 2016; on 4.5.2016, the TVC was constituted in the NDMC areas.

16. Sections 3 and 4 are crucial; they contained the mechanism for identification of street vendors and the interim nature of the rights that are assured to them. The said provisions are as under: -

*"**3.** (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.

***4.** (1) Every street vendor, identified under the survey carried out under sub-section (1) of section 3, who has completed the age of fourteen years or such age as may be prescribed by the appropriate Government, shall be issued a certificate of vending by the Town Vending Committee, subject to such terms and conditions and within the period specified in the scheme including the restrictions specified in the plan for street vending:*

Provided that a person, whether or not included under the survey under sub-section (1) of section 3, who has been issued a certificate of vending before the commencement of this Act, whether known as licence or any other form of permission (whether as a stationary vendor or a mobile vendor or under any other category) shall be deemed to be a street vendor for that category for the period for which he has been issued such certificate of vending.

(2) Where, in the intervening period between two surveys, any person seeks to vend, the Town Vending Committee may grant a certificate of

vending to such person, subject to the scheme, the plan for street vending and the holding capacity of the vending zones.

(3) Where the number of street vendors identified under sub-section (1) or the number of persons seeking to vend under sub-section (2) are more than the holding capacity of the vending zone and exceeds the number of persons to be accommodated in that vending zone, the Town Vending Committee shall carry out a draw of lots for issuing the certificate of vending for that vending zone and the remaining persons shall be accommodated in any adjoining vending zone to avoid relocation."

17. A combined reading of Sections 3 & 4 would show that one, a street vendor is one who is entitled - after due identification in terms of the survey carried out under Section 3 (1) - to be issued a certificate of vending by the concerned TVC subject to the conditions specified under the Act and the Rules. Two, the TVCs are to conduct survey of all existing street vendors within the area of their jurisdiction once every five years. Three, the statutory parameters or mandate which the TVC are to discharge is that existing street vendors - identified in the survey - have to be accommodated in vending zones subject to the norm that 2½ % of the total population of the ward or zone or town or city is to be taken into account, Four, the existing street vendors - irrespective of their inclusion in the survey under Section 3 (1) but who were recipient of certificate of vending before commencement of the Act - regardless of its nomenclature (in the present case in the City of Delhi which was hitherto known as *tehbazari* license/right), would be deemed to be street vendor in that category for the period for which such vendors are issued licenses for vending. In Delhi, *tehbazari* rights were

settled in two phases, i.e., during the pre *Gainda Ram* period and thereafter pursuant to the survey and report of the G.P. Thareja Committee. Protection is afforded to street vendors in terms of Section 3 (3) who are to be accommodated till the completion of survey and issuance of licenses/certificates.

18. The expression "street vendor" broadly refers to those engaged in vending of articles, goods, wares, food items or merchandise *"of everyday use"* or those offering services to the general public. This definition under Section 2 (l) is wide given the fact that such street vendors are permitted to operate and carry on commercial activity in public spaces - some of them used for movement of people such as footpath, pavements sidewalks etc.The Act balances various rights and ensures that members of the public are not inconvenienced - even while ensuring that the street vendors' rights are protected. In this respect Section 29 declares that nothing in the enactment can be construed as conferring upon the street vendors any temporary, permanent or perpetual right to carry out vending activity in the vending zone allocated. Provisions of Section 29 (1) are inapplicable to a stationary vendor if temporary lease-hold or ownership rights is conferred upon him through a lease deed by some such instrument or arrangement.

19. To cater to the existing regulatory gap which had hitherto existed between the need to regulate use of footpath, pavement sidewalks etc. on the one hand and the right of the street vendors to carry out the commercial activity on the other, the Delhi Scheme had sought to redress the issue to a certain extent. It is in this context paragraphs 2.1.17 to 2.1.22 are relevant. They read as follows: **-**

"2.1.17 Thestreet vendor shall not encroach upon the public land and exceed beyond the permissible limits. The space for vending shall be 6 x 4 feet. No permanent or temporary structure will be allowed for street vending. The vendor shall keep all his wares confined to the allotted space. No projections, extensions shall be protruding from the space of vending.

2.1.18 The Vendor shall not hamper the free movement of pedestrian and traffic in any way. Vendor shall operate from the edge of the road/street (if vending from a street) and shall not cause any obstruction to smooth movement of traffic or pedestrians or non-motorized vehicles. He shall ensure that his/her customers shall not do unauthorized parking next to his vending site.

2.1.19 Thevendor shall not sell obnoxious, hazardous and polluting items. It is to be ensured that the quality of product and services provided to the public is as per the standards of public health, hygiene and safety laid down.

2.1.20 Thestreet vendor shall not carry out any unauthorized/ illegal activity.

2.1.21The vendor shall not occupy or stop at any place that is prohibited for street vending. Mobile vendor shall not stop for a period of more than 30 minutes at any place within his hawking zone/vending zone. The vendor shall not stop or vend in the non-vending zone.

2.1.22 The vendors shall not block the footpath or carryout vending on roads. Walkway of two meters width on footpaths should be maintained in front of the vending counters/stalls."

20. The above discussion would reveal that the appellants here assert that they have been continuously carrying on business and commercial activities at various different places. During the course of hearing, it was transpired

that almost all the petitioners claim to carry out vending in New Delhi areas, i.e., Janpath, Palika Bazar, Baba Kharag Singh Marg and Sarojini Nagar. According to the NDMC, the surveys were conducted in 2007 and 2011 to verify the identities of the street vendors and the spaces they were utilizing for the purposes of marketing their wares. Whilst there cannot be any doubt that under provision of Section 4 (1), the rights of those who function as street vendors - by whatever names called - have to be taken into consideration, at the same time, the enactment does not guarantee them protection forever. Whilst they are deemed to be street vendors, that status is subject to the final verification and allotment in accordance with Section 3.

21. The Notification of the TVC of 4.5.2016 would mean that the respondents are now to discharge the obligations by firstly identifying the area and spaces - specifically earmarking them having regard to the provisions of the Act, Rules and the Scheme. This Court would emphasize here that G.P. Thareja Committee and Chaturvedi Committee's reports though useful cannot be treated as conclusive because of the express provisions of the Act and the scheme which indicate the broad regulatory parameters to be taken into account, i.e., the right of way to be made available to the members of the public, length and width of the street sidewalks etc. At the same time, this Court is of the opinion that at least those having any right in terms of the pre-existing schemes including those in G.P. Thareja Committee's report should be clearly ascertained and earmarked. As an interim measure, till the final decision of the TVCs is undertaken and completed, the NDMC - in cooperation with the TVC should first conduct the survey of the existing street vendors and ensure which of

them would confirm to the names in the lists prepared in the surveys pursuant to the Thareja Committee and the surveys carried out in 2007 and 2011. While doing so, the TVC may in addition wherever needed indicate those existing vendors who may not be entitled to continue during the completion of process of settlement of street vending rights. In such event, the principle to be applied would be seniority in terms of the inclusion in the list. To put it differently, in the process of verification of spaces and survey, if the TVC is of opinion that there are vendors occupying spaces which cannot *prima facie* be permitted because of the width of the street, or location of the particular vending site, or other relevant concern, it can indicate that such vendor or vendor may be removed. If the reason for removal is that there are more number of vendors than permissible (or that some of them would impede smooth passage on the pavement etc) the principle to be applied would be "last come first go".

22. The above process shall be conducted in accordance with the Regulation, the method indicated in Chapter-I of the Scheme and the relevant provisions of the Rules. The Court is of the opinion that entire process should be taken up and completed at the earliest and in any case within two months from today.

23. The second stage, i.e., allotment of sites earmarked would have to be taken up either concurrently or immediately after the survey. Here, the TVC shall take into account the criteria spelt out in the Rules and the Scheme to determine the eligibility for allotment. In case there are greater numbers of eligible applicants, the principle indicated in the Act, i.e., Section 4 (3) shall

be followed. In doing so, the TVC shall ensure that the process is both transparent and also free from doubt or suspicion.

24. This court emphasizes that the long series of judgments from *Sodan Singh* to *Gainda Ram* right up to *Maharastra Ekta-4* are iterations of the rights of those seeking to eke out their livelihood, when all avenues of employment fail them, on public spaces. This right is recognized and declared under Article 19 (1) (g). The schemes formulated in 2004 and 2009 were meant to further those declarations. The Act takes this one step further and entitles street vendors to carry out their livelihood in specified, earmarked public spaces. It also enables the local authorities to define what are the spaces, designate non vending areas and equally importantly, ensure that spaces are used by the general public. It is in the spirit of these concerns- often competing- that courts will have to

25. The Court notices that Section 20 of the Act provides for the grievance redressal mechanism. Section 20 (1) authorises the appropriate Government to designate a judicial officer or an authority who has held in the past the post of a Civil Judge or the Judicial Magistrate to preside over the grievance redressal mechanism. One anomaly which is immediately noticeable is that the decision of such grievance redressal committee is by way of an appeal under Section 20 (4) is to the concerned local authority. This, in the opinion of the Court, can lead to incongruous situations. If the dissatisfied applicant urges that his claim is rejected, one of the parties interested in the litigation could be the local authority itself. The definition of local authority under Section 2 (c), however, gives no room for an interpretation other than the concerned Corporation or the authorities under

its hierarchy in terms of the controlling parent statute. This incongruity has been highlighted and needs suitable redressal - by way of an amendment to the Act itself.

26. In view of the above discussion, the following directions are issued: -

(1) The concerned TVC exercising jurisdiction over NDMC areas shall proceed to conduct the survey in accordance with the Scheme, i.e., with respect to identification of specific sites/spaces and complete it within two months from today.

(2) All pre-existing "right holders" - now defined as street vendors (whether called as tehbazari licensees etc.) shall not be disturbed except to the extent that the TVC determines that space or place occupied by them is *prima facie* not in accordance with paragraph 2.1.17 - 2.1.22.

(3) In case the TVC is of the opinion that any street vendor in terms of the above directions has to be displaced, the principle of "last come first go", i.e., chronological seniority shall be followed.

(4) The task of compiling the eligible applicants shall be first preceded by an appropriate advertisement and thereafter proceed to allot the specific or particular space to the street vendors, in terms of the Act, Rules or Scheme.

(5) The authorities are at liberty to ensure that the walk way in all the NDMC areas shall be in conformity with the paragraph 2.1.22, i.e., two meter width on the footpath would be left. At the same time, while removing or evicting any existing street vendor, the NDMC shall also ensure that the principle of seniority - referred to earlier

in terms of rights of existing holders is maintained. If no document or evidence of long use exists, it is open to the NDMC to remove those obstructing such footpath or way.

27. All these appeals and accompanying applications are accordingly disposed of in the above terms; this judgment would stand substituted in place of the orders of the single judges. No costs.

28. A copy of this order be given ***dasti*** under the signatures of Courtmaster.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

MAY 18, 2016
/vikas/