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

% *Date of judgment: 02.09.2016.*

+ W.P.(C) 5759/2016 & C.M. Nos.23732/2016, 25705/2016,
25706/2016 & 32246/2016

FEDERATION OF NEHRU PLACE ASSOCIATION (REGD) &
ORS Petitioner

Through Mr.Maninder Acharya, Sr. Adv. with
Mr.S.K.Sinha and Ms.Smaridhi
Kapur, Advocates.

Versus

SOUTH DELHI MUNICIPAL CORPORATION THROUGH ITS
COMMISSIONER & ANR Respondents

Through Mr.Mukesh Gupta, Standing Counsel
for the SDMC.
Mr.Sbhubhashu Gupta for Mr. Anuj
Aggarwal, Advocate for GNCTD.
SI Giresh from P.S.Kalkaji
Mr.Kamlesh Kumar Mishra, Advocate
for applicant in C.M. No.25705/2016.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The petitioner before this Court is the Federation of Nehru Place Association. The other 22 petitioners are the property occupiers of Nehru Place. Nehru Place is stated to be a shopping-cum-office complex designed by the Delhi Development Authority. It is placed in category 'A' for the purpose of property tax. The petitioners are aggrieved by the action of the

statutory bodies who are allowing/relocating various illegal vendors/hawkers from various locations and bringing them in front of the shop of the petitioners which is w.e.f. 26.04.2016. These illegal vendors are filling up all empty spaces in connivance with the officials of the statutory bodies; these street vendors are unlicensed and illegal; they are not permitted to hawk in this zone which is declared a 'no hawking zone'. Writ petition has been filed seeking action against them by the statutory bodies.

2 A counter affidavit has been filed by the respondent/South Delhi Municipal Corporation (SDMC). The stand of the respondent in this counter is that in earlier W.P. (C) No. 9407/2007 Manushi Sangathan Vs. DDA had been filed which had been disposed of pursuant to which an LPA had been filed and LPA No.766/2008 was also decided on 17.04.2009 leaving open the question as to whether Nehru Place should be declared as 'no hawking zone'; the question of demarcating of a no vending zone would also be decided by the DDA after making a reference to the Ward Vending Committee and in terms of the directions of Supreme Court contained in the judgment of Sudhir Madan. The SLP against this LPA was disposed of on 25.04.2011 wherein the contention of the respondent DDA was that although the hawkers in that petition (as an interim measure) would not be coercively dispossessed yet the DDA retained his right to declare Nehru Place as a no hawking zone was noted. Additional submission being that on 10.08.2009, the LG had declared Nehru Place as a no hawking zone. No tehbazari rights have been given by the MCD /SDMC in Nehru Place. The judgment of the Division Bench of this Court reported in Bhola Ram Patel Vs. New Delhi Municipal Council & Anr in LPA No.136/2016 has also been

relied upon as also the directions contained therein in the light of the provisions of Section 3 (3) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. Additional submission being that the Department has been taking action against the illegal and unauthorized squatters and the last action was taken on 04.08.2016 and not being pre-existing right holders and not having a license, action was taken against the said squatters. It was denied that there was only a cosmetic operation which had been carried out by the Department; this was in response to the submission of the petitioner that the respondent/SDMC is only carrying out a face wash and is not really interested in removing the illegal encroachers.

3 In the course of these proceedings, the concerned SHO Police had also been made a party. This was vide order dated 24.06.2016.

4 On 11.07.2016, appearance had been filed on behalf of hawkers who were stated to be hawking in the aforementioned zone; they had stated that they had moved an application seeking impleadment which was likely to be listed in next 2-3 days. They were 31 hawkers. Copy of the petition had been handed over to them and they were directed to file their response with details of hawkers who had a license as also those who were protected under any orders of this Court.

5 The status report on behalf of the Police/SHO is also a part of the record. This is dated 01.08.2016. His version is that street vendors who were carrying out hawking activities in Nehru Place which is a no hawking zone are illegal. The Police is assisting the MCD in carrying out the

operation of the illegal encroachment of the said illegal hawkers and they would continue to do so.

6 In the course of hearing, it has been brought to the notice of the Court that these hawkers who are now seeking impleadment in the present petition are the Footpath Shop Welfare Society. The details of these 31 persons who are seeking impleadment are detailed in C.M.No.25705/2016. The aforementioned application has sought impleadment of the said persons. Their contention is that they were threatened from time to time and were at the mercy of the Police and the Corporation; there was hawking in a hawking zone and they are adequately protected under Section 3 (3) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. These submissions now made were also the subject matter of the independent W.P. (C) No.7174/2016 titled Raj Kumar Singh & Others VS. South Delhi Municipal Corporation and Others filed by the same 31 persons. This independent W.P. (C) No.7174/2016 was disposed of on 12.08.2016. The order reads herein as under:-

“There are 31 petitioners before this Court. They are stated to be squatting at Nehru Place, New Delhi. Their apprehension is that they are being vexed by the parties and are being disturbed of their squatting site.

On advance notice counsel for respondent no. 1 / SDMC has put in her appearance. Her submission is that the petitioners have filed prosecution challans which do not create any right in favour of the petitioners. Be that as it may. Under section 3(3) Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act,

2014, legal and illegal squatters are protected and as such the petitioners should have no apprehension. The judgement of Bhola Ram Patel Vs. New Delhi Municipal Council passed in LPA 136/2016 has laid down the conditions for dealing with such squatters.

This petition is accordingly disposed of in the above terms with liberty granted to the petitioners to approach the Town Vending Committee as and when constituted qua respondent no.1.”

7 Since these petitioners have already availed of their substantive right by way of substantive writ petition (W.P. (C) No.7174/2016) which was disposed of on 12.08.2016, this Court is not inclined to implead the same 31 petitioners in the present case as the submission of the respondent Department on this count is correct that they in fact are creating confusion and they already having availed of their remedy and having obtained the order on 12.08.2016, there is no occasion for them to be heard in this petition.

8 That apart, this Court notes that although no formal order has been passed on their application (seeking impleadment) yet this Court notes their arguments; they are the same arguments which had been addressed in W.P. (C) No.7174/2016. It is also not the case of these proposed persons (who seek impleadment) that their case is different in the present application.

9 Another development which has taken place is that in W.P. (C) No.7174/2016, an application for clarification and modification of the order had been filed only today which has also been disposed of and this Court was of the view that no clarification is required qua the order dated

12.08.2016. That application has been dismissed. The order dated 12.08.2016 has thus become final; the said order already having adjudicated upon the rights of the proposed respondent (in C.M. No.25705/2016), no further orders are called for on their application in this petition.

10 However, the submission of the applicants that Nehru Place is in fact a no hawking zone has been taken note off and the submissions on this count have also been noted.

11 The petitioner before this Court has largely relied upon the judgment of the Division Bench passed in Bhola Ram Patel. Para 26 of the said judgment has been canvassed by the learned counsel for the petitioners to make a submission that only those persons who have a license are afforded a protection 3 (3) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and not otherwise. For the same proposition reliance has also been placed upon a judgment of the Single Bench of this Court in W.P. (C) No.1415/2016 Akhilesh Kumar and Others Vs. New Delhi Municipal Council and Others wherein the Single Bench has noted (in para 14) that protection afforded by Section 3 (3) of the said Act is only qua those who were licensed under the earlier regime. Submission also being reiterated that Nehru Place is a no hawking zone.

12 On the question as to whether Nehru Place is hawking zone or no hawking zone, there appears to be some confusion. Although the stand of the Department is that in the judgment of Division Bench decided in Manushi Sangathan (supra), the question as to whether Nehru Place should be declared as a no hawking zone was left open and the Supreme Court while disposing of the SLP on 25.04.2011 had in view of the affidavit dated

07.12.2010 of S.R. Solanki, Chief Engineer, South Zone, DDA noted that although the Department had agreed not to take coercive action against the hawkers in that area yet it had not given up its right to declare Nehru Place District Centre (NPDC) as a no-hawking zone. This affidavit was dated 07.12.2010 on which the order of the Apex Court was pronounced on 25.04.2011. The petitioner before this Court in this context has relied upon the minutes of a meeting dated 10.08.2009 wherein they had noted that Nehru Place District Centre should be declared a no-hawking zone. Admittedly these minutes of the meeting have not attained any statutory approval and no action had been taken thereafter. The fact that action has to be taken on minutes which is recorded in a meeting is clear from the minutes recorded on 10.08.2009 which clearly states that action had been taken (item No.54/2009) on the minutes of an earlier meeting held on 03.06.2009. Admittedly there is no record to show that any action had been taken on minutes (qua this proposed item No. 55/2009) dated 10.08.2009. That apart, this Court also notes that the DDA in its counter affidavit dated 07.12.2010 (of S.R. Solanki, Chief Engineer, South Zone, DDA) before the Apex Court had stated that they have a right to declare NPDC as a no-hawking zone and this affidavit was relied upon by the Apex Court while disposing of the SLP on 25.04.2011 meaning thereby that up to 25.04.2011, Nehru Place District Centre had not been declared as a no-hawking zone and had it been to the contrary, this would have been brought to the notice of the Apex Court but this was not done so. The vehement submission of the learned counsel for the petitioner before this Court that Nehru Place District Centre is a no-hawking zone is thus not borne out from the record.

13 The last judgment delivered by this Court on the provisions of Section 3 (3) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 was on 18.05.2016 by a Division Bench of this Court. The complete analysis of the provisions of the said Act and especially Sections 3 & 4 have been discussed; the details are specially emphasized in para 17 and the conclusions are contained in para 26 of the said judgment (Bhola Ram Patel). The need to regulate footpath pavements at site and the rights of the street vendors to carry out commercial activities at places had been addressed for which the Division Bench has quoted 2.1.17 to 2.1.22 of the Scheme as being relied upon. This is contained in para 22 of the judgment. The judgment of the Single Bench in Akhilesh Kumar delivered on 19.02.2016 had in detail discussed the directions of this Court in MANU/DE/1942/2015 Brahm Pal Vs. New Delhi Municipal Council and MANU/DE/2656/2015 Rajnesh Vs. South Delhi Municipal Corporation. In para 12 of the said judgment, the Single Judge has relied upon the directions of the Brahm Pal and Rajnesh and sub paras (v), (vi) and (vii) would be relevant in the context of the arguments addressed before this Court. They read as under:-

“(v) the Court would not be justified in restraining removal of unlicensed street vendors or permitting them to street vend from places of their choice without satisfying itself (a) that the petitioners in fact have been street vending from the site from which they claim; (b) whether the said street vending is an obstruction to free movement on the streets / pavements of the pedestrians and vehicles; (c) how many other street vendors are vending from the said site or in vicinity

thereof and if it is not possible to accommodate all of them, which one of them should have priority; (d) whether such street vending poses any security or fire or other hazard; (e) whether such street vending is in infringement of the rights of any other person's residence or commercial establishment abutting the said street etc.;

vi) that the said exercise is not in the domain of jurisdiction under Article 226 and undertaking such an exercise would tantamount to this Court conducting the survey and formulating scheme which the other authorities under the Act have been mandated to do;

this Court if were to in all such petitions, without enquiry as aforesaid, issue restraint orders sought, would be creating chaos and jungle raj on the streets of Delhi with the likely possibility of all the streets / pavements being blocked and orders with respect to same site being passed in favour of more than one person and fights / disputes for primacy erupting between the street vendors and which the law enforcement agencies would be unable to control because of each having an order in his / her favour;”

14 This Court notes that the Town Vending Committees are in the process of being constituted. The rights of the petitioners Federation have to be balanced with the rights of the street vendors/squatters. The judgment of the Division Bench has elaborated all these issues and this Court is of the view that no orders are required to be passed for removal of squatters/vendors from Nehru Place District Centre as the whole basis of the writ petition is bordered on the submission that Nehru Place is a no-hawking zone which this Court is not inclined to accept in view of the discussion

supra and in the absence of which this Court is of the view that all actions, as is permitted in terms of para 26 of the judgment of Bhola Ram Patel will be initiated and taken by the South Delhi Municipal Corporation with the assistance of the SHO.

15 No further orders are called for on this petition. It is disposed of.

INDERMEET KAUR, J

SEPTEMBER 02, 2016

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