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

% *Date of Judgment: 12th September, 2017*

+ W.P. (C.) 930/2017

BHIKKI RAM Petitioner

Through Mr.Satish Kumar Tripathi and Mr.
Amit Kumar Dubey, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL Respondent

Through Mr. Sri Harsha Peechara, Standing
Counsel with Mr. Mananjay Mishra
and Ms. Vidhi Jain, Advocates

+ W.P.(C) 1181/2017

KUNWAR PAL SINGH Petitioner

Through Mr.Satish Kumar Tripathi and Mr.
Amit Kumar Dubey, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL Respondent

Through Mr. Sri Harsha Peechara, Standing
Counsel with Mr. Mananjay Mishra
and Ms. Vidhi Jain, Advocates

+ W.P.(C) 1191/2017

SANJEEV KUMAR Petitioner

Through Mr.Satish Kumar Tripathi and Mr.
Amit Kumar Dubey, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL Respondent

Through Mr. Sri Harsha Peechara, Standing
Counsel with Mr. Mananjay Mishra
and Ms. Vidhi Jain, Advocates
+ W.P.(C) 1218/2017
BALIK RAM Petitioner
Through Mr.Satish Kumar Tripathi and Mr.
Amit Kumar Dubey, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL Respondent
Through Mr. Sri Harsha Peechara, Standing
Counsel with Mr. Mananjay Mishra
and Ms. Vidhi Jain, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

1. Four petitioners claim to be vending at Janpath Lane, on the side of Bank of Baroda Building(near PT-28-Pan Shop), Connaught Place, New Delhi; Janpath Lane, opposite LIC Building, back side, New Delhi(earlier from 30/9, P-Block Madras Hotel); Janpath Lane, opposite LIC Building, back side, New Delhi(earlier from 30/9, P-Block Madras Hotel); and Janpath Lane, adjacent to LIC parking gate, towards Mini Market, New Delhi respectively.
2. The petitioners have filed the present petitions under Article 226 of the Constitution of India. For the sake of convenience, the prayer made in W.P.(C).930/2017 is being reproduced hereinunder:
“a. admit the writ petition against the respondents;
b. direct the respondent to restore his present vending site i.e. at/near Janpath Lane, on the side of Bank of Baroda

Building(near PT-28-Pan Shop), Connaught Place, New Delhi till such time the respondent/NDMC will complete the exercise of proper verification and final allotment of vending site to him as per new Act as petitioner is an existing verified vendor and has already been earlier protected by this Hon'ble Court as his name being found in the several list of NDMC and particularly to whom NDMC has admitted to be existing vendor.

c. pass any other order/relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

3. Identical prayers have been made in the other three writ petitions as well. The petitioners claim that the petitioners are regular street vendors. Initially, they had applied for a licence and were hawking in the Janpath area of NDMC. After their licences had expired, the petitioners started vending at different places in the Janpath, NDMC area. The grievance of the petitioners is that they have been illegally removed by the officials of the NDMC in the month of January, 2017. The petitioners seek a direction to the respondents to allow them to squat at their respective areas and not to disturb and cause any hindrances primarily two grounds: (i) that the petitioners are entitled to protection under Section 3(3) of the Street Vendors (Protection of Livelihood and Regulations of Street Vending) Act, 2014; and (ii) the petitioners have been vending for a long period of time and their livelihood would be affected in case they are not allowed to vend.
4. A reply has been filed by the respondent NDMC. Learned counsel for the respondent submits that admittedly the petitioners were granted licence to hawk under Section 330 of the NDMC Act. As per the provisions of the NDMC Act, a hawker has no fixed place of hawking

and can roam in the prescribed areas but cannot occupy any specific place. It is submitted that in the case of the petitioner in W.P.(C)930/2017, his licence was not renewed after 2002; and in the case of W.P.(C)1181/2017, W.P.(C)1191/2017 and W.P.(C)1218/2017, their licences were not renewed after 2011. Counsel for the respondent submits that in terms of hawking licence, unlike a squatter, who is allowed to squat in the fixed place, but in the case of a hawker, a hawker is allowed to roam in the prescribed areas and sell their goods but cannot occupy any specific place. Thus, it is contended that the claim of the petitioners that they are vending at fixed place is *prima facie* misleading and patently false. It is submitted that the petitioners were removed as they were illegally vending in an already over-crowded place and obstructing free flow of pedestrians' movement. Moreover, it is contended that having regard to the space available in the NDMC area, the NDMC is following a uniform policy of allowing only those street vendors to vend whose names find mentioned in the list of 628 eligible persons prepared by the NDMC or are licenced vendors or hawkers. Counsel contends that having regard to the area available and complaints of illegal rampant vending, encroachments, obstructions of the public movements, obstruction to the ingress and egress of metro commuters, obstructions to the parking and several buildings in the Connaught Place and Janpath areas, near government buildings, drives are conducted to remove the illegal hawkers and vendors. Mr.Peechara submits that a clarification was also sought by the respondent in LPA.136/2016 titled as ***Bhola Ram Patel v. NDMC*** of the order dated 18.05.2016. The

counsel contends that following the clarification dated 27.09.2016, the respondent has been carrying out exercises to regain the footpaths and roads and clear the places from illegal encroachers from obstruction to the pedestrians and free flow of public traffic and for security reasons. It is contended that footpaths in the NDMC areas are limited, besides the petitioners are not in the list of 628 persons prepared by the NDMC.

5. In response to the submissions made by the learned counsel for the respondent, Mr. Tripathi learned counsel for the petitioners contends that the respondents are following a pick and choose policy. Illegal street vendors are allowed to vend whereas the petitioners are not being allowed to vend. Mr. Tripathi submits that in W.P.(C)930/2017, the petitioner had approached this Court in the year 2005 by filing W.P.(C).21908-10/2005, wherein the following orders was passed on 05.12.2005:

“CM No.15109/2005 in WP(C) Nos.21908-10/2005

Learned counsel for the respondent states that as long as the petitioners conduct trade from the sites notified and do not sell products which they are not authorized to sell, no action would be taken against the petitioners.

In that view of the matter, orders need not be passed in the application save and except to take the statement of the counsel on record and to bind the respondent thereto.

CM disposed of.”

6. Similar order was passed in W.P.(C).318/2011 on 05.05.2011. The orders are identical in nature.
7. We have heard the learned counsel for the parties and considered their rival submissions.

8. The first question which arises for consideration is as to whether the petitioners are street vendors or not. Admittedly, it is the case of the petitioners that they had applied for licences to hawk which were granted and not renewed in the case of W.P.(C)930/2017 after 2002; and in the case of W.P.(C)1181/2017, W.P.(C)1191/2017 and W.P.(C) 1218/2017 after 2011. Accordingly, the petitioners cannot claim to be regular street vendors as hawkers are only permitted to sell their goods by roaming in the areas prescribed and cannot occupy any fixed place. We also find as noticed in para 3 hereinabove that the licences of the respective petitioners expired in the year 2002 and 2011. No steps have been taken by the petitioners to seek renewal of their licences. Besides, we also find that the names of the petitioners do not find mentioned in the list of 628 persons prepared by the NDMC.
9. Being a statutory body, we expect NDMC to act in a fair and just manner without any favour of any kind. A consistent stand has been taken before us that having regard to the space available with the NDMC where it has reached a saturation point, accordingly it has taken a policy decision not to allow more than 628 street vendors to vend. In our view, this Court cannot interfere in the policy decision of the NDMC, provided it is not illegal, unreasonable and the same is being followed in a fair, just and uniform manner without any favour of any kind.
10. The NDMC had sought a clarification in LPA.136/2016 titled as ***Bhola Ram Patel v. NDMC*** to allow them to take action against the vendors who are blocking the ways and who are obstructing public movement. By order dated 27.09.2016, a clarification has been

rendered by the Division Bench. It has been submitted before this Court that post the clarification, the respondent has been carrying out exercise to regain the footpaths and roads and clear the place from illegal encroachers from causing obstruction to the pedestrians and free flow of public traffic and for security reasons. In this context we reproduce paras 3,4 and 5 of the counter affidavit of the NDMC filed in W.P.(C).930/2017, which are as under:

“3. It is respectfully submitted that the areas in which the petitioner falsely claims to do vending is already overcrowded and the petitioner should not be allowed to create any obstruction and free flow of the pedestrians’ movements. In any case, it is reiterated that he is neither authorized nor in the list of 628 therefore, any such claim is liable to be declined and the present petition is liable to be dismissed.

4. That the respondent has been receiving several complaints of rampant vending, encroachments, huge obstructions of the public movements, obstruction to the ingress and egress of metro commuters, obstructions to the parking and several buildings in the Connaught Place and Janpath areas, near government buildings and such illegal vending is in the violation of the provisions of law and judgments and order dated 18.05.2016 read with clarification order dated 27.09.2016 passed by the Hon’ble Division Bench in LPA no.136/2016 titled as Bhola Ram Patel v. NDMC.

5. Accordingly, the respondent has been carrying out exercise to regain the footpaths and roads, clear that place and to remove encroachments, obstruction to the pedestrians, to ensure the free flow of the public movement and security etc and strictly removing not allowing unauthorized vendors like the petitioner.”

11. As far as the orders relied upon by the learned counsel for the petitioners are concerned, we are of the view that the same cannot be of any benefit to the petitioners as the judgments and order dated 18.05.2016 read with clarification order dated 27.09.2016 passed by the Hon'ble Division Bench in LPA no.136/2016 titled as **Bhola Ram Patel v. NDMC**, the order passed on 05.12.2005 in W.P.(C).21908-10/2005 and the subsequent order passed on 05.05.2011 in W.P.(C).318/2011, the learned Single Judge of this Court had directed the respondents not to disturb the possession of the petitioners in view of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011. In our view, the question as to whether the petitioners were hawkers were not brought to the notice of the learned Single Judge and the fact that being a hawker, a person would not be entitled to a fixed place.
12. For the reason that the petitioners are hawkers, they cannot be allowed to hawk at a fixed place; they are not vendors; and their names do not find mentioned in the list of 628 street vendors and were blocking the free movement of pedestrians, no relief can be granted to the petitioners.
13. However, we grant leave to the petitioners that as and when the TVC is functional, they may approach the TVC with all the supporting documents. The TVC would consider the case of the petitioners in accordance with law. Merely because the petitioners are not found vending at the site when the survey is conducted, that by itself would not be a ground alone to reject their case. This direction is being

passed without prejudice to the rights and contentions of both the parties and without expressing any opinion on the merits of the matter.

14. Accordingly, we find no merit in the writ petitions; the same are disposed of with the above directions.

CM. APPL 4209/2017(stay) in W.P.(C).930/2017

CM. APPL 4372/2017(stay) in W.P.(C).1181/2017

CM. APPL 5400/2017(stay) in W.P.(C).1191/2017

CM. APPL 5512/2017(stay) in W.P.(C).1218/2017

15. Application stand disposed of in view of the order passed in the writ petitions.

G.S.SISTANI, J.

CHANDER SHEKHAR, J.

SEPTEMBER 12, 2017

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