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

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

+ W.P. (C.) 1217/2017

RAKESH BABU GUPTA 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) 1449/2017

KAUSHAL KISHORE SHARMA 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. Two petitioners claim to be vending at Janpath Lane, Bank of Baroda, near LIC, New Delhi; and Janpath Lane, Bank of Baroda, near Mini Market, New Delhi respectively. 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).1217/2017 is being reproduced hereinunder:

“a. admit the writ petition against the respondents;

b. direct the respondent not to disturb the petitioner from his present vending site i.e. at/near Janpath Lane, Bank of Baroda, near LIC, 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 order of the Court as his name being found in the several list of NDMC and particularly verified by TVC also as existing vendor;

c. direct the NDMC to recall the order, if any, passed by NDMC in respect of vending site of the petitioner without giving any opportunity to him which is against the very principle of natural justice;

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

2. Identical prayer has been made in the other writ petition as well. The petitioners claim that the petitioners are regular street vendors. 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 on 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.

3. A reply has been filed by the respondent NDMC. It is submitted by counsel for the respondent-NDMC that the petitioners are neither authorized vendor nor in the list of 628 persons prepared by the NDMC. It is further 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 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 further submits that a clarification was sought by the respondent in LPA.136/2016 titled as ***Bhola Ram Patel v. NDMC*** of the order dated 18.05.2016. Counsel further contends that following the clarification dated 27.9.2016, 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.

4. 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.
5. We have heard the learned counsel for the parties and considered their rival submissions.
6. It is not in dispute that the names of the petitioners do not find mentioned in the list of 628 street vendors prepared by the NDMC. The petitioners also do not have licences to vend. 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.
7. 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 2, 3 and 4 of the counter affidavit of the NDMC filed in W.P.(C).1217/2017, which are as under:

“2. 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.

3. 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.

4. 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.”

8. For the reason that the names of the petitioners do not find mentioned in the list of 628 street vendors prepared by the NDMC and the stand taken by the NDMC that the area in question is over-crowded and illegal street vendors are blocking the free flow of pedestrians’ movement, no relief can be granted to the petitioners.
9. 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.

10. Accordingly, we find no merit in the writ petitions; the same are accordingly dismissed.

CM. APPL 5510/2017(stay) in W.P.(C).1217/2017
CM. APPL 6667/2017(stay) in W.P.(C).1449/2017

11. 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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