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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 19th September, 2017

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W.P. (C.) No.2454/2017

SUNIL KUMAR

..... Petitioner

Through Mr.Vatsal Kumar, Adv.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through Mr.Devesh Singh, ASC (Civil),
GNCTD with Ms.Neelam Kholiya,
Adv. for R-1 to R-3.
Mr.Rakesh Mittal, Standing Counsel,
SDMC with Mr.Kamlesh Anand &
Ms.Yamini Mittal, Advs. for R-4.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

1. This is a petition under Article 226 of the Constitution of India filed by the petitioner seeking a writ of Mandamus directing the respondents not to evict/relocate the petitioner from Saket Court Road, Sector-5, Pushp Vihar, opposite CPWD Horticulture Nursery, New Delhi, till the completion of the survey of existing vendors and till such time the vending certificate is not issued.
2. Learned counsel for the petitioner submits that the petitioner is a street vendor and has been carrying out his vending activities at Saket Court Road since 2007. A copy of the receipt for deposit of Rs.100/- for

enlisting in the Vending Scheme has been filed on record. Counsel also has drawn the attention of the Court to two receipts of the years 2015 and 2016, in support of his submissions that the petitioner is a regular street vendor. Counsel also very fairly submits that the petitioner has been vending off and on, but the petitioner has now been removed by the officials of the respondents while similarly situated persons are allowed to vend.

3. Mr. Rakesh Mittal, Standing Counsel who appears for respondent No.4/SDMC, submits that the Saket Court road is a main road and the petitioner and similarly situated persons are obstructing the free flow of traffic and free movement of pedestrians. It is contended that Saket Court Complex is visited by a large number of litigants and lawyers and on account of such obstruction, the free flow of traffic is hampered. He also submits that the said area is a “No Hawking No Vending” zone and even otherwise, the SDMC is well within its right to remove the squatters and any other obstructions which cause hindrance in the free flow of the traffic and for security reason.
4. Mr. Vatsal Kumar, learned counsel for the petitioner complains that the SDMC has not placed any notification on record that the area is a “No Hawking No Vending” zone. Additionally, he complains that the petitioner is being singled out.
5. We have heard the learned counsels for the parties. We may note that the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act came into force in the year 2014. Section 22 of the Act provides for the formation of a Town Vending Committee (“TVC”). As per Section 22(2)(d), the number of members representing the

street vendors in the TVC shall not be less than 40% and they are to be elected by the street vendors themselves in a manner which may be prescribed. Rules, more particular Rule 13 has, however, created an anomaly as per which representation of the street vendors in the TVC is on the basis of the nomination. Highlighting this issue, another Division Bench of this Court had granted stay of the Scheme and thus, till date the TVC is not functional. We may add further that this Court was informed that these Rules are also being amended.

6. Taking note of such a situation, this Court had, with the consent of the stakeholders, directed that a representation be made to the Hon'ble Chief Minister to enable the Government, which is also in the process of amending the Rules, to consider this request of the street vendors. We may also note that taking into account that the matters were being adjourned from time to time and despite repeated requests, an expeditious decision was not being made, the Special Secretary, Urban Development, GNCTD was requested to appear in Court and he was requested that an early decision be taken in the matter.
7. We may also note that another Division Bench of this Court in the case of ***Bhola Ram Patel v. New Delhi Municipal Council and Anr.***, LPA No.136/2016, by order dated 27.09.2016 had granted liberty to the Statutory Bodies to remove such persons who are encroachers and block the free flow of the traffic and free movement of the pedestrians. Relevant para 9 of the said order is reproduced below:-

“9. In these circumstances, this Court is of the opinion that para 26(5) is to be understood as to mean that the NDMC, till final adjudication in the other writ proceedings vis-à-vis the constitution of the TVC (under validity of the concerned notification), should while

ensuring smooth passage in public spaces and pavements, ensure the following:

- (1) Those with a pre-existing right in the form of mention in any previous list, should not be disturbed as far as possible;
- (2) The principle of seniority emphasized in the main judgment should be maintained;
- (3) NDMC can, in enforcing smooth passage, remove those carrying on activities as street vendors etc. if their activity impedes or affects movement in the public passage or pavement etc. At the same time, if such individual or street vendor is removed, the NDMC is further directed to ensure that the names and particulars of all such individuals (with pre-existing rights in some form in other previous lists maintained for this purpose and not others) is maintained for use later when the issue is decided and the exercise is carried out by the regular TVC.”

8. As far as the present petition is concerned, the documents placed on record show that the petitioner is not a regular street vendor. The photographs placed on record also show large number of street vendors at the spot. Mr.Mittal submits that efforts are being made to ensure that the road is made free from any obstruction, and the petitioner shall not be singled out.
9. Having regard to the fact that the petitioner has only placed two challans on record for the years 2015 and 2016, name of the petitioner does not find mentioned in any of the lists prepared by the MCD including the Chopra Committee, the petitioner does not fall in category of a regular squatter. Besides the petitioner has admitted that he has been squatting off and on. Additionally, as pointed out the

petitioner seeks permission to squat at Saket Court road, which is a main road. The Saket Court is visited by a large number of lawyers and litigants. The petitioner cannot be allowed to block the free flow of traffic.

10. Resultantly, we find no merit in the present writ petition. The same is accordingly dismissed.
11. However, we grant leave to the petitioner that as and when the TVC is functional, he may approach the TVC with all the supporting documents. The TVC would consider the case of the petitioner in accordance with law. Merely because the petitioner is not found vending at the site when the survey is conducted, that by itself would not be a ground alone to reject his 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.

C.M. No.10554/2017 (for stay)

Application stands disposed of in view of the order passed in the writ petition.

G.S.SISTANI, J.

CHANDER SHEKHAR, J.

SEPTEMBER 19, 2017/ka