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

% *Date of Decision: 7th September, 2017*

+ W.P.(C) 2566/2017

BACHCHU SINGH & ANR Petitioners

Through Mr. Mobin Akhtar, Advocate

versus

SOUTH DELHI MUNICIPAL CORP. & ORS. Respondents

Through Mr. Mukesh Gupta, Standing Counsel
for the SDMC.

Mr. Aruju Mitra and Ms. Jaskaran
Kaur, Advocates for R-3 and R-4 with
SI Pawan Kumar, P. S. Kalkaji

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J.(ORAL)

1. Two petitioners have filed the present petition. Petitioner No.1 claims to be vending at Mansrover Building, Nehru Place, since the year 2008 and petitioner No. 2 claims to be vending at Skylark Building, Nehru Place, New Delhi since the year 2004.
2. The grievance of the petitioner is that they are being consistently harassed and victimised by the official of the respondent Nos. 1 and 2, despite the fact that they are regular squatters. Learned counsel for the petitioners further submits that the petitioner's stand removed in May, 2016.

3. Mr.Akhtar, learned counsel for the petitioners, submits that as per Sections 3 and 4 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, the Town Vending Committee is to conduct a survey of all existing vendors and after being identified under the survey, the certificate of vending is to be issued to all existing vendors and as per Section 3(3) no street vendor is to be evicted till the survey has been completed and certificate of vending is issued to all the street vendors. In support of his submission that the petitioners are regular squatters, learned counsel for the petitioners has drawn the attention of the Court to the challans, copies of which have been placed on record.
4. Learned counsel for respondent No.1 has opposed the prayers made in the present writ petition. It is submitted that Nehru Place area was under the jurisdiction of Delhi Development Authority till November, 2014 and thereafter, the same was transferred to the South Delhi Municipal Corporation. It is the case of the SDMC that Nehru Place District Centre has been declared as a 'No Hawking No Vending Zone' by the DDA and the SDMC has also consistently followed the stand of the DDA.
5. Learned counsel has drawn the attention of the Court to the order passed in LPA No. 766/2008 in the case of **Manushi Sangathan, Delhi vs Delhi Development Authority &Ors.** which reads as under:-

“In view of the above findings, we dispose of the present Letters Patent Appeal by directing DDA to continue with the pilot project. Accordingly, 67 vendors (reduced to 67 from 68 as per the statement made by the appellant-NGO) will be

permitted to hawk in the area which was demarcated by DDA prior to their removal on 19th April, 2008. However, it will be open to DDA to examine whether Nehru Place or the said area should be declared a non-hawking area and if required, demarcate vending/ non-vending areas in Nehru Place. Removal/shifting of the hawkers under the pilot project, if required, will be in terms of the directions issued by the Supreme Court in the case of Sudhir Madan (supra). The question whether Nehru Place should be declared a no hawking zone and the question of demarcating non-vending areas will be decided by the DDA after making reference to the Ward Vending Committee and on the basis of the directions issued by LPA NO.766/2008 Page No.36 the Supreme Court and in terms of the Scheme of the MCD. We may note that MCD has stated that they had already allotted alternative site to some hawkers out of the list of 67 street vendors. If any of said hawkers have already opted for the new site, they will not be entitled to the benefit of this Order. The Appeal is accordingly allowed to the extent indicated above.”

6. Reliance is placed on the aforesaid observation to show that the respondent has taken a consistent stand that Nehru Place area is a no hawking and no vending zone.
7. It is contended by Mr. Gupta that at that stage only 67 vendors were permitted to hawk in the area. He further submits that a Special Leave Petition was filed against the order of Division Bench passed in the LPA. Reliance is placed on the affidavit filed by the erstwhile land owning agency before the Supreme Court of India wherein it was agreed by the DDA to grant protection to 67 hawkers under the umbrella of *Manushi Sangathan(supra)* and 85 hawkers under various order passed by the Court. Para 5 of the affidavit filed before the Supreme Court of India is reproduced below:-

“The petitioner authority also submits that as an interim measure and till such time, the word vending committee takes a decision on the eligibility and relocation of the 67 hawkers under the umbrella of the Respondent No.1 and other 85 hawkers sitting under various orders or different courts at Delhi, the Petitioner authority shall not take any coercive action to remove these persons. However, the Petitioner authority also submits that the same may not been taken as a concession on behalf of the Petitioner authority to give up its case of the NPDC being declared as No Hawking Zone or an admission on the part of the petitioner authority for other hawkers to use Nehru Place District Centre as hawking site”.

8. It is further pointed out that on 10.08.2009 under the Chairmanship of the Lt. Governor of Delhi vide item No.55 of 2009, it was decided that Nehru Place, District Centre should be declared as No Hawking Zone. Copy of the minutes of the meeting of 10.08.2009 have been placed on record.
9. Attention of the court is also drawn to the observation made by Division Bench of this court in LPA No.825/2012 in the case of ***Urmila Devi v. Delhi Development Authority & Ors.*** vide order dated 11.01.2013, which reads as under:-

“We are however of the opinion that the said controversy is irrelevant. It is not disputed that Nehru Place has been declared as a ‘No Hawking Zone’. None is permitted to hawk/vend from open areas, streets and pavements thereof...”

10. Mr. Gupta also points out that post filing of the affidavit by DDA only 62 Vendors out of 67 by ***Manushi Sangathan (supra)*** were permitted to vend and 33 out of 85 were found eligible as per the list handed

over by the DDA to the MCD.

11. Mr. Gupta points that petitioners are not regular street vendors. Their names do not appear in the list prepared either by the Thareja Committee in 1992 or the Chopra Committee which was formed under the orders of the Supreme Court in the year 1989 and 1994.
12. Additionally, Mr. Gupta has strongly urged before us that a consistent stand has been taken by the erstwhile Land Owning Agency, i.e. DDA that Nehru Place District Centre has been declared as a “No Hawking No Vending” zone. The said stand was followed in the case of ***Manushi Sangathan*** before the Supreme Court of India. Attention of the Court is drawn to the order passed by the Supreme Court, dated 25.04.2011, which reads as under:-

“This petition is directed against the order dated 17.04.2009 of the Division Bench of the Delhi High Court, the operative portion of which reads thus:

"In view of the above findings, we dispose of the present Letters Patent Appeal by directing DDA to continue with the pilot project. Accordingly, 67 vendors (reduced to 67 from 68 as per the statement made by the appellant-NGO) will be permitted to hawk in the area which was demarcated by DDA prior to their removal on 19th April, 2008. However, it will be open to DDA to examine whether Nehru Place or the said area should be declared a non-hawking area and if required, demarcate vending/non-vending areas in Nehru Place. Removal/shifting of the hawkers under the pilot project, if required, will be in terms of the directions issued by the Supreme Court in the case of Sudhir Madan (supra). The question

whether Nehru Place should be declared as no hawking zone and the question of demarcating non-vending areas will be decided by the DDA after making reference to the Ward Vending Committee and on the basis of the directions issued by the Supreme Court and in terms of the Scheme of the MCD. We may note that MCD has stated that they had already allotted alternative site to some hawkers out of the list of 67 street vendors. If any of said hawkers have already opted for the new site, they will not be entitled to the benefit of this Order. The Appeal is accordingly allowed to the extent indicated above."

Arguments in the case were heard on different dates and the judgment was reserved on 26.10.2010. Thereafter, the parties filed written submissions and some affidavits. In paragraph 5 of affidavit dated 07.12.2010, Shri S.R.Solanki, Chief Engineer, South Zone, Delhi Development Authority, has made the following statement :-

"5. The Petitioner authority also submits that as an interim measure and till such time, the ward vending committee takes a decision on the eligibility and relocation of the 67 hawkers under the umbrella of the respondent No.1 and other 85 hawkers sitting under various orders of different courts at Delhi, the Petitioner authority shall not take any coercive action to remove these persons. However, the Petitioner authority also submits that the same may not been taken as a concession on behalf of the Petitioner authority to give up its case of the NPDC being declared as No Hawking Zone or an admission on the part of the Petitioner authority for other hawkers to use Nehru Place District centre as hawking site."

In our opinion, the stand taken in the above reproduced

paragraph of the affidavit of Shri Solanki is in consonance with the direction given by the Division Bench of the High Court. Therefore, the special leave petition is disposed of as infructuous.

The direction given in I.A.No.4 of 2011 for imposition of cost of Rs.50,000/- is deleted.”

13. Mr. Gupta submits that in view of the stand taken by the DDA before the Supreme Court of India, the Special Leave Petition was disposed of. He submits that a concession was made by the DDA that till the time the Ward Vending Committee will take a decision on the eligibility and relocation of 67 hawkers under the umbrella of respondent No.1 (Manushi) and other 85 hawkers sitting under various orders of different Courts at Delhi, the Authority would not taken any coercive action to remove such persons. The DDA also took another categorical stand that the concession may not be considered as the Authority giving up its case of Nehru Place District Centre being declared as “No Hawking No Vending” zone or an admission on the part of the DDA regarding other hawkers to use Nehru Place District Centre as a hawking site. Mr.Gupta contends that this stand of the DDA was accepted by the Supreme Court and based on the affidavit so filed, the Special Leave Petition was disposed of.
14. It is, thus, contended by the learned counsel appearing for the MCD that no relief can be granted to the petitioners, as the petitioners are not regular street vendors; they have not been hawking at Nehru Place District Centre which is evident from the fact that their names do not find mentioned in either of the lists prepared by the Thareja

Committee in the year 1992 or the Chopra Committee in the year 1996. Additionally, a consistent stand of the erstwhile Land Owning Agency, DDA, and the MCD has been that Nehru Place District Centre is a “No Hawking No Vending” zone and barring the persons to whom protection has been granted, they have not allowed and shall not allow any other street vendor to occupy place in Nehru Place District Centre.

15. We have heard the learned counsels for the parties. The basic facts are not in dispute, i.e. both the petitioners claim to be street vendors and claim to be carrying out hawking activities at Nehru Place District Centre. The petitioners claim that they are regular street vendors and thus, are entitled to protection under Section 3(3) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. It is also the stand of the petitioners that till the TVC is functional, they should be allowed to vend at their respective sites and earn their livelihood. Photographs have been filed in support of their existence at the site.
16. We are unable to accept the submission of the learned counsel for the petitioners, for the reason that in case the petitioners were regular street vendors, their names would have found mentioned in either of the two lists prepared under the directions of the Supreme Court by Thareja and Chopra Committees. We also find that in the affidavit filed before the Supreme Court, various lists were provided of the persons who were either part of the **Manushi Sangathan (supra)** or those vendors who had approached different Courts and were granted protection. In case, the petitioners were regular street vendors,

certainly their names would have figured in any of the proceedings, which is not there.

17. Additionally, *prima-facie*, we are of the view that the DDA (erstwhile Land Owning Agency) and the MCD have taken a consistent stand that Nehru Place District Centre is a “No Hawking No Vending” zone and they shall not allow any other person to vend except for those persons who find mentioned in their affidavit and form part of the order of the Supreme Court which has been reproduced above and some other persons who have been granted protection by different Courts.
18. Copy of the minutes of the meeting dated 10.08.2009, post the order passed by the Division Bench in **Manushi Sangathan**, have been filed in LPA No.623/2016, which is also listed today. Relevant portion reads as under:-

“Item No.55/2009

Sub: Rejuvenation of District Centre Nehru Place, New Delhi

F.10(7)/07/CC-XV/DDA

The Authority also discussed the issue of rejuvenating the Nehru Place District Centre. After detailed discussions, it was decided that Nehru Place District Centre should be declared as “No Hawking Zone”.

2) The Authority also decided that separate areas should be identified and earmarked as vending zones in different parts of the city.”

19. The matter was placed before the Committee by a note for confirmation. The note reads as under:

“Item No.56/2009
12.10.2009

Sub: Confirmation of the minutes of the meeting of the Delhi Development Authority held on 10.8.2009.

File No. F.2(2)2009/MC/DDA

Minutes of the meeting of the Delhi Development Authority held on 10.8.2009 are submitted for confirmation of the Authority.

(Appendix ‘A’ Page No.2 to 19).

RESOLUTION

Minutes of the meeting of the Delhi Development Authority held on 10.9.2009 were confirmed as circulated.”

20. The minutes of the Meeting dated 10.8.2009 were confirmed on 12.10.2009. The meeting was held under the Chairmanship of the Lieutenant Governor of Delhi; Vice Chairman; 12 Members; Secretary; and 20 Special Invitees and senior officers. Relevant portion of the confirmation reads as under:

“ITEM NO.56/2009

Sub : Confirmation of the minutes of the meeting of the Delhi Development Authority held on 10.9.2009 at Raj Niwas, Delhi, File No. F.2(2)2009/MC/DDA.

Minutes of the meeting of the Delhi Development Authority held on 10.8.2009 were confirmed as circulated.”

21. Taking into consideration the submissions made by the learned counsel for the parties, we are of the view that the DDA, erstwhile land owning agency, and the SDMC, have taken a consistent stand that Nehru Place District Centre has been declared as a No Hawking and No Vending Zone, however, while deciding LPA No.766/2008 a Division Bench of this Court while disposing of the LPA directed to continue with the pilot project and the appellant-NGO Vendors of Manushi were permitted to hawk in the area demarcated by the DDA. It was left open to the DDA to examine whether Nehru Place or the said area should be declared a no hawking area. After the passing of the order by the Division Bench on 17.4.2009, the matter was considered by the DDA in the meeting held on 10.8.2009. The Minutes of the meeting have been extracted. The minutes were duly confirmed. Subsequently as stated in the affidavit filed before the Supreme Court of India, protection was granted in the LPA only to members of *Manushi Sangathan* and certain other street vendors who were enjoying protection of orders passed by different Courts. The names of both the petitioners do not find mentioned in either of the list prepared by Thareja Committee, 1992 or Chopra Committee. Resultantly, we find no merit in the present writ petition and the same is accordingly dismissed.

G.S.SISTANI, J

CHANDER SHEKHAR, J

SEPTEMBER 07, 2017 b///kk / msr