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

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Date of Judgment: 29th August, 2017

+ W.P.(C) 4471/2017

RAKESH KUMAR

..... Petitioner

Through : Mr. Vishesh Issar and Mr. Varun
Sharma, Advocates

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR

.... Respondents

Through : Ms. Jyoti Taneja, Advocate for
respondent no.1.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

1. The petitioner claims to be regular squatter and also claims to be carrying out his squatting activities in front of Chief Readymade Shop (Madan Store), between Gali no.7 and 8, Main Ajmal Khan Road, Karol Bagh, New Delhi. The grievance of the petitioner is that the officials of the North Delhi Municipal Corporation are harassing him and interfering in his vending activities.
2. Learned counsel for the petitioner submits that the petitioner from time to time has been agitating his rights and now in view of Section 3(3) of the Street Vendors (Protection of Livelihood and Regulations of Street Vending) Act, 2014 (hereinafter '*the Act*'), thus, the petitioner cannot be removed. The petitioner has placed various

receipts/challans of the years 2002, 2003, 2004, 2006, 2007, 2011, 2012, 2013, 2016 and 2017 in support of his plea that the petitioner is a regular squatter

3. Learned counsel for the North Delhi Municipal Corporation submits that the petitioner has only placed weekly *bazaar challans* pertaining to Ajmal Khan Road, Karol Bagh for the years 2002, 2003, 2004, 2006, 2007, 2010 and 2011, whereas *challans* for the years 2012, 2013 and 2016 are not challans issued by the Enforcement Department of the North Delhi Municipal Corporation but pertain to the challans issued by the Evening Court, it is thus contended by the Counsel for the North Delhi Municipal Corporation that the petitioner is not a regular squatter which is evident from the challans placed on record. Ms.Taneja further contends that no benefit can accrue to the petitioner in view of Section 3(3) of the Act for the reason that the name of the petitioner does not find mentioned in the list prepared by the NDMC or by the Chopra Committee. The counter affidavit filed by the Corporation states that the petitioner was squatting on the metalled road and is causing hindrance to the free flow of traffic as well as the pedestrians, and hence was removed.
4. We have heard learned counsel for the parties and analysed the documents placed on record. Upon analysis of *challans* for the years 2002, 2003, 2004, 2006 and 2007 we find that the same do not show the name of the petitioner and thus, cannot be of any benefit to him. The *challan* dated 24.10.2007 pertains to applying for licence under the erstwhile scheme of MCD and again cannot show that the petitioner was squatting at the site in question. The weekly *bazaar challans* at pages 72 and 73 of the paperbook of the year 2011 would show that he is not a regular squatter. The remaining *challans* have

been issued by the Evening Court, Tis Hazari Courts, however, the *challans* of the year 2013, 2016 and 2017 show nothing relating to the site where the petitioner claims to be squatting. Only two *challans* dated 16.07.2011 and 03.04.2012 pertain to the petitioner and his place of squatting.

5. Additionally, the name of the petitioner does not figure in any of the lists prepared by the Municipal Corporation or the Chopra Committee. This gains significance in view of the judgments of a coordinate bench of this Court in ***Bhola Ram Patel v. New Delhi Municipal Council and Anr.***, LPA 136/2016 dated 18.05.2016 [2016 (157) DRJ 584] and subsequent clarification dated 27.09.2016 [2016 (159) DRJ 494], whereby this Court had directed that the municipal corporation shall ensure smooth passage in public places and pavements and had interpreted the term ‘street vendors’ as those having a pre-existing right as *tehbazari* licence or name in any list. In the present case, the petitioner neither holds a *tehbazari* licence nor has his name in any list prepared by the respondent no.1 and thus, cannot claim the protection under Section 3 (3) of the Act.
6. Even further, learned counsel for the respondent has handed over in Court a copy of the order dated 03.05.2017 passed by a Division Bench of this Court in ***Paardarshita Public Welfare Foundation (NGO) v. Commissioner South Delhi Municipal Corporation & Ors.***, W.P. (C) 5023/2015 to show that this Court had directed measures to be taken to remove the encroachments on pavement to ensure hindrance free movements of the pedestrians.
7. Based on the stand taken by the learned counsels for the parties, we dispose of the writ petition with the following agreed directions:-

- (i) In case the petitioner makes an application along with supporting documents to the Town Vending Committee, as and when functional. The TVC will consider the same in accordance with law.
- (ii) 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.

8. The writ petition is disposed of accordingly.

9. C.M. 19492/2017 also stands disposed of in view of the above order.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

AUGUST 29, 2017

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