

\$~18

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

%

Date of Judgment: 29th August, 2017

+ W.P.(C) 4844/2017

SHIV GIRI

..... Petitioner

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

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR

.... Respondents

Through Mr. Manoj Kumar Sharma,
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 a regular squatter and also claims to be carrying out his squatting activities at 13/8, W.E.A., Padam Singh 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 1981, 1991, 1993, 1995, 1997, 1998, 2003, 2007, 2010, 2011 and 2012 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 Padam Singh Road, Karol Bagh, New Delhi for the years 1991, 1993, 1995, 1998, and 2003, whereas *challans* for the years 1981, 1997, 2010, 2011 and 2012 are not *challans* issued by the Enforcement Department of the North Delhi Municipal Corporation but pertain to *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. Mr.Sharma 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 1991, 1993, 1995, 1998 and 2003 are weekly *bazaar challans* and would show that the petitioner is not a regular squatter. The *challan* dated 20.09.2007 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 remaining *challans* have been issued by the Tis Hazari Courts, however, the *challans* of the year 1981, 1997, 2010, 2011 and 2012 show nothing relating to the site

where the petitioner claims to be squatting. There are no *challans* to show that he had been squatting when the Act came in force or anytime thereafter.

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. 20885/2017 also stands disposed of in view of above.

G.S.SISTANI, J

CHANDER SHEKHAR, J

AUGUST 29, 2017 //pst