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

% *Date of Judgment: 17<sup>th</sup> November, 2017*

+ W.P.(C) 10462/2016

ARVIND GUPTA & ORS. .... Petitioners

Through: Ms.Anamika Ghai Niyazi and  
Ms.Kirti Jaswal, Advocates

versus

GOVT OF NCT & ORS. .... Respondents

Through: Mr.Sanjoy Ghosh, ASC for GNCTD  
with Ms.Urvi Mohan and Mr.Rishabh  
Jetly, Advts. for R-1 and R-3 with  
SI Satish Bhati, PS Kalkaji.  
Mr.Mukesh Gupta, Standing Counsel  
for SDMC with Mrs.Shashi Gupta and  
Mr.Sanjeev Garg, Advts.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MR. JUSTICE V.KAMESWAR RAO**

**G.S.SISTANI, J. (ORAL)**

1. This is a petition under Article 226 of the Constitution of India filed by three petitioners. They seek a direction that the respondents be directed to hand over their respective allotted hawking sites at Greater Kailash-I and till such sites are allotted, they may be allowed to vend from their present hawking sites at Nehru Place, New Delhi. It is the case of the petitioners that they are the regular street vendors and petitioners no.1 namely Arvind Gupta has been continuously hawking at the area opposite Madhuvan Building No.55, Nehru Place Commercial Complex, New Delhi since the year 1989; petitioner no.2 namely Mahender Kumar has been hawking opposite Vishal Bhawan,

Building No.95, Nehru Place Commercial Complex, New Delhi since the year 1977 and petitioner no.3 namely Raju Gupta @ Raj Kumar Gupta has been hawking opposite Vishal Building No.95, Nehru Place Commercial Complex, New Delhi since the year 1990. It is also the case of the petitioners that they have applied for the permanent tehbazari sites under the National Policy on Urban Street Vendors 2007 with their complete documents and records, but no allotment has been made.

2. Ms.Ghai submits that from the year 2009, Zonal Vending Committee of Municipal Corporation of Delhi, the predecessor-in-interest of respondent no.2 i.e. South Delhi Municipal Corporation (SDMC) carried out a draw of lots and issued a list of 37 successful hawkers. The petitioners were found eligible for allotment of tehbazari sites at Ward No.192 at Greater Kailash-I, New Delhi. Post the draw of lots no such sites were in fact allotted. Since the petitioners were being harassed by the officials of the respondents, a Writ Petition (Civil) No.5689/2010 titled as *Arvind Gupta and Others vs. MCD and Others* was filed. The petitioners had made a grievance that they have already been granted sites at Greater Kailash-I. It is the case of the petitioner that in the aforesaid writ petition (hereinafter referred to as 'the first petition') the MCD and DDA filed their affidavits and recognized their rights. The aforesaid writ petition was disposed of by an order dated 13.10.2014. Since the petitioners were not granted hawking sites, the petitioners in para 13 of the writ petition have made an averment that an SLP (Civil) 29277/2009 titled as *DDA vs. Manushi Sangathan and Others* was filed by the DDA before the Supreme

Court of India against the hawkers operating in Nehru Place. In the said SLP an affidavit was filed by the DDA wherein it was admitted by DDA that 67 hawkers belonging to Manushi Sangathan and other 85 hawkers were also operating in Nehru Place who have been protected by various court orders. An averment was made that the names of the petitioners also figured in the list of 85 hawkers. The said petition was disposed of by the Supreme Court of India by an order dated 25.04.2011. The counsel contends that the Supreme Court has categorically directed the DDA not to dispossess the hawkers including the petitioners herein. It is also the complaint of the petitioners that the officials of the respondents continued to harass them, resultantly, a second Writ Petition bearing W.P.(C) 5781/2015 was filed which was disposed of by an order of 29.05.2015. Counsel also claims that in view of Section 3 (3) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, the petitioners being regular street vendors are entitled to protection.

3. The main crux of argument of learned counsel for the petitioners is that even as per the understanding of the DDA, the erstwhile land owning agency in terms of the affidavit filed by them in the Supreme Court of India, the petitioners were regular street vendors and they were to be granted protection as their names figured in the affidavit filed by the DDA. It is also the submission of Ms.Ghai that identically placed persons whose names figured in the affidavit filed before Supreme Court of India have been allowed to vend. Ms.Ghai also contends that some of the similarly placed petitioners who were not

allowed to vend have been granted protection by this Court in at least three writ petitions which were filed in the years 2016 and 2017, while these petitioners are being singled out. It is also the case of the petitioners that the previous orders passed in the earlier two writ petitions, the petitioners have been granted leave to approach Town Vending Committee (TVC), whereas no TVC is in place even now and thus, the petitioners are left with no choice but to continue to vend at their existing sites. Ms.Ghai submits that the petitioners were granted interim protection as is evident from copy of the order dated 13.10.2014 passed in Writ Petition (Civil) No.5689/2010, which has been placed on record(page 185). It is submitted that reading of this order would show that the respondents were restrained from dispossessing the petitioners.

4. Counsel for the petitioners has placed strong reliance on the affidavit filed by the DDA before the Supreme Court of India in SLP (Civil) 29277/2009, more particularly, paragraph 6 which reads as under:

| <i>Case No.&amp; Title</i>                                               | <i>Court</i>                                                   | <i>Number of Hawkers</i> |
|--------------------------------------------------------------------------|----------------------------------------------------------------|--------------------------|
| <i>SLP 29277/09 DDA &amp; Ors. vs. Manushi Sangathan &amp; Ors.</i>      | <i>Supreme Court</i>                                           | <i>68</i>                |
| <i>WP(C) No.6893/08 Prem Shanker Gupta &amp; Ors. vs. DDA &amp; Ors.</i> | <i>Disposed of by the High Court vide order dated 2.6.2010</i> |                          |
| <i>-----</i>                                                             | <i>-----</i>                                                   | <i>-----</i>             |
| <i>W.P.(C) 5689/10 Arvind Gupta &amp; Ors. vs. MCD &amp; Ors.</i>        | <i>Delhi High Court</i>                                        | <i>03</i>                |

5. It is submitted that since this affidavit was filed by the DDA voluntarily in another connected matter with regard to hawkers of Nehru Place and now the MCD has stepped into the shoes of the DDA, thus MCD would remain bound by the stand taken by DDA

before the Supreme Court of India and the order passed by the Supreme Court of India dated 25.04.2011 in the SLP (Civil) 29277/2009.

6. Mr.Mukesh Gupta, learned counsel appearing for SDMC submits that the present petition is a gross abuse of the process of the Court. The petitioners have not approached this court with clean hands and have suppressed material facts. It is contended that consistent stand has been taken by erstwhile land owning agency (DDA) and is consistently being followed by the SDMC that Nehru Place District Centre is a 'no hawking' and 'no vending' zone. Mr.Gupta further contends that the petitioners are not regular street vendors for the reason that three writ petitions were filed by the petitioners being Writ Petition nos. 5689/2010, 5781/2015 and W.P.(C) 10462/2016, which is the present writ petition. In all the writ petitions, no interim protection was granted at any stage. It is also contended that barring the three writ petitions, the petitioners also filed a contempt petition which was disposed of on 24.08.2016 being Cont. Case (C).985/2016 titled as *Vipin Narang & Ors. v. MCD & Others*, wherein no protection was granted to the petitioners. While relying on the three orders passed in the aforesaid writ petitions and the contempt petition, it is the contention of the counsel for the SDMC that at no stage any of the courts found the case of the petitioners a fit case for grant of any interim protection, although the earlier writ petitions and the contempt petition stand dismissed. Counsel also contends that no advantage can be taken by the petitioners on a factual error which had crept up in the affidavit filed by the DDA before the Supreme Court of India wherein

it was inadvertently shown that the present petitioners were enjoying an interim protection. Counsel contends that a mistake could have been made by the DDA but the petitioners were well aware that at no point they have been granted protection by the High Court. Mr. Gupta relies on two orders dated 20.08.2010 to show that an application being CM.APPL.11184/2010 was filed in W.P.(C) 5689/2010 when notice was issued for 28.09.2010. He submits that another application being CM.APPL. 11510/2011 was filed in the same writ petition when by an order dated 09.08.2011, notice was issued for 14.11.2011, but no protection was granted to the petitioners. Both these orders have been relied upon by Mr.Gupta to buttress his arguments that the applications were filed post filing of the affidavit by the DDA before the Supreme Court of India which would show that there was no stay order in favour of the petitioners when the DDA filed the affidavit before the Supreme Court of India and an attempt was made to cover up by filing subsequent applications.

7. During the course of hearing Ms.Ghai has contended that in identical cases where at least three writ petitions were filed, in three applications which were disposed of by the order of 02.06.2010, the petitioners in those cases were granted protection. While relying on these orders, Mr. Gupta submits that this is also a factual error as those writ petitions were in fact pending on the date when the affidavits was filed but order of 02.06.2010 was only an interim order. Reliance is also placed on an affidavit filed by the DDA in response to the first writ petition filed by the petitioner being W.P.(C) 5689/2010.

Attention of the Court is drawn to the following paragraphs of the counter affidavit, which read as under:

**“PRELIMINARY SUBMISSION :**

It is stated that upon physical verification at Nehru Place District Centre it has been found that none of the petitioners are squatting or carrying on any hawking activities from there. In fact, the very fact that the petitioners have themselves stated that the MCD had allotted them alternate sites in Greater Kailash-I shows that they were removed from Nehru Place and that is the reason as to why, the need for granting an alternate site arose in the first place.

6. That it is submitted that as stated above, upon verification from the site of Nehru Place it is found that none of petitioners are squatting or carrying on any hawking activities from Nehru Place District Centre.

It may be pointed out that the District Centre, Nehru Place was taken over from the MCD on 18.4.2002 for its upgradation and rejuvenation. At that time, all the regular Teh Bazari Holders were shifted by the MCD as well as by the DDA to alternative sites. The DDA allotted stalls to 85 persons in Chhoti Subzi Mandi, Tilak Nagar and the MCD relocated persons to East of Kailash near Paras Cinema.

Thus, the area was cleared of all the hawkers in 2002 upon transfer to the DDA from the MCD.

7. That a conscious decision has again been taken by the Hon'ble LG, Delhi in September-October, 2009 after the judgment of the Hon'ble Division Bench dated 17.04.09 in the case of 'Manushi Sangathan Vs. DDA & Ors.' that Nehru Place is to be declared a "No Hawking Zone". In the said judgment the Division Bench had prohibited the DDA from removing only the 67 hawkers who were allotted hawking sites pursuant to the Pilot Project which was noticed in the order and it was left open for the DDA to consider the permissibility of

declaring Nehru Place area as a “No Hawking Zone”. The decision of the Hon’ble LG, Delhi referred to above was taken pursuant to the said permission granted by the Hon’ble Division Bench.

8. That it is stated that the petitioners are not sitting at Nehru Place District Centre. From time to time, the hawkers like the petitioners try and encroach in the area in question. Attempts are made to indulge in unregulated and unauthorised hawking and encroachment by different persons. The officers of the DDA, on spotting the said encroachers / hawkers immediately report to the Delhi Police and with the help of the police remove the said encroachers. Regular action is taken as far as possible, but the same cannot be done throughout the day especially, after working hours.

Since certain hawkers are sitting at Nehru Place under the protection of interim orders from various courts, the persons like the petitioners taking benefit of such protected hawkers, try to occupy hawking space until they are spotted by the field staff and removed.”

8. Mr. Gupta further submits that in the aforesaid counter affidavit in para 10 the erstwhile land holding agency has strongly opposed grant of any interim relief. Para 10 of the counter affidavit reads as under:

“10. That it is submitted that the answering respondent is disputing any right of the petitioners to the grant of any interim orders in the present Writ Petition. The present petitioners stand on a different footing than the petitioners in the case of ‘Prem Shankar Gupta’ being relied upon by the petitioners for grant of interim relief. The deponent craves leave to point out the distinction in the two sets of cases at the time of arguments.”



9. Additionally, Mr. Gupta submits that Nehru Place District Centre has been declared as a 'no hawking', 'no vending' zone. He relies on a decision rendered by this Court in *Bachchu Singh & Anr v. South Delhi Municipal Corporation & Ors*, W.P.(C) 2566/2017 decided on 07.09.2017, relevant paragraphs of which read as under:

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."*

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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.”

10. We have heard learned counsel for the parties and considered their rival submissions.

11. The basic submission made by Ms.Ghai is that since the names of the petitioners figure in the affidavit filed by the DDA before the Supreme Court in the case of *Manushi Sangathan* (*supra*), thus, the petitioners are entitled to protection, is without any force. Firstly, for the reason that in fact no protection was granted to the petitioner and the affidavit filed by the DDA contains a factual error. This is evident from the fact that neither any copy of any stay order granted in favour of the petitioner has been filed. To the contrary Ms.Ghai is relying upon two orders dated 20.08.2010 and 09.08.2011. One of the orders is post filing the affidavit before the Supreme Court of India seeking stay, which would not show that the petitioners themselves were aware and conscious that no protection had been granted to them. Another writ petition was filed subsequently. In the second writ petition also, no stay was granted. Both the writ petitions i.e. first and second writ petitions were disposed of allowing the petitioners to approach the Town Vending Committee. During the course of hearing, Ms. Ghai relied on order dated 13.10.2006 of Commercial Civil Judge, Delhi which is also of no benefit to the petitioners as the learned counsel has been unable to point out to this Court the outcome of the suit in which such an order was passed. In fact, counsel fairly submits that she is not aware as to what was the outcome of the civil suit and in which proceedings this order was passed. She is not aware as to whether the suit is pending or dismissed or whether interim order is confirmed or vacated.
12. We also find that the affidavit which was filed before the Supreme Court of India and the final order dated 25.04.2011 passed by the

Supreme Court of India reflects the stand of the erstwhile land holding agency in *Manushi Sangathan* (supra). As per the order, the Supreme Court has noticed that “*However, the Petitioner authority also submits that the same may not be taken as a concession on behalf of the Petitioner authority to give up its case of the NDPC 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.*”

13. Such a stand was also taken in the affidavit filed before the Supreme Court that “*It is pertinent to point out that as on date the Nehru Place District Centre is declared as “No Hawking Zone”. However, by virtue of various courts orders, several hawkers have occupied the Piazza.*”
14. We may note that in at least three separate writ petitions which were filed in this court the SDMC had conceded that the petitioners in those writ petitions were regular street vendors and had been granted protection by some court order hence a stand has been taken that they would not be removed till a final decision has been taken in the matter.
15. The SDMC being a statutory body and limb of the government is bound to act in fair and just manner and the submissions that petitioners are being singled out are not correct.
16. Having regard to the fact that in the earlier two writ petitions filed by the petitioners no favourable orders were passed, the stand taken by the SDMC and further for the detailed reasons in *Bachchu Singh & Anr*(supra), that Nehru Place is a ‘no hawking’, ‘no vending zone’, we

find no ground to entertain the writ petition. The same is accordingly dismissed.

17. It would be open to the petitioners to approach the Town Vending Committee(TVC) with all supporting documents, as and when it is functional, and merely because that they are not found vending at the site, should not be a ground to reject their claim.
18. At this stage, Ms.Ghai submits that the petitioners would approach the SDMC and make a request for grant of site in the Greater Kailash area and she submits that in case any site is available, the petitioners should be accommodated. Accordingly, it is directed that the TVC will decide the claims of the petitioners in accordance with law based on documents filed by them and unaffected by any of the observations made by this Court in this case.

**CM.APPL. Nos.40997/2016, 27977/2017 & 30441/2017**

19. The applications stand disposed of in view of the order passed in the writ petition.

**G.S.SISTANI, J.**

**V.KAMESWAR RAO, J.**

**NOVEMBER 17, 2017**

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