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

% *Date of Judgment: 18th September, 2017*

+ **W.P. (C.) No.11415/2016**

MAHESH KUMAR YADAV Petitioner
Through Mr.Lakshay Sawhney, Adv. with
Mr.Aditya Shandilya, Adv.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS Respondents
Through Mr.Mananjay Kr. Mishra & Ms.Vidhi
Jain, Advs. for Mr.Sri Harsha
Peechara, Standing Counsel, NDMC.

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 an appropriate writ, order or direction to the respondents to permit the petitioner to continue his vending activity from the site shown in the plan Annexure P-2 and also to include the name of the petitioner in the survey of existing street vendors as per his seniority.
2. The petitioner claims to be a regular squatter and was squatting near Indian Oil Building, Janpath Lane, New Delhi.
3. The main thrust of the arguments of the learned counsel for the petitioner is that since the petitioner has been regularly squatting, he could not have been removed. Strong reliance is placed on the

observations made in the order passed by another Division Bench of this Court, dated 27.09.2016 in LPA No.136/2016. In support of his submission that the petitioner is a regular squatter and has acquired a preexisting right and moreover his name finds mentioned in the list of 3000 squatters prepared by the NDMC thus he cannot be removed. Mr.Sawhney points out that this LPA was initially disposed of by an order dated 18.05.2016, however, on an application filed by the NDMC, necessary clarification was provided. Mr.Sawhney submits that the name of the petitioner finds mentioned in a list prepared by the NDMC comprising of 3000 persons. He has drawn the attention of the Court to observations made in para 9 of the order dated 18.05.2016, which 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.”

4. Mr.Sawhney submits that the petitioner should be allowed to vend and squat near Indian Oil Building, Janpath Lane and a direction should also be issued to the respondents not to harass him.
5. Mr.Mishra, learned counsel for NDMC submits that the averments made in this writ petition are not factually correct. Initially, the petitioner was vending near Parliament Street and thereafter, he illegally occupied a place in Janpath Lane. It is contended that the petitioner is an illegal squatter and his name does not find mention in any of the three lists prepared by the NDMC. It is explained that the first list was prepared prior to 1989; the second list was prepared under the supervision of the Supreme Court and Thareja Committee verified the persons; and the third list was prepared in the year 2012 arising out of a policy of the NDMC of the year 2007 when 628 street vendors were enlisted. It is submitted that the name of the petitioner does not fall in either of the three lists. He submits that no other list has ever been prepared by the NDMC and the reference to the observations made in Para 9 of order dated 18.05.2016 in LPA No.136/2016, paragraph 9 is misplaced and the reference is only with respect to the above stated three lists and no other list.
6. Mr.Mishra also submits that the list at page 68 of the paper-book sought to be relied upon by Mr.Sawhney does not show that it is a list relied upon by the NDMC during the hearing of the said LPA. He submits that the cause title of the list would itself show that this is a list of ‘Eligible Applicants’ and nothing further. It is further submitted

that the word 'list' mentioned in paragraph 9 of the order of the Division Bench is to be read in its correct perspective and in the light of the fact that only three lists have been prepared, only three lists were discussed and the order is to be understood in the light of only those three lists.

7. Mr.Mishra further submits that the necessity for seeking clarification of the order dated 18.05.2016 had arisen on account of the fact that under the garb of the first order dated 18.05.2016, the street vendors had started occupying large areas hindering smooth flow of traffic and the safe movement of pedestrians from the public places and pavements. It is submitted that the clarification was then rendered by the Division Bench giving a right to the NDMC to enforce smooth passage and remove such persons whose activities would impede and affect movement in the public passages and pavements. He submits that a careful and complete reading of the order would show that the NDMC has been permitted to take an appropriate action and remove such persons who are selling articles at places which obstruct the movement of pedestrians and traffic.
8. Mr.Mishra also relies upon page 69, an interim order passed by the Supreme Court, to show that the understanding has all along been with either of the three lists and not any other list.
9. We have heard the learned counsels for the parties. We may note that after coming into effect of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 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 who 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 by the Government of NCT of Delhi.

10. 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.
11. In a large number of matters against the NDMC before us, the consistent stand is being taken that having regard to the paucity of space and with a view to regulate the street vendors and to ensure smooth flow in public passages and pavements, the NDMC is allowing only such street vendors whose names find mentioned in either of the three lists, i.e. list of *tehbazari* license holders, list prepared by the Thareja Committee and the list of 628 street vendors. Having regard to the fact that this is the consistent stand being taken

by the NDMC and the fact that the repeated statements have been made that except those persons belonging to these lists, the NDMC is not allowing any other street vendor to vend, for the reason that there is paucity of space, in our view, the word 'list' appearing in paragraph 9 of the order passed in ***Bhola Ram Patel v. New Delhi Municipal Council and Anr.***, LPA No.136/2016, is to be read and understood in the context of the three lists which are consistently being relied upon by the NDMC. Copy of the list relied upon by the learned counsel for the petitioner pertains to a list of those persons who had applied for licence. In case the petitioner was a regular street vendor his name would have found mentioned in either of the three lists prepared by the NDMC. In our view, no right would accrue in their favour based on the list relied upon by counsel for the petitioner. Consequently, we find no ground to allow the present writ petition. The same is accordingly dismissed.

12. Needless to say that as and when the TVC becomes functional, the case of the petitioner would be considered by the TVC on the petitioner's furnishing all the relevant documents. The TVC would consider the case of the petitioner expeditiously, as he claims that he has been squatting for a long period of time. 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.44744/2017 (for stay)

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

G.S.SISTANI, J.

CHANDER SHEKHAR, J.

SEPTEMBER 18, 2017/ka

