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

% *Date of Judgment: 18th May, 2018*

+ W.P.(C) 4530/2018

RAJU SAHA

..... Petitioner

Through: Mr.Rajat Gava & Ms.Titasha
Banerjee, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION OF DELHI & ORS.

..... Respondents

Through: Mr.Mukesh Gupta, standing counsel
for SDMC with Ms.Shashi Gupta,
Adv.
Ms.Shobhana Takiar and Mr.Prateek
Dhir, Advts. for respondents no.2 & 3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following directions:
 - (a) Issue an appropriate writ/order/direction to restrain the respondent no.1, South Delhi Municipal Corporation from illegal eviction of the petitioner from the site Ground Floor, C-518, Opposite Market No.1, CR Park, New Delhi-110019.
 - (b) Issue an appropriate writ/order/direction to restrain the respondent no.3, Delhi Police from illegal eviction of the petitioner from the site Ground Floor, C-518, Opposite Market No.1, CR Park, New Delhi-110019.

- (c) Issue an appropriate writ of mandamus to Respondent No.1 to conduct survey of the street vendors in terms of the provision of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and Government of National Capital Territory of Delhi Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme, 2015 within a time bound manner.
 - (d) Issue an appropriate writ of mandamus to Respondent no.1 to identify and declare areas/zones/ward as vending zone or no vending zone in terms of the provision of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 after the completion of survey as sought in the aforesaid prayer (c).
 - (e) Issue an appropriate writ of mandamus to Respondent No.3 warranting the authority under which the impugned action of evicting the petitioner has been undertaken.
 - (f) Grant ad interim ex-parte relief to the petitioner till the complete implementation of the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.
2. The brief facts of the case are that the petitioner claims to be a regular street vendor and is stated to have been vending at the site situated on the ground floor of House No.C-518, Opposite Market No.1, C.R.Park, New Delhi – 110019. The petitioner has been engaged in vending tea and light snacks by the name ‘Rajus the Singing Tree’. The petitioner also claims that he is registered under the Delhi Shops and Establishment Act, 1954 and the Food Safety and Standards Act, 2006.

He further claims that he has a valid electricity and water connections with meters provided by the BSES Rajdhani Power Limited and the Delhi Jal Board respectively. He has also obtained a commercial gas connection of Indian Oil Corporation Limited.

3. Learned counsel for the petitioner submits that complaint of the petitioner is that he has been illegally removed by the Delhi Police without any order. Counsel further submits that the petitioner is not obstructing free movement on the streets/pavements of the pedestrians and free flow of traffic in any manner. Counsel for the petitioner has relied upon a certificate dated 12.04.2009, issued by Ms.Sandhya Banerjee, photocopy of which has been filed at page 94 of the paper book, in support of his contention that the owner of the house, Ms.Sandhya Banerjee, has in fact granted protection to the petitioner by allowing him to squat outside her aforestated house. Counsel, thus, submits that the action of the respondent/SDMC is arbitrary, preposterous, unreasonable and liable to be struck down; and the prayer made by the petitioner to allow him to vend at the area in question should be allowed.
4. Mr.Mukesh Gupta, learned standing counsel appearing for the South Delhi Municipal Corporation, submits that the basis of the petition that the petitioner has been granted protection by the owner of the House no.C-518, Chittaranjan Park, New Delhi, is false, unfounded and misleading. Counsel further submits that the certificate dated 12.04.2009, sought to be relied upon by the petitioner, simply suggests that the petitioner is known to the owner of the aforestated property i.e. C-518, Opposite Market No.1, CR Park, New Delhi, and he has been

regularly helping her in doing part time house hold jobs since her husband expired on 08th April, 2008 and he is also looking after her and her house. The Certificate, in any way, suggests that no protection has been granted to the petitioner to squat outside her house. On the contrary, the owner of the house, who is a senior citizen, along with other senior citizens, had made a complaint to the SHO, CR Park Police Station, against the petitioner herein stating that the petitioner is having an unauthorised tea stall outside the boundary wall of their house, which is causing nuisance and their safety is at stake. They had also raised their problems (point-wise) in the complaint and also conveyed that they wanted to keep the complaint anonymous as they fear physical harm at the hands of the petitioner and his associates if the complaint is disclosed to them. In support of this contention, counsel has handed over in Court today a photocopy of the complaint, which is taken on record.

5. It is further contended by Mr.Gupta that pursuant to the complaint made, the Municipal authority has removed the tea stall of the petitioner and cleared the site from all encroachments. In support of this contention, counsel has handed over photographs in Court today, which are taken on record. Mr.Gupta further submits that the petitioner is an encroacher who has obtained licence, electricity and water connections by giving wrong address of the owner of the house, without her leave and permission. Counsel further submits that because of the encroachment made the petitioner is blocking the free movement of pedestrians, besides the free flow of traffic.
6. In response to the submission so made by Mr.Gupta, learned counsel

for the petitioner submits that since the petitioner has been vending for a considerably long time, he should be allotted an alternate site to enable him to earn his livelihood.

7. We have heard learned counsels for the parties, considered their rival submissions and also perused the paper book and the documents including the Certificate dated 12.04.2009, purported to have been issued by the owner of the house to the petitioner, and the photographs, handed over in Court today. The Certificate dated 12.04.2009 reads as under:

“From Smt.S.Banerjee, C-518, C.R.Park, ND-19

To whomsoever it may concern

This is to certify that Raju Saha is known to me for the last 14 years and has been regularly helping me in doing part time household jobs in my house. As my husband expired on 8th April, 2008, he has been also looking after me and my house. He is a very honest and sincere person.

New Delhi
Dated 12/04/09

Sd./-
(Smt. S.Banerjee
w/o late Sukiman Banerjee)”

8. Perusal of the Certificate dated 12.04.2009, relied upon by the petitioner does not show that she had allowed the petitioner to squat and vend along with the boundary wall of her house. Even otherwise, the area in question is a public land and the owner could not have granted any permission to the petitioner to vend there. We are also surprised as to how the petitioner has obtained electricity and water connections from the municipal authorities for an area which does not belong either

to the petitioner or to the owner of the house. No public land can be encroached upon, much less, the municipal authorities cannot grant licences for such areas.

9. We have also examined the complaint, which has been made by various senior citizens, aged between 79 to 92 years, who have also expressed an element of insecurity by running of the tea stall alongside the boundary wall of their house, which is being used by all sorts of persons, who sit there and have tea, cigarettes and drugs etc., which also hampers privacy of the complainants (senior citizens). There is no doubt that the tea shop would be frequented by different sections of the society. We are also surprised to see that as to how the municipal authorities have granted water and electricity connections and also allowed live cooking by using gas cylinder in the public area. The challans placed on record, however, would show that the petitioner has been vending at the area in question.
10. At this stage, counsel for the SDMC submits that the Delhi Street Vendors (Protection of Livelihood and Regulation of Street Vending) Rules, 2017 have since been notified on 10.01.2018 and constitution of the Town Vending Committee (TVC) is in process of being constituted and a public notice has been issued calling upon the street vendors to furnish their documents to enable the Corporation to prepare the electoral roll to conduct elections for the TVC.
11. No document has been provided on record by the petitioner that he is an authorized street vendor, or his name finds mentioned in any of the lists prepared by the Thareja Committee, Chopra Committee or the list prepared in the year 2007 by the MCD. In our view, the petitioner

cannot be allowed to occupy public land, use a gas cylinder for cooking, block free flow of the traffic and free movement of pedestrians. Petitioner can also not be permitted to cause nuisance and the security of senior citizens cannot be compromised.

12. Having regard to the submission made by counsel for the SDMC that serious steps are being taken to constitute the TVC. The petitioner, as prayed, shall be at liberty to approach the TVC, as and when it becomes functional, with all supporting documents. We make it clear that in case the petitioner is not found vending at the site at the time of survey, that itself should not be a ground to reject his case. The TVC, in the light of documents, which may be furnished by the petitioner, shall pass an order in accordance with law.

13. Writ petition is disposed of with the above observations.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MAY 18, 2018

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