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

% ***Date of Judgment: 26.10.2018***

+ **W.P.(C) 3591/2017**

NATIONAL HAWKERS FEDERATION (AKSHARDHAM)

..... Petitioner

Through: Mr.Kamlesh Kumar Mishra, Mr.Rahul
Kumar and Mr.Rohit Kalra,
Advocates.

versus

COMMISSIONER OF POLICE AND ORS

..... Respondents

Through: Mr.Devesh Singh, ASC (Civil),
GNCTD with Ms.Urvashi Tripathi
and Ms.Sukriti Ghai, Advocates for R-
1 to 4 & R-6.

Mr.Jagdish Sagar, Advocate for R-5.

Mr.R.V.Sinha, Mr.A.S.Singh and
Mr.Amit Sinha, Advocates for R-7.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. Fifty members of the petitioners' association who claim to be vending near Akshardham Metro Station having been removed by the SHO of the area, has led to the filing of the present petition.

2. Mr.Mishra, learned counsel for the petitioners submits that members of the petitioners' association have been singled out by the SHO who has no jurisdiction over the land in question, whereas similarly situated persons have been allowed to vend.
3. Mr.Devesh Singh, learned counsel appearing for respondent nos.1 to 4 and 6 has relied upon the status report dated 05.02.2018 filed on behalf of respondent nos.1 to 3, which we reproduce below:

“In this regard, it is submitted that initially, a few persons started squatting/vending near the Akshardham Temple illegally, but with the passage of time the number of such squatters/vendors increased tremendously causing inconvenience to the tourist/visitors to the said temple. The illegal squatting/vending by the large number in hazardous manner not only create law and order problem, but also resulted in traffic chaos in and around the temple.

The Akshardham Temple and Akshardham Metro Station are the sensitive places in Delhi, the higher authorities in the Police Department have alerted/briefed with regard to the information received from the Central Intelligence Agencies viz I.B. as regard to the Security threat posed to the said monument from outlawed organizations as well as Terrorist. Apart from this a large number of foreign and domestic VIP/VVIPs tourists like President, Prime Minister, Ministers, foreign delegations etc. use to visit the Akshardham Temple. Accordingly local Police has been directed/briefed by the Police authorities to be in a state of high alert and to remain ever vigilant with regard to its security and to ensure encroachment free zone at and around Akshardham Temple and Metro station to avoid any untoward incident. The area in the vicinity of the Akshardham Temple also needs to be sanitized from security point of view from time to time, which means clearing the area encroached by the Hawkers etc.

It is further submitted that ensuring the security of the people visiting for temple and maintaining a close vigil in and around the temple are the foremost responsibility of respondent police authorities and any action taken by the police in this regard are for bonafide reasons and are not actuated by any ulterior motive.

The Haldiram, Padma Town (cloths), food kot, Coffee care, Nexa Maruty Show Room etc are in the covered building of Metro Station and they are having their own securities to ensure keep close watch over the activities of visitors.

The pusta road in front of Akshardham Temple and Metro Station is very busy, due to heavy traffic movement towards NOIDA from Delhi and from Western UP & NOIDA to East Delhi and North Delhi. Apart from this the visitors of Akshardham Temple come from NOIDA, entire Delhi Region and NCR through the Metro Train, after that they pass through the footpath to enter in the temple. Thus the Hawkers obstruct the pedestrian/traffic.

It is therefore requested that the unauthorized hawkers/encroachers may not be allowed at and around the Akshardham Temple/Metro Station.

The undersigned is ready to abide by any directions/orders, which this Hon'ble Court deem fit to pass in this matter. ”

4. Mr. Singh has further relied upon the status report dated 13.05.2017 which we reproduce below:

“Briefly stated that facts of the instant case are that the petitioners are the members of the National Hawkers Federation and have been vending in the area in vicinity of the Akshardham Mandir for the last many years. In view of the security arrangements for the Republic Day 2017, they were asked to remove their vending units, which they did, but thereafter when they tried to put their vending units back at their previous locations in the

vicinity of the said temple, they were not allowed to do so by the authorities. However, after sometime they were allowed to continue with their vending activities. The Petitioner Federation has gone on to state that in view of the visit of Hon'ble Prime Minister to the Akshardham Mandir on 10-04-2017, as a security measure, they were once again asked to remove their vending units and accordingly this time too they removed their vending units but now they are not being allowed to put their vending units back at the said site and are not allowed to vend peacefully.

In this regard, it is respectfully submitted that initially a few persons started squatting/ vending near the Akshardham Temple illegally but with the passage of time the number of such squatters/visitors increased tremendously causing inconvenience to tourists visitors to the said Temple and also to commuters seeking to access the nearby Akshardham Metro station. The illegal squatting/ vending by a large number of persons in a haphazard manner not only created law and order problems on a regular basis but also resulted in traffic chaos in and around the vicinity of the temple. It is submitted that oral complaints were also received from a large number of tourists regarding overcharging and misbehaviour by the hawkers/street vendors.

It is further submitted that the undersigned has also been repeatedly alerted by higher authorities in the department with regard to information received from central Intelligence Agencies viz. I.B. as regards to the security threat posed to the said Monument from outlawed organizations as well as terrorists. It may not be out of place to mention that the said temple is a recipient of a large numbers of both domestic and foreign tourists and has a great profile, therefore an attack on the same by foreign sponsored terrorists shall have great propaganda value for such undesirable elements.

It is in this conspectus of a very high threat perception to the said monument and the large traffic of

both domestic and foreign tourists, that the undersigned has been directed by the higher authorities in the police establishment to be in a state of high alert and to remain ever vigilant with regard to its security. Since the said temple enjoys a high profile it is also visited by foreign dignitaries, viz. Presidents, Prime Ministers, Ministers etc. and to ensure their security, the area in the vicinity of the temple also needs to be sanitized from security point of view from time to time which means clearing the area encroached by Hawkers etc.

It is submitted that ensuring the security of the people visiting the temple and maintaining a vigil in and around the temple are the foremost responsibilities of the respondent police authorities and any action taken by the police in this regard are for bonafide reasons and are not actuated by any ulterior motive.

The undersigned is ready to abide by any directions/ orders which the Hon'ble court deems fit to pass in this matter."

5. He further submits that members of the petitioners' association have not been singled out and the uniform action has been taken to keep the area in question encroachment free. He further submits that no allotment has been made to the members of the petitioners' association, even by the Municipal Corporation of Delhi (MCD).
6. Mr.Sinha, learned counsel appearing for respondent no.7/DMRC also submits that the area in question has been cleared of all encroachments towards the parking lot of the metro station by the official of the Delhi Police.
7. Mr.Jagdish Sagar, learned counsel appearing for respondent no.5/East Delhi Municipal Corporation has relied upon paras no.6 and 10 of the

counter affidavit filed on behalf of respondent no.5 which we reproduce below:

“6. It is correct that the area in question, which the answering Respondent has not identified as a vending zone for the purposes of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014, is required to be cleared of all encroachment having regard to its security importance, as per the assessment of Respondent No.1. The answering Respondent is cooperating with Respondent No.1.

10. The admission that the Petitioners do not have evidence of their averment that they have all been vending from the site in question be noted. The averments regarding Respondents Nos.1 to 3 do not pertain to the answering Respondent. The remaining contents of the paragraph under reply are denied for want of knowledge. It is respectfully submitted that the answering Respondent has no information as to whether the Petitioners themselves were in fact vending in the area and were in fact removed from the area in question. It is submitted that without conclusive evidence or record of the same, which can only be available with Respondents Nos. 1 to 3, it is possible for any person to claim the rights of a vendor and allege that he was removed by Respondents Nos.1 to 3. When the Petitioners themselves have admitted that they do not have evidence of the same, the answering Respondent is not in a position to accommodate them. ”

8. Learned counsel for the respondent no.5 further submits that in case, the members of the petitioners' association have any grievances; they should approach the Town Vending Committee (TVC) which has now been constituted.
9. We have heard the learned counsel for the parties.

10. Mr. Mishra, learned counsel for the petitioners strongly urged before this Court that members of the petitioners' association have been singled out while other hawkers have been allowed to vend.
11. During the course of hearing, Mr. Mishra, learned counsel for the petitioners has drawn attention of the Court to certain photographs which show that the brand names such as *Haldiram's* etc. are being allowed to sell their products while the poor vendors are being discriminated. This submission of learned counsel for the petitioners is without any force, as the board of *Haldiram's* and other food vendors are inside the metro station and are licencees and not on the road or parking lot where members of the petitioners' association sought permission to squat. Status report filed by the respondent/DMRC shows that entire area has been cleared of encroachment, thus, it cannot be said that the members of the petitioners' association have been discriminated or singled out.
12. Status report filed on behalf of respondent/GNCTD which we have extracted above sets out the reasons for the removal of the street vendors. As far as, the question of regulation of traffic and security is concerned, this in our view, is to be left open for the statutory authorities to decide and not for the Court to substitute its views as to whether vendors would lead to traffic congestion or would be a security hazard.
13. We find no ground to entertain this petition. The writ petition is accordingly dismissed.

14. However, we grant liberty to the members of petitioners' association and others who vend at the metro station to approach the TVC to seek such relief, as may be available in accordance with law.

G.S.SISTANI, J.

JYOTI SINGH, J

OCTOBER 26, 2018

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