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

% *Date of Judgment: 2nd April, 2018*

+ LPA 623/2016 & CM.APPL 293/2017

FEDERATION OF NEHRU PLACE ASSOCIATION (REGD)

..... Appellant

Through Mr. Ravi Sikri, Senior Advocate with
Mr. Sanjay Gupta, Mr. Deepank
Yadav and Ms. Samridhi Kapur,
Advocates

versus

SOUTH DELHI MUNICIPAL CORPORATION THR ITS
COMMISSIONER & ORS

..... Respondents

Through Mr. Mukesh Gupta, Standing Counsel
and Mr. Sri Harsha Peechara,
Standing Counsel with Ms. Vidhi Jain
and Mr. Shashi Gupta Advocate for
SDMC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. This is an appeal filed by the petitioner/appellant aggrieved by the order dated 12.09.2016 passed by a learned Single Judge of this Court. The appellant, federation of Nehru Place Association(Regd), is stated to be consisting of all trade associations of Nehru Place formed with an object to safeguard business interests of property owners, property occupiers (hereinafter referred to as 'the association'). The association along with 22 of its members had filed a writ petition seeking the following prayers:

- “A) issue writ of mandamus or any other appropriate writ, order(s) or directions to the Respondents to restore undisputed, declared No-Hawking status of the District Centre Nehru Place by removing all street vendors/squatters/hawkers and subsequently maintain District Centre Nehru Place, New Delhi free from street vendors/squatters/hawkers;
- (B) issue writ of mandamus or any other appropriate writ order or direction directing the respondents to initiate action against all its officials and ground level staffs colluding for lucre with Hawkers and in allowing them to Vend/Squat from a “No-Hawking Zone”, thus contravening laws of the land;
- (C) or issue such other appropriate writ order or direction(s) as may deem fit and proper.”
2. We may note, at the outset, that during the pendency of the writ petition before the learned Single Judge, an application was filed being CM.APPL 25705/2016 by 31 persons claimed to be members of Footpath Association Welfare Society. The learned Single Judge noticed in para 6 of the judgment that the submissions made on behalf of the Footpath Association Welfare Society was a subject-matter of an independent writ petition being W.P.(C).7174/2016 titled ***Raj Kumar Singh and Others v. South Delhi Municipal Corporation and Others*** filed by the same 31 persons. The learned Single Judge extracted the relevant portion of the order, which we also deem appropriate, to extract which reads as under:

“6 In the course of hearing, it has been brought to the notice of the Court that these hawkers who are now seeking impleadment in the present petition are the Footpath Shop Welfare Society. The details of these 31 persons who are seeking impleadment are detailed in C.M.No.25705/2016. The

aforenoted application has sought impleadment of the said persons. Their contention is that they were threatened from time to time and were at the mercy of the Police and the Corporation; there was hawking in a hawking zone and they are adequately protected under Section 3 (3) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. These submissions now made were also the subject matter of the independent W.P. (C) No.7174/2016 titled Raj Kumar Singh & Others VS. South Delhi Municipal Corporation and Others filed by the same 31 persons. This independent W.P. (C) No.7174/2016 was disposed of on 12.08.2016. The order reads herein as under:-

“There are 31 petitioners before this Court. They are stated to be squatting at Nehru Place, New Delhi. Their apprehension is that they are being vexed by the parties and are being disturbed of their squatting site.

On advance notice counsel for respondent no. 1 / SDMC has put in her appearance. Her submission is that the petitioners have filed prosecution challans which do not create any right in favour of the petitioners. Be that as it may. Under section 3(3) Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, legal and illegal squatters are protected and as such the petitioners should have no apprehension. The judgement of Bhola Ram Patel Vs. New Delhi Municipal Council passed in LPA 136/2016 has laid down the conditions for dealing with such squatters.

This petition is accordingly disposed of in the above terms with liberty granted to the petitioners to approach the Town Vending Committee as and when constituted qua respondent no.1.”

3. The learned Single Judge rightly observed that since the applicants in CM.APPL 25705/2016 (under Order I Rule 10 CPC) had already availed their substantive rights by filing the W.P.(C).7174/2016,

which was disposed of on 12.08.2016, the Court was not inclined to implead them. We have noted the above observations made by the learned Single Judge at the outset for the reasons that a similar application has been made before us as well being CM.APPL 7935/2018, and thus which is also dismissed not only for the reasons as stated in para 6 of the judgment of the learned Single Judge, but also for the reason that the order of the learned Single Judge has attained finality as far as the application is concerned as the said applicants have chosen not to assail the order by which their applications seeking impleadment stands dismissed. Accordingly, C.M.293/2017 is dismissed.

4. Mr.Sikri, learned Senior Counsel appearing for the appellant submits that the writ petition was disposed of by the learned Single Judge of this Court in the following terms:

“...this Court is of the view that no orders are required to be passed for removal of squatters/vendors from Nehru Place District Centre as the whole basis of the writ petition is bordered on the submission that Nehru Place is a no-hawking zone which this Court is not inclined to accept in view of the discussion supra and in the absence of which this Court is of the view that all actions, as is permitted in terms of para 26 of the judgment of Bhola Ram Patel will be initiated and taken by the South Delhi Municipal Corporation with the assistance of the SHO.”

5. Mr.Sikri further contends that while disposing of the writ petition the learned Single Judge went on to decide the issues which were not in dispute and returned a finding which is contrary to the record and thus, not sustainable. He submits that the consistent stand of the erstwhile land owning agency i.e. the Delhi Development Authority (DDA) and

the South Delhi Municipal Corporation (SDMC) has been that the area in question is a 'no hawking' and 'no vending' zone. Counsel for the appellant as also the counsels for SDMC submit that the present appeal would stand fully covered by a decision rendered by this Court in case of ***Bachchu Singh & another vs. South Delhi Municipal Corporation & others***, W.P.(C) 2566/2017 dated 07.09.2017. Mr.Mukesh Gupta and Mr.Sri Harsha Peechara, learned counsels for the SDMC reiterate the stand taken by them at the time of hearing of ***Bachchu Singh (supra)*** that the area in question is a 'no hawking' and 'no vending' zone. Reliance is placed on paras 4, 5 & 9 of the aforesaid judgment, which we reproduce below:

4. Learned counsel for respondent No.1 has opposed the prayers made in the present writ petition. It is submitted that Nehru Place area was under the jurisdiction of Delhi Development Authority till November, 2014 and thereafter, the same was transferred to the South Delhi Municipal Corporation. It is the case of the SDMC that Nehru Place District Centre has been declared as a "No Hawking No Vending Zone" by the DDA and the SDMC has also consistently followed the stand of the DDA.

5. Learned counsel has drawn the attention of the Court to the order passed in LPA No. 766/2008 in the case of ***Manushi Sangathan, Delhi vs Delhi Development Authority & Ors.***, which reads as under:-

"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 a 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 LPA NO.766/2008 Page No.36 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.”

6. We have heard learned counsels for the parties.
7. In the case of ***Bachchu Singh*** (*supra*), this court had categorically reached a conclusion that Nehru Place area is a ‘no hawking’ and ‘no vending’ zone. Relevant paragraphs of the aforesaid judgment read as under:

15. We have heard the learned counsels for the parties. The basic facts are not in dispute, i.e. both the petitioners claim to be street vendors and claim to be carrying out hawking activities at Nehru Place District Centre. The petitioners claim that they are regular street vendors and thus, are entitled to protection under Section 3(3) of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. It is also the stand of the petitioners that till the TVC is functional, they should be allowed to vend at their respective sites and earn their livelihood. Photographs have been filed in support of their existence at the site.

16. We are unable to accept the submission of the learned counsel for the petitioners, for the reason that in case the petitioners were regular street vendors, their names would

have found mentioned in either of the two lists prepared under the directions of the Supreme Court by Thareja and Chopra Committees. We also find that in the affidavit filed before the Supreme Court, various lists were provided of the persons who were either part of the Manushi Sangathan (supra) or those vendors who had approached different Courts and were granted protection. In case, the petitioners were regular street vendors, certainly their names would have figured in any of the proceedings, which is not there.

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.”

8. In view of the judgment passed in ***Bachchu Singh*** (*supra*), the impugned order dated 12.09.2016 is set aside. It is declared that the Nehru Place area is ‘no hawking’ and ‘no vending’ zone. The municipal authorities shall be bound by the stand taken by them in the case of ***Bachchu Singh*** (*supra*) and the same would apply to the present case as well. Resultantly, the appeal is allowed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

APRIL 02, 2018

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