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

+ W.P.(C) 2024/2018, C.Ms. No.8384/2018, 13558/2018, 18944/2018, 29699/2018, 520/2019, 23825/2019, 23826/2019 & 25325/2018

SAPTAHIK MERCHANT WELFARE ASSOCIATION
(REGISTERED) THROUGH ITS PRESIDENT SH. A. D. DEHLVI

..... Petitioner

Through Mr. A.K. Mishra, Advocate with Mr.
Ankush Sharma, Advocate.

versus

THE NORTH DELHI MUNICIPAL CORPORATION & ANR

..... Respondents

Through: Ms.Anjum Javed, ASC-GNCTD with
Mr.Devendra Kumar, Mr. Faran
Ahmed and Ms.Priti, Advocates for
R2-4.

Ms.Saroj Bidawat, Adv. for SDMC
Ms.Mini Pushkarna, St. Counsel,
North DMC with Ms.Shiva Pandey
and Ms.Swagata Bhuyan, Advs.

Inspector Sudhir Kumar, TI/Darya
Ganj, Traffic Circle with SI Ram
Tirath, Pairvi Officer, Traffic.

Inspector Mahesh Kasana, ATO, PS
Jama Masjid.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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03.07.2019

C.M. No. 10189/2019 (by the North Delhi Municipal Corporation) and C.M. No.29341/2019 (by the Applicant, for modification of the order dated 27.02.2019)

1. The present application has been moved by the respondent/ North Delhi Municipal Corporation (Nr. D.M.C) praying *inter alia* for modification of the order dated 27.2.2019, passed in the present petition whereunder, as an interim measure, members of the petitioner Association were permitted to carry out a weekly bazaar on Sundays at Netaji Subhash Marg, subject to certain conditions stipulated in the said order.
2. Ms. Pushkarna, learned counsel for the respondent/Nr. D.M.C submits that though her presence has been marked in the order sheet of 27.2.2019, by the time she had appeared in the matter, the Court had already dictated the order. She states that she had sought to point out to the Court that Netaji Subhash Marg is a no hawking/no vending zone, but was advised to move an appropriate application to bring out the correct position on record. It was pursuant thereto that the present application came to be drafted and filed within two days, on 2.3.2019.
3. Notice was issued on this application on 6.3.2019, when Mr. Mishra, learned counsel for the petitioner was present. However, no reply has been filed to this application till date.
4. Ms. Pushkarna submits that on 27.2.2019, in the course of making submissions, learned counsel for the petitioner had handed over to the Court a list of squatting and non-squatting areas and stated that as per the said list, Netaji Subhash Marg has been shown as a squatting area. She states that the said list relied upon by Mr. Mishra is not on record, though a copy thereof is placed at page 100 of the connected writ petition, **W.P.(C) No.5022/2017**,

entitled Chandni Chowk Sarv Vyapar Mandal (Redg.) Vs. Delhi Police, through Commissioner of Police & Ors. It is stated that enclosed with the public notice is a list of squatting/non-squatting and hawking/non-hawking areas under the jurisdiction of the Municipal Corporation of Delhi which was superseded by a subsequent zone wise list of squatting/non-squatting and hawking/non-hawking areas under the jurisdiction of the MCD that was filed by the Department before the Supreme Court in W.P. (C) No.1699/87 entitled ***Gainda and Anrs. Vs. MCD and Ors.*** She refers to page 363 of the paper book where, the affidavit filed by the MCD in terms of an order dated 14.11.2006, passed by the Supreme Court, has been filed. The relevant extract of the said affidavit is reproduced below:-

“4) That by an affidavit filed in May 2006, a detailed scheme i.e. proposed to be implemented in the city of Delhi were placed before this Hon’ble Court. Certain salient aspects of the Bombay Scheme were also placed and various other aspects such as; eligibility conditions, role of NGO’s were also highlighted in the said detailed affidavit.

5) Thereafter, in July 2006 another affidavit was filed detailing a list of zone wise squatting/non-squatting and hawking/non-hawking areas under the jurisdiction of MCD. The complete list was conveyed to the public by way of a Public Notice in the leading Newspapers as also displayed on the web site of MCD being www.mcd.online.gov.in.

6) That however, this Hon’ble Court on 14.11.2006 directed the MCD to prepare the final list of squatting/non-squatting and hawking/non-hawking areas under the jurisdiction of MCD. The exercise has been completed and a comprehensive list of such areas are annexed hereto and marked as ANNEXURE-A.

Thus, the scheme now requires final approval by this Hon'ble Court before the same is implemented. ”

5. We may note that Annexure-A referred to in paragraph 6 of the captioned affidavit is a Zone wise list of squatting/non-squatting and hawking/non-hawking areas under the jurisdiction of MCD. The list of non-squatting areas specifically includes Netaji Subhash Marg (refer page 388 of the paper book).

6. Learned counsel for the respondent/Nr.D.M.C submits that the aforesaid list was prepared on the basis of a joint inspection conducted by the officers of the NDMC, PWD, Nr.D.M.C, S.D.M.C, Traffic Police and the ASI. Vide letter dated 24.7.2018, the DCP Traffic, Central Range wrote to the Deputy Commissioner, Nr.D.M.C regarding the joint inspection report of Netaji Subhash Marg and Velodrome Road in the context of relocation of the Sunday Weekly Market (Sapthik Bazar) and stated as follows:-

“In this connection, it is submitted that a joint inspection along with civic agencies was carried out regarding relocation of Sunday Weekly Bazar (Saptahik Bazar) on 24.07.2018. It was agreed that Netaji Subhash Marg is a very busy road and the volume of traffic is very high on this road throughout the day. It was observed that the vendors of the weekly bazaar keep their articles on footpath (Pavement) as well as on the main road which adversely affects the flow of Traffic on Netaji Subhash Marg. As the footpath is already occupied by the vendors of weekly bazaar, there is no space left for pedestrians and they are also forced to walk on the road further affecting the flow of traffic on the already congested Netaji Subhash Place. It was also pointed out that the customers visiting the weekly bazaar also momentarily park their vehicle in front of the shop they intend to

visit. This also adds to the congestion. During the inspection, it was observed that if weekly Bazaar is allowed to continue on Netaji Subhash Marg up to Jama Masjid, Meena Bazar and its surrounding areas, it will absolutely hinder the smooth flow of traffic and affect the already congested areas of Delhi-6. It is worth mentioning here that in Manushi Sangathan case, as per the directions of the Hon'ble High Court of Delhi, efforts are being made to decongest the Chandni Chowk with the help of all the stake holders. The progress of the decongestion works is being closely monitored by Hon'ble High Court of Delhi. At this juncture, instead of decongesting the already heavily congested Chandni Chowk and Delhi-6, allowing the weekly market on the adjacent main road i.e. Netaji Subhash Marg, Jama Masjid & Meena Bazar will further affect the progress of decongestion. It is pertinent to mention here that the Traffic Police has already filed a status report in the Hon'ble High Court opposing running of Saptahik Bazar on Netaji Marg and its adjoining areas. Copy of the status report is enclosed herewith."

6. The aforesaid Status Report enclosed with the captioned letter dated 24.07.2018, specifically states as follows:-

"2. North DMC

Weekly bazaar was not permitted post year 2005 on Netaji Subhash Marg. The decision to shift the weekly bazaar to Velodrome Road was taken w.e.f. 29/05/2005 with directions that the bazaar holders will have to clear Netaji Subhash Marg. Hence, no market can be allowed to function on Netaji Subhash Marg since it is purely illegal."

3. X X X X

4. **Traffic Police**—

Netaji Subhash Marg

During the inspection, it was observed that if weekly Bazaar is allowed to continue on Netaji Subhash Marg upto Jama Masjid, Meena Bazaar and its surrounding areas, it will hinder the smooth flow of traffic and affect the already congested area.

Learned counsel for the respondent/Nr.D.M.C states that the Lieutenant Governor, GNCTD has approved the aforesaid Status Report.

7. It is thus stated that at no stage after the year 2005, was permission ever granted to conduct a weekly bazaar on Netaji Subhash Marg, an area that has been declared as a no-squatting and no-hawking zone, the underlying reason being that it is a very busy road, the volume of traffic is extremely high on the said road at all times and any permission to vend there even for conducting a weekly bazaar, adversely affects the free flow of traffic. Further, no space is left for the pedestrians if the weekly bazaar is permitted, thereby forcing them to walk on the road and jeopardise their life and limb. Not only this, the customers, who visit the weekly bazaar, elect to park their vehicles on the main road itself and add to the already existing congestion.

8. Ms. Pushkarna has next drawn our attention to the order dated 12.2.2019, passed in the connected petition, **W.P.(C) No.5022/2017**, entitled Chandni Chowk Sarv Vyapar Mandal (Regd.) Vs. Delhi Police, through Commissioner of Police & Ors. wherein, it was specifically noticed by the Division Bench that despite action for removal of encroachers being taken by the Municipal authorities and the Traffic Police in the Chandni Chowk area and on Netaji Subhash Marg, the encroachers keep on returning back to the area. In this background, a Nodal Officer was appointed to conduct a

meeting and explore the possibility of forming a Task Force comprising of the members of the Corporation and police so that the area is cleared of illegal encroachers on a permanent basis. She further submits that pursuant to the aforesaid order, a meeting was conducted on 25.2.2019 wherein, representatives of the petitioner in the captioned writ petition, officers of the Nr.D.M.C, Delhi Police, Delhi Traffic Police, PWD and Shahjahanabad Re-Development Corporation Ltd. had participated and it was decided that amongst other things, squatting and hawking activities shall not be carried out in the no-hawking and no-squatting zones of the City Zone, Nr.D.M.C that takes in its fold, Chandni Chowk, Subhash Marg and other areas. Further, it was decided that the area shall not be permitted to be re-occupied by illegal hawkers and squatters for any prohibited activities. We are informed that subsequently, a meeting was also conducted on 2.4.2019 to vigorously pursue the removal action but due to the General Elections scheduled in April-May 2019, the Model Code of Conduct had come into force till 30.5.2019 and further action had to be suspended.

8. Mr. Mishra, learned counsel for the petitioner controverts the submissions made by learned counsel for the respondent/Nr.D.M.C and asserts that no congestion or obstruction is caused to the free flow of the traffic and movement of pedestrians if a Sunday weekly bazaar is permitted to be held at Netaji Subhash Marg and the Delhi Police has also indicated so.

9. Learned counsel for the Delhi Police interjects and states that an affidavit dated 04.05.2018 has been filed on behalf of the Delhi Police referring to the congestion in the area and at no stage did the Traffic Police state before this Court or any other forum, that a weekly bazaar ought to be

permitted on Netaji Subhash Marg.

10. Mr. Sanjeev Ralli, learned counsel for the petitioner in W.P. (C) No.5002/2017, who are the applicants in C.M. 29341/2019, states that he has filed the said application for recall/modification of the order dated 27.2.2019 and that he is supporting the contentions raised by the Nr.D.M.C. He refers to the order dated 6.2.2007 passed by the Supreme Court in **W.P. (C) No.1699/87**, entitled Sudhir Madan & Anr. Vs. MCD and Anr., wherein it has been clarified that though certain directions had been issued regarding holding of casual *tehbazari* on weekly holidays, festivals, etc. in the matter of Gainda Ram & Ors. Vs. MCD reported as **(1993) 3 SCC 178**, such weekly bazaars shall not be held in the non-hawking/non-squatting zones. He submits that in the light of the aforesaid observations made by the Supreme Court and even otherwise, Netaji Subhash Marg having been declared by the MCD as a non-hawking/non-squatting zone, no weekly bazaar can be permitted at the said place.

11. Taking into consideration the submission made by Ms. Pushkarna, learned counsel for the respondent No.1/Nr.D.M.C, learned counsel for the Delhi Police and Mr. Sanjeev Ralli, learned counsel for the applicant in C.M. No.29341/2019 and having regard to the orders referred to hereinabove, we deem it appropriate to vacate the interim order dated 27.2.2019 whereunder, as an interim measure, members of the petitioner/association were permitted to conduct weekly bazaar on Sundays on Netaji Subhash Marg. It is clarified that no weekly bazaar shall be permitted to be conducted on Netaji Subhash Marg for hawking/squatting.

12. C.Ms. No.10189/2019 and 29341/2019 are allowed and disposed of.

W.P.(C) 2024/2018

1. In view of the detailed order passed in C.M. No.10189/2019 and C.M. No.29341/2019 as above, the prayer made in the present petition for issuing directions to the respondents to refrain from interfering in the running of the Sunday weekly bazaar at Netaji Subhash Marg, does not survive.
2. The writ petition is dismissed alongwith the pending applications.

JULY 03, 2019
NA/rkb

HIMA KOHLI, J.

ASHA MENON, J.