

\$~04

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

+ W.P.(C) 12297/2018

SH. HARGOVIND RAM AND ORS. Petitioner
Through Mr. Mobin Akhtar, Advocate.

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS.

..... Respondent
Through Ms. Sangeeta Chandra, Advocate for
SDMC.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

23.08.2019

%

1. The present petition has been filed by seven petitioners praying *inter alia* for the following reliefs:-

(a) *Issue a writ, order, directions in the nature of mandamus to Respondents restraining them to evict the Petitioners from their vending/hawking sites and conduct the survey, identify them in the said survey and allow the Petitioners to carry out their trade and business at their sites till they are registered.*

(b) *Direct the Respondent No.1 & 3 to constitute the Town Vending Committee in a time bound manner, if it is not constituted.*

(c) *Direct the Respondent No.1 and 3 to issue license of Tehbazari/Vending/Hawking to the Petitioners.*

(d) Such others or further orders or directions as this Hon'ble Court may in the circumstances of the case may deem fit and proper in the interest of justice."

2. The averments made in the petition are to the effect that from the year 1987 to 2002 the petitioners were carrying on their own vending activities at Nehru Place Commercial Complex, New Delhi. It has been alleged that the petitioners were being constantly harassed and victimized by the officials of the DDA, under whose jurisdiction the area fell.

3. Aggrieved by the said action of the officials of the DDA in the year 2007, the petitioners along with five others had filed W.P. (C) Nos.7444/2007 and 8018-28/2007, which were disposed of by a common order dated 29.11.2007, directing the erstwhile MCD to consider the representations of the petitioners in terms of the National Policy on Urban Street Vendors-2004 and the Scheme for Hawkers and Vendors-2007 and make necessary allotments. Out of the twelve petitioners in the captioned petitions, the MCD had only accommodated two persons.

4. Aggrieved by the said non-accommodation, the remaining petitioners and two others had approached the High Court by filing **W.P. (C) 4060/2010** entitled Hargovind Ram & Ors. Vs. MCD & Ors. Vide order dated 17.9.2010, the said writ petition was disposed of by the learned Single Judge with a direction to the Zonal Vending Committee constituted for allotting *tehbazari* sites, to consider the applications of the petitioners therein and determine their eligibility for allotment of *tehbazari* sites within a period of two months. It was further directed that the interim order dated 3.8.2010, operating in favour of the petitioners directing that they would not

be disturbed from the squatting sites, would continue to operate till the Zonal Vending Committee arrives at a decision. However, the said interim order was made subject to the condition that the petitioners will not squat at any non-squatting zone and will comply with the relevant rules and regulations and further, in the event, the Zonal Vending Committee allots the sites where they were squatting to some other persons, they shall remove themselves from the said sites.

5. It has further been averred in the present petition that the petitioners had approached the Zonal Vending Committee of the MCD in terms of the aforesaid order dated 17.9.2010, but their representations were not decided. In the meantime, the Supreme Court passed an order on 25.4.2011, in **SLP (Civil) 29277/2009** entitled DDA Vs. Manushi Sangathan & Ors., observing as follows:-

“This petition is directed against order dated 17.04.2009 of the Division Bench of the Delhi High Court, the operative portion of which reads thus:

"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 as 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 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."

Arguments in the case were heard on different dates and the judgment was reserved on 26.10.2010. Thereafter, the parties filed written submissions and some affidavits. In paragraph 5 of affidavit dated 07.12.2010, Shri S.R.Solanki, Chief Engineer, South Zone, Delhi Development Authority, has made the following statement :-

"5. The Petitioner authority also submits that as an interim measure and till such time, the ward vending committee takes a decision on the eligibility and relocation of the 67 hawkers under the umbrella of the respondent No.1 and other 85 hawkers sitting under various orders of different courts at Delhi, the Petitioner authority shall not take any coercive action to remove these persons. However, the Petitioner authority also submits that the same may not be taken as a concession on behalf of the Petitioner authority to give up its case of the NPDC being declared as No Hawking Zone or an admission on the part of the Petitioner authority for other hawkers to use Nehru Place District centre as hawking site."

In our opinion, the stand taken in the above reproduced paragraph of the affidavit of Shri Solanki is in consonance with the direction given by the Division Bench of the High Court.

Therefore, the special leave petition is disposed of as infructuous.

The direction given in I.A.No.4 of 2011 for imposition of cost of Rs.50,000/- is deleted.”

6. Learned counsel for the petitioners contends that the aforesaid order has extracted the stand taken by the DDA in the affidavit dated 7.12.2010 filed before the Supreme Court to the effect that Manushi Sangathan comprised of 67 hawkers and there was another set of 85 hawkers, who were sitting under various orders of different courts in Delhi and he states that the petitioners herein form a part of the list of 85 hawkers who have the protection of the aforesaid order dated 25.4.2011, passed by the Supreme Court.

7. Thereafter, in the year 2016, the petitioners alongwith 43 others, filed another writ petition registered as **W.P. (C) No. 10062/2016** entitled Hargovind Ram & Ors Vs. South Delhi Municipal Corporation & Ors. praying *inter alia* that the DDA/MCD be restrained from removing them from the sites at Nehru Place Commercial Complex. We may note that prior thereto, an order dated 29.6.2016 was passed by the High Court on a petition filed by the Federation of Nehru Place Association (Regd.), registered as W.P. (C) No.5759/2016 wherein, it was stated on behalf of the petitioner that Nehru Place is a no-hawking zone and a reference was made by learned counsel for the MCD to the order dated 25.4.2011 passed by the Supreme Court in the case of Manushi Sangathan (supra) in favour of 67 hawkers.

Therefore, it was stated that wherever there were Court orders, protecting hawkers, no coercive measures were being taken against them. An apprehension was expressed on behalf of the petitioners in the captioned petition that as on 20.6.2016, there were hawkers present at particular points in the layout plan enclosed with the petition and it was likely that the hawkers in connivance with local officers may encroach in the other areas as well. After hearing the learned counsel for the parties, vide order dated 29.6.2016, the learned Single Judge directed that till the next date, the respondents will not permit fresh encroachments by hawkers in the area as per the plan filed, except those who were shown in red colour in the layout plan or those who had protection in terms of the order of the Court.

8. The petitioners herein have averred in para 19 of the writ petition that on 4.8.2016, the respondent SDMC had evicted them from the sites where they were hawking. Subsequently, vide order dated 7.9.2017, passed in **W.P. (C) No.2566/2017** entitled Bachchu Singh & Anr Vs. South Delhi Municipal Corporation & Ors., a co-ordinate Bench of this Court had held that Nehru Place Commercial Complex is a ‘no-hawking’, ‘no vending’ zone. Aggrieved by the said order, Manushi Sangathan had approached the Supreme Court and filed SLP (C) No.23381-82/2018 wherein, vide order dated 24.8.2018, the parties were directed to maintain status quo as existing on that date. Pegging their case on the said status quo order, the petitioners herein claim that they have been continuing to hawk at various sites at Nehru Place Commercial Complex and, therefore, the respondent/SDMC be restrained from evicting them.

9. A counter affidavit in opposition has been filed by the respondent/SDMC wherein, it is stated that on their own showing, the

petitioners were evicted from the hawking sites as long back as on 4.6.2016 and therefore, it is their version too that they have not been vending at the Nehru Place Commercial Complex after that. It is further stated by Ms. Chandra, learned counsel for the SDMC that originally the Nehru Place Commercial Centre was being managed by the DDA, but on 16.9.2014, it was transferred to the SDMC. At the time of handing over Nehru Place Commercial Centre, DDA had furnished a list of 114 street vendors to the SDMC. A copy of the letter dated 16.9.2014, addressed by the DDA to the SDMC enclosing therewith a list of 114 vendors has been handed over by the learned counsel for the respondent/SDMC and taken on record with a copy furnished to the other side.

10. Learned counsel for the respondent/SDMC further submits that at the time of handing over the Complex by DDA to SDMC, officers from both the Departments had conducted a joint inspection of the entire area to identify the actual number of street vendors squatting at the site. Out of the list of 114 street vendors handed over by the DDA to the SDMC, only 95 vendors were found actually squatting at the site, out of which 62 vendors belong to the group of vendors who were a part of the Manushi Sangathan and the remaining 33 vendors have claimed protection under various orders passed by the Courts, in terms of the list provided by the DDA. It is submitted that the names of the petitioners herein are not a part of the list of 62 street vendors belonging to the group of vendors, who are a part of the Manushi Sangathan and nor are they a part of the list of the remaining 33 vendors, who have claimed that there are stay orders operating in their favour, restraining SDMC from evicting them from the sites under their occupation in the Complex.

11. It was in this background that the SDMC took a decision to remove all persons other than the 95 persons found squatting at the Nehru Place Commercial Centre and the remaining persons including the petitioners herein were removed from there on 4.8.2016.

12. Ms. Chandra, learned counsel for the respondent/SDMC also places reliance on the judgment dated 2.4.2018, passed by a co-ordinate Bench in LPA 623/2016, wherein Nehru Place has been declared as a 'no-hawking', 'no-vending' zone. Similar observations were made in the order dated 7.9.2017, passed in W.P. (C) No. 2566/2017. Her reply to the submission made by learned counsel for the petitioners that the petitioners are similarly placed as the petitioners in **W.P. (C) No. 6823/2017** entitled Premvati and Ors. Vs. SDMC & Ors. and the petitioners in **W.P. (C) No. 7405/2017** entitled Vipin Narang & Ors. Vs. Govt. of NCT of Delhi & Ors., is that the name of the petitioners in the captioned petitions are included in the list of 95 vendors, unlike the petitioners herein, who having not been found at the site at the relevant point of time, cannot claim parity with the aforesaid petitioners.

13. Having perused the averments made in the petition, it is evident that the petitioners have themselves specifically admitted in para 19 that on 4.8.2016, the respondent/SDMC had evicted them from various sites where they were squatting in the Nehru Place Commercial Centre. Reliance placed by the learned counsel for the petitioners on the interim order dated 24.8.2018, passed by the Supreme Court in SLP (C) No.28875/2018, whereunder a status quo was directed to be maintained by the parties, would hardly be of any assistance as the petitioners were admittedly not part of the list of 67 hawkers under the umbrella of the Manushi Sangathan and in any

case, as per their own showing, they were not at the site after 4.8.2016. For the aforementioned reasons, we are not inclined to issue any directions to the respondents in terms of prayer (a).

14. As for the prayers (b) and (c) which are for directing the respondent/SDMC to constitute the Town Vending Committee (TVC) for issuing license of *tehbazari*/hawking to the petitioners, we may note that much water has flown under the bridge by now. Not only has the TVC of the area been constituted, but it has also conducted a meeting on 26.7.2019. We are informed by the learned counsel for the petitioners that the petitioners have already submitted applications to the TVC. If that is the position, then the petitioners are at liberty to pursue the matter with the TVC. Upon conclusion of the survey of the area, the TVC shall consider the representations made by the petitioners alongwith the relevant documents and take a decision under intimation to them.

15. The present petition is disposed of.

HIMA KOHLI, J

ASHA MENON, J

AUGUST 23, 2019
NA