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

+ **Date of Decision: 21.09.2021**

% **W.P.(C) 8066/2021 and CM Appl. 32736/2021**

REDI PATRI FOOTPATH VIKRATA

EKATA MUNCH AND ORS.

.....Appellant

Through: Mr. N.K. Sahoo, Advocate

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS

.....Respondents

Through: Mr. Tushar Sannu, Standing Counsel
with Ms. Ankita Bhadouriya & Mr. Subham Jain,
Advocates for the respondent No.1/SDMC with
Bhagirath Pandit, Licensing Officer, SDMC,
Mr. Naushad Ahmed Khan, ASC Civil GNCTD for
Respondent No. 2 and 3 with Mr. Zahid, Ms.
Manisha Chauhan, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner No. 1, Society espousing the cause of squatters and vendors. Petitioner No.1 is a society registered under the Societies Registration Act, having its office at No. A-138, Gali No -5, Sonia Vihar, New Delhi. Petitioner Nos. 2 to 37 are the members of petitioner No.1. The petition has been filed by the petitioners seeking the following prayer:

a) To issue a writ of mandamus or appropriate writ or direction or order directing the respondents for conducting survey of the petitioners at their respective places of squatting

at Sethi Chowk & Sataraj Park Central Market, Lajpat Nagar Market, New-Delhi-110024 in term of order dated 20.07.2021 passed in W.P. No 4105/2015.

b) And to pass such other and further order or orders as this Hon'ble Court deem fit and proper in the interest of justice.

2. The case set up by the petitioners in a nutshell is that petitioner No. 2 to 37, have been squatting on their respective places of squatting, being fixed site at Sethi Chowk and Sataraj Park of Central Market, Lajpat Nagar, Pushpa Market, New Delhi. They have been eking out their livelihood and making the ends meet of their families and dependents by doing small trade from their respective places of squatting at Sethi Chowk, Shakti Raj Park, Central Market, Lajpat Nagar and Pushpa Market, New Delhi. Their places of squatting are neither causing any hindrance nor obstructing the transit of the general public. Petitioner Nos. 2 to 33 have been squatting at their respective sites for periods ranging from 12 to 20 years and, in fact, some of the petitioners are members of the "Eyes and Ears Scheme" floated by Delhi Police to provide information regarding unattended objects and the movements of suspicious and unidentified persons in the locality.

3. On 05.03.2014, the Streets Vendors Act, 2014 came into force. The Act provides that Town Vending Committee shall after conducting a survey, recommend for declaration of an area as a vending and/or a non-vending zone. The broad principles to be followed by the Local Authority- while preparing a Street Vending Plan u/s 21 of the Act, for declaring a vending/non-vending zone under the First Schedule of the Street Vendors Act, 2014 are:

“ *THE FIRST SCHEDULE*

(See section 21)

PLAN FOR STREET VENDING

(1)

(2)

(3) Declaration of no-vending zone shall be carried out by the plan for street vending, subject to the following principles, namely:—

a) Any existing market, or a natural market as identified under the survey shall not be declared as non-vendingZone;

b) declaration of no-vending zone shall be done in a manner which displace the minimum percentage of street vendors;

c) Overcrowding of any place shall not be a basis for declaring any area as non-vending zone provided that restriction may be placed on issuing certificate of vending in such areas to persons not identified as street vendors in the survey.

d) making of spatial plans conducive and adequate for the prevalent number of street vendors in that city or town and also for the future growth, by adopting such norms as may be necessary;

e) Till such time as the survey has not been carried out and the plan for street vending has not been formulated, no zone shall be declared as no vending zone.”(emphasis supplied)

4. On 17.09.2019, the Town Vending Committee-1, Central Zone was constituted as per Gazette notification and petitioner No. 1 was nominated as a member of Town Vending Committee-1(hereinafter called TVC-1).

5. On 07.08.2020, the Ministry of Housing and Urban Affairs announced a loan scheme for squatters and hawkers affected due to COVID-19. The PM Street Vendor’s AtmaNirbhar Nidhi Scheme (hereinafter referred to as PM SVANidhi Scheme) was launched. Under the PM SVanidhi Scheme, the Ministry of Housing & Urban Affairs sought to empower the street vendors

by not only extending a loan facility to them, but also, by providing for their holistic development and economic upliftment.

6. In the month of December, petitioners No.1 to 7 were issued an LOR by the respondent No. 1 in respect of their fixed place of squatting and have been paying the EMI of the loan granted to them under PMSVANidhi Scheme ever since.

7. On 25.03.2021, the Federation Lajpat Nagar Market Traders Association filed a Writ Petition being WP(C) 4105/2021, seeking Prohibition to restrain TVC-1 from conducting the proposed survey in Ward no. 57 S. The said relief was premised on the plea that Ward no. 57-S was a no-squatting and no-hawking zone of Pushpa Market/Central Market, Lajpat Nagar.

8. This Court on 20.07.2021 passed the following order:

1. *The present writ petition has been preferred by the Federation Lajpat Nagar Traders Association who seek prohibition restraining the Town Vending Committee-I from conducting the proposed survey in Ward No. 57- S. The said relief is premised on the plea that Ward No. 57-S is a no-squatting & no-hawking zone of Pushpa / Central Market Lajpat Nagar. The petitioner has relied upon the judgment rendered by a Division Bench of this Court in W.P.(C) 2556/2015 on 03.07.2017 titled **Vyapari Kalyan Mandal Main Pushpa &Anr. v. South Delhi Municipal Corporation & Ors.** wherein this Court inter alia held as follows:*

“47. As per the Act, the declaration of no-vending zone is to be carried out by the Plan for Street Vending to be prepared by the local authority in consultation with the Town Vending Committee [Section 21 read with the First Schedule]. At the same time, Clause 3(e) of the First Schedule provides that till

the completion of survey and formulation of the plan, no zone shall be declared as a no-vending zone. This clause merely prohibits any further declaration of no-vending zones and does not nullify the existing demarcation by the municipal authorities. On the contrary, it tacitly recognises that certain areas might have already been declared as no-vending zones.

*48. Accordingly, we also subscribe to the view taken by the coordinate bench of this Court **Hawkers Adhikar Suraksha Samiti (Supra)** in its order dated 05.10.2016 that as an interim measure, the non-squatting zones declared under the old schemes shall continue to be non-squatting zones for the time being. Hence, the protection of Section 3 (3) shall not extend to vendors in no-vending zones."*

"60. We allow the present writ petition with the following directions:

- (i) The SDMC and the Delhi Police are directed to ensure that Pushpa/Central Market i.e. the area covered by the order dated 13.11.1996 of the Lieutenant Governor is maintained as a nosquatting zone;*
- (ii) Once the area has been cleared, it shall be ensured that the vendors are not allowed to return or squat again;*
- (iii) The SDMC shall conduct regular eviction drives;*
- (iv) Delhi Police is to render all the necessary assistance in eviction of vendors to the SDMC;*
- (v) The zonal head of SDMC and the concerned SHO shall be personally liable to ensure that direction (ii) is not flouted;*
- (vi) Both the SDMC and the Delhi Police are to prepare and maintain lists of persons removed from the area to ensure that repeat offenders are brought to the book;*
- (vii) On receipt of the order, a meeting shall be convened of all the concerned authorities to discuss the implementation of the order and measures proposed to maintain the area as a non-hawking/non-*

squatting zone; and

(viii) Any person aggrieved by unlawful vending in the area is at liberty to approach the SDMC or the SHO at the first instance and then this Court.

61. The directions shall continue until the Town Vending Committee comes into operation and finally decides whether the area is to be a vending zone or non-vending zone.”

- 2. Learned counsel for the petitioner submits that since the aforesaid area is a no vending zone, the respondent authorities are in contempt inasmuch as they are permitting illegal squatting and vending by the squatters in the area for which the petitioners have also preferred contempt proceedings.*
- 3. Learned counsel for the petitioner submits that since the area is a no vending zone, the existing squatters' vendors cannot be granted any form of recognition since that would be tantamount to perpetuating the illegality and the deliberate and willful breach of the judgment rendered by this Court in **Vyapari Kalyan Mandal Main Pushpa & Anr. v. South Delhi Municipal Corporation & Ors.***
- 4. When the writ petition was taken up by this Court on 06.04.2021 we had declined to interfere with the ongoing survey. However, we had taken note of the submission of the petitioner and, consequently, observed that the Town Vending Committee should take into account the earlier orders passed by this Court and of the Supreme Court relied upon by the petitioner in the present writ petition as well as such other orders that might have been passed in relation to the subject matter of the petition.*
- 5. The respondents have filed an affidavit in response to the present petition. The stand taken by the respondent is that as per Section 3 of the Street Vendors (Protection of Livelihood and regulation of Street Vending) Act, 2014 the Town Vending Committee is required to conduct the survey of the street vendors in accordance with the Scheme as notified by the Government of NCT of Delhi. The GNCTD has already notified the Town Vending Committee in accordance with Section 22 of the said Act. The respondent further states that certain areas of*

Lajpat Nagar are maintained as non-squatting zones. The respondent has also stated that even though certain areas of Lajpat Nagar are maintained as non-squatting areas, there are encroachments by street vendors. Ms. Rajesh states that the purpose of the survey is only to collect data with regard to the persons who are squatting and hawking in the area and the conduct of the survey shall not be a reason to not comply with the judgment of this Court in Vyapari Kalyan Mandal Main Pushpa (Supra).

- 6. Perusal of para 61 of the aforesaid judgment itself shows that the directions issued by the Court in recognition of the fact that the said area is a no hawking zone, are to continue until the Town Vending Committee comes into operation and finally decides whether the area is to be vending zone or a no-vending zone. At the same time the status of it being a non-vending zone is to continue till it is expressly declared as a vending zone and it has expressly been observed in the said judgment that the benefit of Section 3 (3) of the aforesaid Act is not available since the area is a non-vending zone. Accordingly, we dispose of this petition permitting the respondent authorities to undertake the survey while making it clear that it continues to remain duty bound to implement the judgment of this Court in Vyapari Kalyan Mandal Main Pushpa (Supra). The protection under Section 3(3) the said Act shall not be available until and unless the Town Vending Committee declares the area in question to be a vending zone in accordance with law. Counsel for the petitioner points out that in the light of the fact that the survey has been permitted to be proceeded in the area in question, there is likelihood of influx of more and more vendors before the survey is undertaken so that they could claim some rights. To avoid this situation, we direct the respondents to ensure that the survey is positively completed within 2 weeks from today failing which the Deputy Commissioner Central Zone shall be personally held responsible. We direct the Delhi Police to provide all assistance to Town Vending Committee to undertake and to complete its exercise within two weeks. The Delhi Police shall also ensure that no new hawkers or vendors come into the area in question and start squatting and vending*

or hawking in that area till the survey is completed and even thereafter.

7. Petition stands disposed of in the above terms.”

9. It is based on this order that the present writ petition has been filed, seeking a writ directing the respondents for conducting the survey of the petitioners at their respective places of squatting at Sethi Chowk & Sataraj Park, Central Market, Lajpat Nagar, New Delhi.

10. We had issued notice and directed the respondent, South Delhi Municipal Corporation to file a counter-affidavit, which they have so done on 18.09.2021. In response to the petition, the respondent No. 1- SDMC, has stated that the present writ petition is misconceived. The respondent has stated that the entire Central/ Pushpa Market is a no-squatting zone and the purpose why it has been declared a no-squatting zone is based on the bomb blast which took place in Pushpa Market, Lajpat Nagar- II on 21.05.1996. In the said blast, 13 people died, several persons were injured and besides the loss of lives - there was immense loss of goods worth several crores.

11. A high-level enquiry was ordered by the then Lieutenant Governor of Delhi and as per the said report, the primary reason for the high number of casualties and loss of property was the delay of emergency services reaching the site on account of encroachment by squatters and hawkers in the lanes and by-lanes of Central/ Pushpa Market. It was recommended that no squatting / hawking should be permitted in the future in the said area. On the basis of the enquiry report, the Lieutenant Governor vide his order dated 13.11.1996 directed the authorities to clear all roads, lanes, by-lanes of Central/ Pushpa Market, Lajpat Nagar of all encroachments in a joint

operation to be conducted by the MCD and the police. The Lieutenant Governor also declared that the entire Central/Pushpa Market as a 'No Squatting Zone' and, thereafter it has been a consistent stand of MCD and SDMC that the said area is a no-squatting zone before all the judicial forums.

12. The respondent further relied on '**Vyapari Kalyan Mandal & Anr V. SDMC & Ors**' in W.P. (C) No. 2556/2015, wherein this Hon'ble Court on 03.07.2017 stated as under:

"56. From the site plan, it is clear that these tehbazari holders are not blocking the roads, lanes, by-lanes or pavements; on the contrary, the roads, lanes, by-lanes and pavements are being blocked by the unauthorized street vendors despite the area being declared as non-hawking/non-vending zone. The effect of this is fatal and suicidal as in case of a calamity, no vehicles of emergency services, including ambulances or fire trucks, can reach the spot and relief would be hampered on account of obstruction on the roads and by-lanes. The order dated 13.11.1996 was passed in the background of a horrible bomb blast which had resulted in the loss of several lives. The emergency services could not reach owing to blockages and encroachments on the passageways. With the passage of time, the situation has only worsened with the unabated influx of people and street vendors. Numerous persons visit the market on a daily basis and this Court would be putting all of their lives and security in jeopardy if we were to be privy to the encroachers. Being pitched between the conflicting rights of the livelihood of the street vendors versus the life and security of the public in general, including the street vendors. We are of the opinion that the former must bow to the latter as without life and security, no question of earning a livelihood can arise.

57. Additionally, we are informed by the counsel for the police and SDMC that the area shown in red in the aforegoing map is blocked by the unauthorized street vendors, but the conditions

at the site are much worse as the balance open areas are used by pedestrians, movement of traffic and customers who no longer have access to the pavements.”

13. In the case of ‘**Gainda Ram v. MCD**’ (2010) 10 SCC 715, the eligibility of the squatters was considered by the R.C. Chopra Committee. The Chopra Committee was of the opinion that the area in question i.e., Main Pushpa (Central) Market is a very congested area and hence, squatters may not be permitted to carry on their business from this area.

14. The Apex Court while dealing with areas adjoining the Pushpa Market/ Central Market, Lajpat Nagar, vide order dated 01.12.2000 in W.P.(C) No. 1699/1987 observed that,

“Not only will blocks ‘D’ and ‘J’ be treated as non-squatting areas but the areas which are shown in the same plan close to the bomb blast site, where MCD has permitted tehbazari will not be treated as non-squatting areas and all those who are occupying those areas will be removed from that area and proved tehbazari site for squatting in accordance with their seniority elsewhere.....

.... No objection will be entertained from those persons for squatting in view of the earlier order passed by the Lt. Governor and the policy of the Govt. of NCT of Delhi which has been reiterated and now accepted by this Court.”

15. The Supreme Court, in I.A. No. 394 in I.A. No. 356 in W.P.(C) No. 1699/1997 on 06.02.2007, while considering the scheme submitted by the MCD passed the following order:

“The Scheme shall also provide that no license shall be granted to any person in no-hawking/squatting zones. The Station House Officer of the concerned police station shall take immediate steps to remove any person found hawking/squatting in a non-hawking/squatting area. If an allottee who has been

allotted a tehbazari/vending site in a hawking/squatting zone, is found carrying on such activity in a non-hawking/squatting zone, the Municipal Corporation may consider cancelling his allotment.”

16. Hence, as per the SDMC, the hawkers and vendors who were vending in this area were, pursuant to the orders of the Apex Court and this Court, relocated and provided alternative spots to squat and the area of Pushpa Market was directed to be kept free from any encroachments.

17. Lastly, it is submitted that Ward No. 57-S is a no-squatting & no-hawking zone and as per the judgment of **‘Vyapari Kalyan Mandal Main Pushpa’** (*supra*), it has been observed that :

“47. As per the Act, the declaration of no-vending zone is to be carried out by the Plan for Street Vending to be prepared by the local authority in consultation with the Town Vending Committee [Section 21 read with the First Schedule]. At the same time, Clause 3(e) of the First Schedule provides that till the completion of survey and formulation of the plan, no zone shall be declared as a no-vending zone. This clause merely prohibits any further declaration of no-vending zones and does not nullify the existing demarcation by the municipal authorities. On the contrary, it tacitly recognizes that certain areas might have already been declared as no-vending zones.

48. Accordingly, we also subscribe to the view taken by the coordinate bench of this Court Hawkers Adhikar Suraksha Samiti (Supra) in its order dated 05.10.2016 that as an interim measure, the non-squatting zones declared under the old schemes shall continue to be non- squatting zones for the time being. Hence, the protection of Section 3 (3) shall not extend to vendors in no-vending zones.”

18. In compliance of the directions of this Court issued on 20.07.2021 in W.P.(C) 4105/2021, reproduced above, the respondent has conducted survey

in presence of SDMC officials and TVC members in Ward 57-S, Lajpat Nagar, New Delhi on 29.07.2021 and 30.07.2021. In relation to the non-vending zones of Lajpat Nagar, no survey has been conducted. The area which is declared as a no-vending and no-squatting zone, is being maintained as such by the SMDC with the help of the Delhi Police.

19. We have heard Counsels for the parties and have gone through the documents on record.

20. Vending is a fundamental right under Article 19 of the Constitution of India. This has been recognized by the Supreme Court in the case of **Gaında Ram** (*supra*). At the same time the Supreme Court has also held that rights of vendors under Article 19(1)(g) cannot interfere with the fundamental rights of others. The rights of the street vendors under Article 19(1)(g) are subject to reasonable restrictions under Article 19(6). The rights of vending and hawking have to be regulated, so as to protect the rights of the citizens guaranteed under Articles 19(1)(d), 19(1)(g) and Article 21 of the Constitution. The safety of general public is also of paramount importance. If sensitive and vulnerable crowded areas have been declared as no vending zones and no-hawking zones, to maintain public safety, health and hygiene, the same cannot be considered as an unreasonable restriction.

21. The counter-affidavit of the respondent is clear as to why Pushpa Market has been declared a no-vending zone and no hawking zone. On 21.05.1996, the bomb blast took place in Lajpat Nagar and the primary reason for enormous loss of lives, property and goods was the delay in reaching the site by emergency services due to the encroachments by

squatters and hawkers in the lanes of Lajpat Nagar.

22. In a recent case, there was an incident where a fire had broken out at Nehru Place, which is a high rise district commercial area. The reason as to why the fire tenders could not even reach the site of fire was that large areas, which were meant for movement of pedestrians and traffic, had been illegally encroached upon by vendors and hawkers.

23. Once an area has been declared a 'no-vending and no-squatting zone' any vendor squatting and vending in that area does so in violation of the law. Any vendor/squatter who is vending/squatting in a non-vending and non-hawking zone is committing an illegality by his actions. They cannot claim premium on their illegality, by claiming that they too should be made a part of the survey, to be relocated and given another place for hawking. Any such relocation by the town vending committee would tantamount to rewarding the violators of the law, which cannot be permitted. The same would be negation of the Rule of Law.

24. In WP(C) 6130/2016 titled '**Hawkers Adhikar Suraksha Samiti v Union of India & Ors**', a coordinate bench of this court had observed as follows:

"29. Having regard to the fact that declaration of non-squatting zones and non-vending areas is not inconsistent with the provisions of the Act of 2014 which expressly prohibits carrying out vending activities by street vendors in no-vending zones, we consider it appropriate to direct as an interim measure that non-squatting zones declared under the schemes existing prior to enforcement of Act of 2014 shall continue to be non-squatting zones for the time being so as to balance the larger interest of the general public."

25. As regards the argument of the petitioner founded upon the Street Vendors Protection Act, it is clear from the affidavit of respondent that after coming into force of Street Vendors Protection Act, 2014, protection is only granted to ‘existing vendors till the time survey is conducted’. ‘Street vendor’ as per Section 4 of the Act, are only those vendors who have received a certificate of vending from the authorities concerned. None of the vendors in Sethi Chowk or Sataraj Park, Lajpat Nagar area have, or could have been granted any certificate of vending as they are in a no-squatting no vending zone.

26. We concur with the observation in ***Vyapari Kalyan Mandal Main Pushpa & Anr (supra)*** quoted above, wherein, it was noted that the Court cannot put the safety and life of public in jeopardy by allowing the encroachment of street vendors in no vending and no hawking zones.

27. We feel that “*to err is human, but to repeat is foolish*”. On account of an omission and an error, there was an enormous loss of lives, property and goods, as emergency services could not reach the site of bomb blast in Lajpat Nagar. If the lessons from that mistake are not learnt or are ignored, we would be guilty of repeating an omission. We cannot turn a blind eye to a potential similar situation which may arise in the future.

28. In the case of ***Maharashtra Ekta Hawkers Union & Anr v Municipal Corporation, Greater Mumbai & Ors*** (2004) 1 SCC 625, the Supreme Court had laid down that :

“10. The above authorities make it clear that the hawkers have a right under Article 19(1)(g) of the Constitution of India. This right however is subject to reasonable restrictions under Article 19(6). Thus hawking may not be permitted where e.g. due to narrowness of road, free flow of traffic or movement of pedestrians is hindered or where for security reasons an area is required to be kept free or near hospitals, places of worship etc. There is no fundamental right under Article 21 to carry on any hawking business. There is also no right to do hawking at any particular place.”

29. The Supreme Court also held in ***Sodan Singh & Ors v. New Delhi Municipal Committee & Ors.*** (1989) 4 SCC 155:

“24. We would, however, make it clear that the demand of the petitioners that the hawkers must be permitted on every road in the city cannot be allowed. If a road is not wide enough to conveniently manage the traffic on it, no hawking may be permitted at all, or may be sanctioned only once a week, say on Sundays when the rush considerably thins out. Hawking may also be justifiably prohibited near hospitals or where necessity of security measures so demands. There may still be other circumstances justifying refusal to permit any kind of business on a particular road. The demand on behalf of the petitioners that permission to squat on a particular place must be on a permanent basis also has to be rejected as circumstances are likely to change from time to time. But this does not mean that the licence has to be granted on the daily basis; that arrangement cannot be convenient to anybody, except in special circumstances.”

30. As per the affidavit, in compliance of the directions of this Court on 20.07.2021 in WP(C) 4105/2021, the survey has already been conducted in the presence of SDMC officials and Town Vending Committee members in Ward No. 57-S, Lajpat Nagar, New Delhi on 29.07.2021 and 30.07.2021. As regards to the survey in the no-vending area of Lajpat Nagar Ward is

concerned, no survey can be conducted in the same as the said area is not even in consideration.

31. To allow the encroachment of vendors in Lajpat Nagar Market/Pushpa Market, and thereafter directing survey by TVC, would amount to putting the life and security of various individuals and citizens on the line. In deciding between the vendors' right to livelihood under Section 19(1)(g) of the constitution, and the safety and security of many more individuals living in this city, we have to give precedence to the latter over the former. Without there being any life and security, no question of right to livelihood can arise. These two conflicting rights must be read in consonance and be subjected to reasonable restrictions under the law.

32. Presence of unauthorized vendors/squatting in no-hawking zone creates mayhem in the area encroached upon- primarily being roads and pavements, which makes it impossible for people as well as traffic to commute through. If any vendors are found in a no-vending zone, the same is a violation of the safety and security of the individuals living in the city, as well as directives and orders passed by this Court as well as the Supreme Court as detailed above.

33. In this view of the matter, the writ petition is devoid of merit and dismissed.

JASMEET SINGH, J.

VIPIN SANGHI, J.

SEPTEMBER 21, 2021/ 'dm'

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