$~40
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 30.04.2024*

\+ **W.P.(C) 3570/2024**

PRABHAT SHARMA ..... Petitioner
Through: Mr.Bibhuti Bhushan Mishra, Mr.Kamlesh Kr Mishra, Mr.Aditya, Mr.Anubhav Gupta, Mr.Dipak Raj and Ms.Tripti Juyal, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI AND ORS ..... Respondents
Through: Mr.Aditya Vaibhav Singh, Advocate for MCD.
Mr.Divyam Nandrajog, PC and Mr.Mayank Kamra, Advocate for R3 to R5.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE GIRISH KATHPALIA

VIBHU BAKHRU, J. (*Oral*)

1. The petitioner has filed the present petition, *inter alia,* praying as under:-

> "I. Pass an order thereby declaring the act of the respondents MCD of seizing/confiscating the articles/goods on 19.01.2024 and on 27.02.2024 of the petitioner street vendor to be illegal, arbitrary and unconstitutional.

> II. Pass an order thereby directing the respondents MCD to forthwith release the goods of the petitioner without any charges as the act of confiscating the goods was illegal and arbitrary."

2. The petitioner claims that he is engaged in vending clothing and handloom items and carries on vending activities from a site described as, 'Opposite 13, UB, Bungalow Road, Jawhar Nagar, Delhi – 110007' (hereafter *the site in question*). The petitioner also claims that he had participated in the survey, which was conducted in the year 2021 in terms of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014 (hereafter *the Act*).

3. The Municipal Corporation of Delhi (hereafter *MCD*) had removed the petitioner from the site in question on 18.01.2024 and had seized his goods. The petitioner claims that the seized goods, which include an iron stand, apparel, and wooden hangers, are valued at ₹18,250/-. On the next day, that is on 19.01.2024, the petitioner made a representation to the Commissioner, MCD complaining against the illegal seizure of the goods. This was followed by another representation made to other officers. Notwithstanding the aforesaid representations, the petitioner's goods were not released.

4. MCD has filed the counter-affidavit, *inter alia,* affirming that the petitioner was carrying on vending activities in a no-vending zone, and, therefore, he was removed from the said zone and his goods were seized. MCD states that the petitioner is at liberty to secure the release of his goods on payment of the removal charges/storage charges and penalty.

5. The petitioner disputes that he is liable to pay any amount to MCD. It is his case that the seizure of his goods was illegal as the provisions of Section 18 of the Act as well as the provisions of Paragraph 6.7 of the Government of National Capital Territory of Delhi the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme 2019 (hereafter *the Scheme*) were not complied with. The learned counsel for the petitioner submits that for all practical purposes, it should be assumed that the petitioner is entitled to a Certificate of Vending (hereafter *COV*) as he has participated in the survey and a receipt evidencing the same has been issued to him.

6. The learned counsel for the petitioner also disputes the list of no vending areas as prepared by MCD. He also refers to Clause (3)(e) of the First Schedule to the Act that proscribes any zone from being declared as a no vending zone till such time as the survey has not been carried out and the plan for street vending has not been formulated. He contends that in terms of Section 33 of the Act, the provisions of the Act have an overriding effect. Therefore, no zone can be declared as a no vending zone.

7. According to the respondents, the said provisions are inapplicable as the petitioner has not been issued a COV as yet. It is stated that at the current stage only interim COVs have been issued and the final COVs will be issued after the second TVC is constituted and a vending plan is prepared in terms of Section 21 of the Act. It is contended on behalf of MCD that it is impossible to serve prior notice to street vendors such as the petitioner as no fixed place for vending has been allocated to them. The COVs issued by

MCD to the unauthorised street vendors (street vendors who have not been allocated any *Tehbazari* site) are in the nature of interim COVs (as in the present case as well) and do not specify any fixed site for vending, but merely mention the zone. The Terms and Conditions annexed with the COV also specify that the street vendors are required not to carry on vending activities from a fixed place for more than 30 minutes or such time as may be fixed by the Town Vending Committee (hereafter *the TVC*).

8. The learned counsel appearing for MCD relies upon Section 322 of the Delhi Municipal Corporation Act, 1957 in support of the contention that MCD has the power to remove the goods, which have been illegally placed on the streets.

9. The learned counsel for the petitioner also challenges the list of no vending as prepared by MCD. He submits that in terms of Section 33 of the Act, the provisions are of an overriding effect.

10. Before proceeding further, it would be relevant to refer the Section 18 and 19 of the Act. The same are set out below:-

> "18.(1) The local authority may, on the recommendations of the Town Vending Committee, declare a zone or part of it to be a no-vending zone for any public purpose and relocate the street vendors vending in that area, in such manner as may be specified in the scheme.
> (2) The local authority shall evict such street vendor whose certificate of vending has been cancelled under section 10 or who does not have a certificate of vending and vends without such certificate, in such manner as may be specified in

the scheme.
(3) No street vendor shall be relocated or evicted by the local authority from the place specified in the certificate of vending unless he has been given thirty days' notice for the same in such manner as may be specified in the scheme.
(4) A street vendor shall be relocated or evicted by the local authority physically in such manner as may be specified in the scheme only after he had failed to vacate the place specified in the certificate of vending, after the expiry of the period specified in the notice.
(5) Every street vendor who fails to relocate or vacate the place specified in the certificate of vending, after the expiry of the period specified in the notice, shall be liable to pay for every day of such default, a penalty which may extend up to two hundred and fifty
rupees, as may be determined by the local authority, but shall not be more than the value of goods seized.

19. (1) If the street vendor fails to vacate the place specified in the certificate of vending, after the lapse of the period specified in the notice given under sub-section (3) of section 18, the local authority, in addition to evicting the street vendor under section 18, may, if it deems necessary, seize the goods of such street vendor in such manner as may be specified in the scheme:

Provided that where any such seizure is carried out, a list of goods seized shall be prepared, as specified in the scheme, and a copy thereof, duly signed by the person authorised to seize the goods, shall be issued to the street vendor.
(2) The street vendor whose goods have been seized under sub-section (1) may, reclaim his

> goods in such manner, and after paying such fees, as may be specified in the scheme:
>
> Provided that in case of non-perishable goods, the local authority shall release the goods within two working days of the claim being made by the street vendor, and in case of perishable goods the local authority shall release the goods on the same day of the claim being made by the street vendor."

11. In terms of Section 18(1) of the Act, the local authority (MCD in this case) may on recommendations of the TVC declare any zone to be a 'no-vending zone'. In such eventuality, the street vendors are required to be relocated from the said zone. However, in terms of Section 18(3) of the Act, no street vendor is to be evicted from the place specified in the COV unless he is given 30 days' prior notice.

12. In the present case, these provisions have not been implemented as the COVs allocating fixed vending sites to unauthorised street vendors have not been issued. In fact, the petitioner has not been issued any COV as yet.

13. However, as far as the no-vending zone is concerned, the area declared as the no vending zone under the Scheme for street vendors in MCD in the year 2007 continues to be operative till such time as a vending plan is prepared in terms of Section 21 of the Act

14. In ***Vyapari Kalyan Mandal Main Pushpa & Anr. v. South Delhi Municipal Corporation & Ors.: 2017 SCC OnLine Del 8962*** a coordinate bench of this Court considered the question whether any area could be considered as a no-vending zone till the time a vending plan is prepared and

the no vending zone is declared and held as under:

> "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."

15. Following the aforesaid decision, this Court in ***Veer Singh v. The Chairman of NDMC & Ors.: Neutral Citation 2024:DHC:641-DB***, rejected the contention that the street vendors carrying on vending activities in a no vending/no hawking zone could not be removed.

16. In view of above, currently street vending is not permitted in the area declared as a no vending zone under the Scheme prepared in the year 2007. In view of above, the provisions of Section 18 of the Act are of no assistance to the petitioner for the reasons that, a) the petitioner was removed as he was vending in a no vending zone; and b) the petitioner has not been issued a COV which reflects the place of vending in the no vending area and

therefore, the provisions relocating the petitioner – in terms of Section 18(3) of the Act – are not applicable.

17. It is also relevant to refer Section 19 of the Act. In terms of Section 19(1) of the Act, if a street vendor fails to vacate the place specified in the COV after the lapse of the period specified in the notice issued under Section 18(3) of the Act, local authorities would have the powers as deemed necessary to seize the goods in addition to evicting the street vendor in terms of Section 19(2) of the Act. The street vendors, whose goods have been seized under Section 19(1) of the Act may reclaim the goods in the manner and after paying the requisite fees, as may be specified in the Scheme.

18. As noted above, since no specific site has been allocated to the petitioner, or specified in the COV, the provisions of Section 18(3) of the Act are not applicable. Consequently, the provisions of Section 19(1) of the Act are not applicable as well.

19. The petitioner relies upon the Paragraph no.6.7 of the Scheme, which is set out below:-

> "6.7 The manner of seizure of goods by the local authority, including preparation and issue of list of goods seized:
> 6.7.1 The designated officer shall make an objective assessment of the goods/wares seized, in consultation with the vendor.
> 6.7.2 The list of goods seized will be prepared in duplicate, which will be verified by the vendor and duplicate copy of the list will be issued to the vendor. The list of goods seized will also be authenticated by a TVC member and a witness. The copy of the goods seized shall mention the name of the official, his designation and the office address and the address of the premises from where goods can be reclaimed. The

> form of seizure memo is as per Annexure 'D'.
> 6.7.3 Videography of the process of seizure of goods shall be done."

20. It is apparent that Paragraph no.6.7 of the Scheme provides for the manner of the seizure of the goods in the aid of the exercise of the powers under Section 19(1)(b) of the Act. As noted above, the said provisions are inapplicable as the COV's recording/allocating fixed sites have not been issued to the unauthorised street vendors as yet.

21. It is relevant to note that Paragraph no. 6.8.3 of the Scheme also provides for the manner of recovery of storage charges and other charges to reclaim the seized vending material. As noted above, these provisions are inapplicable in respect of the street vendors unauthorisedly carrying on vending activities in a no-vending zone.

22. In so far as the petitioner's challenge that the seizure of his goods is without any authority of law is concerned, it is relevant to refer to Section 322 of the Delhi Municipal Corporation Act, 1957 (hereafter the *MCD Act*) which reads as under: -

> "322. Power to remove anything deposited or exposed for sale in contravention of this Act. -- The Commissioner may, without notice, cause to be removed—
> (a) any stall, chair, bench, box, ladder, bale or other thing whatsoever, placed, deposited, projected, attached or suspended in, upon, from or to any place in contravention of this Act;
> (b) any article whatsoever hawked or exposed for sale on any public street or in other public place in contravention of this Act and any vehicle, package, box or any other thing in or on which such article is

placed."

23. It is apparent from a plain reading of Section 322 of the MCD Act that MCD does have the powers to remove articles as specified, which have been placed for sale in contravention of the provisions of the MCD Act.

24. It is also relevant to refer to Section 326 of the MCD Act, which is set out below:-

> "326. Disposal of things removed under this Chapter
> (1) Any of the things caused to be removed by the Commissioner under this Chapter shall, unless the owner thereof turns up to take back such thing and pays to the Commissioner the charges for the removal and storage of such thing, be disposed of by the Commissioner by public auction or in such other manner and within such time as the Commissioner thinks fit.
> (2) The charges for removal and storage of the thing sold under sub-section (1) shall be paid out of the proceeds of the sale thereof and the balance, if any, shall be paid to the owner of the thing sold on a claim being made therefor within a period of one year from the date of sale, and if no such claim is made within the said period, shall be credited to the Municipal Fund."

25. In terms of Section 326 of the MCD Act, the person whose goods are seized, is entitled to recover the same on payment of removal charges and storage charges. In our view the said provisions are applicable, as in absence of the machinery provisions of Sections 18 and 19 of the Act being applicable, the provisions of the MCD Act would necessarily apply. Thus, MCD has the powers under Section 322 of the Delhi Municipal Corporation Act, 1957, to remove the goods and articles which are placed for selling the

same, in contravention of the MCD Act.

26. In view of above, we are of the view that the reliefs sought for in the petition cannot be granted. The petition is accordingly dismissed.

VIBHU BAKHRU, J

GIRISH KATHPALIA, J

APRIL 30, 2024
M

Click here to check corrigendum, if any