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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 478/2021 and CM Nos.45304/2021, 45305/2021, 53827/2022**
and 48664/2023

MUKESH SHARMA AND ORS Appellants
Through: Mr N.K. Sahoo, Advocate along with
appellant no.1 in person.
versus
NEW DELHI MUNICIPAL COUNCIL
AND ANR Respondents
Through: Mr Sriharsha Peechara, Standing
Counsel for NDMC with Ms Harshita
Gupta, Mr Akshat Kulshreshtha and
Mr Shubham Kumar Mishra,
Advocates.
SI Mohit Kumar, PS Connaught
Place, New Delhi.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

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21.02.2024

1. The appellants have filed the present appeal impugning an order dated 22.07.2016 (hereafter *the impugned order*) passed by the learned Single Judge in W.P.(C) 3574/2011 captioned *Vaiso Jain v. NDMC & Anr.*
2. There is an inordinate delay in filing the present appeal – it has been filed after a delay of 1950 days. However, Mr Sahoo, learned counsel appearing for the appellants seeks to justify the delay on the ground that the appellants had been enjoying the benefit of another order dated 25.05.2011 passed in W.P.(C) 3364/2011 and other connected matters, till the year 2021. He submits that the impugned order in effect seeks to deny the



appellant the benefit of the said order and therefore, the appellants have been constrained to file the present appeal. He also submits that apart from appellant no.8, the other appellants were not parties to W.P.(C) 3574/2011.

3. The appellants grievance essentially arises from not being permitted to vend in the area of Indira Chowk and Rajiv Chowk as the said area is declared as a non-vending zones.

4. It is their case that notwithstanding that the said area was declared as a non-vending zone in the scheme framed in the year 2007; the appellants have the right to carry on vending pursuant to the order 25.05.2011 passed by this Court in W.P.(C) 3364/2011 and other connected matters. He contends that the learned Single Judge could not override an earlier order passed by a Coordinate Bench in the same case. He submits that the order dated 25.05.2011 is required to be implemented and the impugned order is liable to be set aside.

5. The impugned order was rendered in an application filed by New Delhi Municipal Council (NDMC) seeking vacation of an earlier order dated 25.05.2011, whereby the said petition, W.P.(C) 3364/2011 and other connected matters, were disposed of. The order dated 25.05.2011 was passed in a batch of petitions including W.P.(C) 3574/2011. Several street vendors had filed petitions pleading that they were squatting and carrying on vending activities at various sites falling within the NDMC jurisdiction. They had filed their applications for allotment of *tehbazari* sites before the vending committee of NDMC, which were pending consideration at the material time. Their grievance, essentially, was that they were being



removed from their respective squatting sites while their applications for allotment was pending. They had also relied upon the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 whereby *status quo* as to encroachment and unauthorised development was to be maintained on 31.12.2011. During the course of the proceedings, the said petitioners also relied upon the decision of the Supreme Court in ***Gainda Ram and Ors. v. Municipal Corporation of Delhi and Ors.: (2010) 10 SCC 715***, whereby the Supreme Court had disposed of the writ petition with directions to the concerned authorities to frame appropriate regulations for street vending and to pass a legislation for regulating their right to hawk/carry on street vending which was recognised.

6. At that material time, it was submitted by the NDMC that it was in the process of finalising the list of eligible squatters/hawkers and the same would be completed on or before 30.06.2011. It was stated that 4400 applications were received by the NDMC and approximately 70% of those applications had been processed and verified. In the aforesaid context, the learned Single Judge directed that the writ petitioners would not be disturbed till the vending committee completes the exercise of determining their eligibility. Although the petitions were disposed of, it is apparent that the order dated 25.05.2011 was in the nature of an interim arrangement interdicting the NDMC to not remove the writ petitioners till their applications for vending sites were considered and disposed of.

7. Admittedly, the said exercise did not fructify into allotment of sites. Undisputedly, the vending committee, which was then considering the applications, is also no longer operative. Notwithstanding the same, it is the



appellants' case that they are entitled to continue to draw benefit of the order 25.11.2011. As noted above, the principal challenge to the impugned order rests on this assumption.

8. The learned Single Judge had entertained the NDMC's application and had noted certain subsequent developments including the undertaking given by the NDMC before the Supreme Court in *Sodan Singh & Ors. v. New Delhi Municipal Committee & Ors.: (1989) 4 SCC 155* that areas of Rajiv Chowk and Indira Chowk as well as areas around DMRC stations would not be proposed as vending sites.

9. The learned Single Judge also noted that the petitioners did not have any express permission or licence from the NDMC to carry on street vending activities. The Court also observed – and in our view rightly so – that the order dated 25.05.2011 was not founded on any right of the petitioners to carry on trade from a specific site. However, the petitioners were granted limited protection (in terms of order dated 25.05.2011) as their applications for allotment of *tehbazari* sites were pending consideration.

10. More than five years had since elapsed and the scheme under which, applications of vending sites were made is no longer in operation. As noticed at the outset, the present appeal is directed to the petitioners to seek directions interdicting the NDMC from removing them from the sites located in the areas of Indira Chowk and Rajiv Chowk. The said relief cannot be granted as the said areas have been declared as no-vending/no-hawking zone. This question has been considered by the court in several decisions including in *Vyapari Kalyan Mandal Main Pushpa & Anr. v.*



South Delhi Municipal Corporation & Ors., 2017 SCC OnLine Del 8962 and Veer Singh & Ors. v. The Chairman & Ors., Neutral Citation No. 2024: DHC:641-DB.

11. The contention that the learned Single Judge had no jurisdiction to vary the order dated 25.05.2011 is unmerited. As noticed earlier, the order dated 25.11.2011 was, essentially, in the nature of an interim protection granted to the writ petitioners. Although, the writ petitions were disposed of, the Court had also noted in the order dated 25.05.2011 that the question whether the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011 – under which the petitioners were claiming protection – applied, was not examined by the court. Admittedly, the process of allotment of vending sites pursuant to the applications filed in the year 2011 stands abandoned. Thereafter, the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 was enacted. In terms of Section 21 of the said Act, the NDMC is required to prepare a vending plan in consultation with the Town Vending Committee.

12. In the given circumstances, we are unable to accept the contention that the directions issued by the Court by an order dated 25.05.2011 would continue to be operative in perpetuity. This Court in ***Vyapari Kalyan Mandal Main Pushpa & Anr. v. South Delhi Municipal Corporation & Ors.***, (supra) had also held that no vending zones as declared under the 2007 scheme would continue to be operative till a fresh vending plan is prepared in terms of Section 21 of the said Act. The learned counsel also relies upon the judgment dated 08.05.2016 in *LPA No. 136/2016* captioned *Bhola Ram Patel v. New Delhi Municipal Council and Anr.* of a Coordinate Bench of



this Court. It is seen that the said decision is not applicable in respect of areas that have been declared as a no vending zones.

13. We also note that a Coordinate Bench of this Court had in its order dated 11.10.2021 in W.P.(C) 11669/2021 captioned *New Delhi Traders Association v. New Delhi Municipal Corporation & Ors.* issued directions for removal of unauthorised vendors from no vending zones.

14. In view of the above, the present appeal is unmerited.

15. We are also not persuaded to accept that the explanation for the delay provided by the learned counsel for the appellant.

16. The appeal is dismissed, both on merits as well as limitation. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

**FEBRUARY 21, 2024
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