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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 1415/2016
AKHILESH KUMAR & ORS Petitioners
Through: Ms. Rani Chhabra, Adv.

Versus

NEW DELHI MUNICIPAL COUNCIL & ORS Respondents
Through: Mr. Anil Grover & Mr. Harsh Pichara,
Adv. for NDMC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **19.02.2016**

CMs No.6192-93/2016 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

W.P.(C) 1415/2016 & CM No.6191/2016 (for stay)

3. The 160 petitioners claiming to be street vending around the entrances of underground market 'Palika Bazaar' and on the pavements abutting Regal and Rivoli Cinema Halls, at Connaught Place, New Delhi have filed this petition to restrain the respondents no.1 to 4 New Delhi Municipal Council (NDMC) from acting in contravention of the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.
4. The counsel for the petitioners states that in an action taken by the respondents NDMC on 12th February, 2016, all the petitioners have been removed from the sites from where they had been earlier street vending,

without following the due process of law and without even any notice and in a swift action.

5. This Court in *Brahm Pal Vs. New Delhi Municipal Council* MANU/DE/1942/2015 and in *Rajnesh Vs. South Delhi Municipal Corporation* MANU/DE/2656/2015 and in a large number of similar petitions coming before this Court has taken a consistent stand that no protection, as is sought in this petition, can be granted except to those street vendors who were licenced under the regime prevalent prior to the coming into force of the Street Vendors Act.

6. The counsel for the petitioners fairly admits that none of the 160 petitioners were licensed at any time though it is stated that they have been squatting and street vending on the pavements aforesaid for the last several years and have been earning their livelihood therefrom. In support thereof attention is drawn to a list purported to have been prepared by the Enforcement Department of the respondents NDMC and in which list, it is stated, the names of all the 160 petitioners appears.

7. The counsel for the respondents NDMC appearing on advance notice has controverted and disputed the said list. It is also pointed out that as per the said list also, the checking was in pursuance to the inspections in the month of March and September, 2015 and it is contended that the petitioners for this reason also cannot claim any right to be protected under Section 3(3) of the Street Vendors Act.

8. The counsel for the petitioners besides the passionate pleas contends that once the law i.e. Section 3(3) of the Street Vendors Act has prohibited

eviction of street vendors till the survey to be conducted by the Town Vending Committee (TVC) to be constituted under the said Act has been conducted, the action of the respondents NDMC of removal of the petitioners from the sites where each of them was street vending, has but to be held to be illegal and the petitioners ought to be permitted to come back and street vend from the sites where they earlier had been vending.

9. A perusal of the photographs filed along with the petition shows that the petitioners had literally occupied the entire pavements outside Palika Bazaar and abutting the Regal and Rivoli Cinema Halls at Connaught Place, New Delhi and compelling the pedestrians who also have a right to use the pavements and pathways to spill on to the road at their peril from the fast moving traffic thereon.

10. The counsel for the respondents NDMC also states that such large number of street vendors at the entry and exit point of the underground Palika Bazaar market and outside the cinema halls aforesaid frequented by large number of persons was also found to be posing a security hazard, putting the life of the persons visiting the Palika Bazaar and the aforesaid Cinema Halls in jeopardy.

11. It cannot also be lost sight of that the roads on which the pedestrians are compelled to spill owing to the street vendors blocking the pavements are the arterial roads for the busy New Delhi Railway Station and the squatting by the petitioners also results in impeding the movement of traffic for the New Delhi Railway Station.

12. I have in this respect, in *Brahm Pal* supra and in *Rajnes* supra, held:
- i) that Section 3 of the Street Vendors Act requires the TVC to be constituted to conduct a survey of all ‘existing’ street vendors and accommodate them in the vending zones in accordance with the plan of Street Vending and holding capacity of the vending zones;
 - ii) it is thus not as if street vending is to be unregulated and there is an absolute right to street vend from wherever one desires;
 - iii) streets are primarily meant for passage, of pedestrians and vehicles and unregulated street vending is invariably an obstruction to movement on streets;
 - iv) this Court in exercise, particularly of writ jurisdiction, has to pass orders which advance substantial justice, keeping in view all relevant factors and cannot be oblivious of the said concerns;
 - v) the Court would not be justified in restraining removal of unlicensed street vendors or permitting them to street vend from places of their choice without satisfying itself (a) that the petitioners in fact have been street vending from the site from which they claim; (b) whether the said street vending is an obstruction to free movement on the streets / pavements of the pedestrians and vehicles; (c) how many other street vendors are vending from the said site or in vicinity thereof and if it is not possible to accommodate all of them, which one of them should

- have priority; (d) whether such street vending poses any security or fire or other hazard; (e) whether such street vending is in infringement of the rights of any other person's residence or commercial establishment abutting the said street etc.;
- vi) that the said exercise is not in the domain of jurisdiction under Article 226 and undertaking such an exercise would tantamount to this Court conducting the survey and formulating scheme which the other authorities under the Act have been mandated to do;
 - vii) this Court if were to in all such petitions, without enquiry as aforesaid, issue restraint orders sought, would be creating chaos and jungle raj on the streets of Delhi with the likely possibility of all the streets / pavements being blocked and orders with respect to same site being passed in favour of more than one person and fights / disputes for primacy erupting between the street vendors and which the law enforcement agencies would be unable to control because of each having an order in his / her favour;
 - viii) that Section 3(3) of the Street Vendors Act has already afforded protection to the street vendors and the Police and the Municipal Authorities are expected to abide by the law of the land – if the Courts were to in addition, issue restraint orders as are sought in these petitions, it would be taking away the jurisdiction of the said Authorities to, on the spot resolve the conflicts if arising between the rights of the street vendors

under the Street Vendors Act and the rights of others viz. pedestrians, motorists, owners of properties abutting streets etc. under other laws and their other statutory obligations.

13. I must record that the order in **Rajnesh** supra and other connected petitions was subject matter of appeals before the Division Bench which has vide order dated 6th November, 2015 set aside the order and remanded the petitions to the Single Judge and which are stated to be still pending. What prevailed with the Division Bench was the fact that the appellants / petitioners before the Division Bench were having favourable orders in their favour from the erstwhile Zonal Vending Committee as also the Appellate Authority. However, the Division Bench did not interfere with the reasoning aforesaid and did not issue the directions sought before and rather remanded the petitions to the Single Judge and which as aforesaid are pending. It is for this reason only that I had at the outset enquired from the counsel for the petitioners whether any of the petitioners was licensed under the regime in vogue prior to the coming into force of the Street Vendors Act and which I was told they are not. Thus the reason which prevailed with the Division Bench does not come to the rescue of the petitioners.

14. I am thus of the opinion that the protection afforded by Section 3(3) of the Street Vendors Act is only qua those who were licensed under the earlier regime.

15. The respondent NDMC, having assessed the situation at site and having found that the continuance of the petitioners therein is a security hazard, this Court cannot intervene. Mention may also be made of **Dharam Chand Vs. Chairman, New Delhi Municipal Council** (2015) 10 SCC 612

concerned with a licensed street vendor vending from a site outside the Supreme Court and who, for security reasons, had been re-located. It was held that notwithstanding the constitutional right of a citizen to carry on business but such right is subject to certain restrictions – it cannot be disputed that there are certain areas which may be required to keep free from such type of kiosks for security reasons – the Court cannot direct the administration to allow such kiosks even if there is a threat to safety and security. It was held that the rights of the street vendors have to be balanced with the rights of the society in general for security and that the Court cannot assume and presume that there is no threat to the safety and security and allow the street vendors to continue the business.

16. I may also record that now, the TVC will be functional very soon and any orders as are sought will also interfere with its functioning.

17. There is thus no merit in the petition.

Dismissed.

No costs.

18. At this stage, the counsel for the petitioners states that liberty be given to the petitioners to approach the TVC, constitution whereof is nearly complete.

19. The petitioners, in accordance with law, shall be entitled to approach the TVC.

RAJIV SAHAI ENDLAW, J

FEBRUARY 19, 2016

‘gsr’