

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

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Date of decision: 22nd July, 2016

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W.P.(C) No.3574/2011

VAISO JAIN

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Adv. with Mr.
N.K. Sahoo, Ms. Aastha Dhawan and
Ms. Wamika Trehan, Advs.

Versus

NDMC AND ANR

..... Respondents/Applicants

Through: Mr. Mananjay Mishra, Adv. for
NDMC.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.18689/2016 (of the respondent for vacation of order dated 25th May, 2011 in W.P.(C) No.3574/2011).

1. This application has been filed by the respondent New Delhi Municipal Council (NDMC) for vacation of the order dated 25th May, 2011 disposing of the writ petition and/or for declaration that the petitioner cannot claim protection of the said order dated 25th May, 2011 in view of violations committed by the petitioner and also in view of the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (Street Vendors Act).

2. The application came up before this Court first on 17th May, 2016 when the senior counsel for the petitioner appeared on advance notice. Though the senior counsel for the petitioner sought time to file reply to the application but finding that the order dated 25th May, 2011 of disposal of this

writ petition was not in this petition alone but in a large number of other writ petitions filed by other persons also claiming to be street vendors in the NDMC areas and that besides the said order, similar order had been passed in a large number of other petitions also and in some of which also similar applications were being filed and being of the opinion that at this stage it is not necessary to go into the facts of the individual cases and only a legal question has to be decided with respect to the continuation in force of the order dated 25th May, 2011 and other similar orders in view of the coming in to force of the Street Vendors Act, the counsels were heard and order reserved giving liberty to the counsels to file written submissions if so desire. Written submissions have been filed on behalf of the applicant/respondent NDMC as well as the petitioner.

3. The petitioner filed this writ petition pleading (i) that the petitioner is carrying on his petty trade from squatting site in the NDMC area and is earning his livelihood therefrom for many years; (ii) that the petitioner had applied to the respondent NDMC for grant of *tehbazari*/vending site; (iii) the said application of the petitioner was pending before the Zonal Vending Committee constituted under the Scheme of Urban Street Vendors framed by the respondent NDMC in the year 2004/2007; however the officials of the respondent NDMC from time to time meted out threats to the petitioner to remove the petitioner from the site and had also been disturbing the petitioner; (iv) that the respondent NDMC was not entitled to disturb the petitioner, also under the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011; (v) that the process of allotment

of *tehbazari*/vending sites in the NDMC area had not been finalized till then; (vi) that the Zonal Vending Committee and the Appellate Authority had already granted protection to the petitioner; and, (vii) however despite the said protection, the petitioner was being harassed.

4. The writ petition, as aforesaid along with a host of other petitions, was on 25th May, 2011 disposed finding/observing (i) that the said petitions had been filed by persons who claimed to be squatting as hawkers/vendors at various sites in the NDMC jurisdiction including Sarojini Nagar, Janpath, Connaught Place and Palika Bazar; (ii) all the said persons claimed to have filed applications for allotment of *tehbazari* sites before the Vending Committee of the respondent NDMC and which applications were pending consideration; (iii) the writ petitions had been filed seeking interim protection; (iv) that according to the counsel for the NDMC, the exercise of finalizing the list of eligible squatters/hawkers was expected to be completed on or before 30th June, 2011; (v) “having regard to the aforesaid submissions by the counsel for the respondent/NDMC and the anxiety expressed by the counsels for the petitioners that the petitioners are sought to be illegally dispossessed, while the exercise of finalizing the list of eligible squatters is still pending at the end of NDMC, the present writ petitions are disposed of with the directions to the respondent/NDMC not to disturb the petitioners from their present hawking sites till the Vending Committee completes the exercise of determining the status of their eligibility, while leaving open other issues raised in the present petitions, including applicability of the National Capital Territory of Delhi Laws (Special Provisions) Act, 2011”;

(vi) the aforesaid order was however made subject to the petitioners not inducting anyone else at the hawking site; the petitioners complying with the requirements of the National Policy for Urban Street Vendors and the Master Plan for Delhi – 2021 and the petitioners not dealing in any licensable articles; and, (vii) it was further provided that if any of the petitioners were found eligible for allotment of a vending site under the Scheme, the interim protection will continue till such time the respondent/NDMC implemented the Scheme of allotment of the vending sites.

5. The respondent NDMC in its application under consideration states (i) that the petitioner is an unauthorised vendor claiming to carry on his vending activities in front of A-7, A Block, near Post Office, Inner Circle, Connaught Place, New Delhi since 1989 though he does not have any permission or license therefor; (ii) that the respondent NDMC had received several complaints from regular public who visit Connaught Place and Janpath markets regarding rampant unauthorised occupation of pavements and streets by unauthorised street vendors, interfering with/obstructing the movement of the visitors to Connaught Place; (iii) the respondent NDMC conducted an inspection of entire Connaught Place and Janpath area and found the petitioner violating the terms and conditions of the order and also the provisions of the Street Vendors Act and the Scheme and the Rules framed thereunder and thus the petitioner was removed; (iv) the petitioner filed Cont. Case No.452/2016, vide order dated 3rd May, 2016 wherein *status quo* in terms of the order dated 25th May, 2011 was directed to be maintained; (v) that during the course of hearing of the said contempt case it was observed

that the respondent NDMC should obtain clarification from the Court which had passed the order dated 25th May, 2011 in the writ petition; (vi) that during the inspection carried out by the respondent NDMC on 6th May, 2016, the petitioner was found to be occupying area of 6x7ft. which is excessive and in violation of the terms and conditions of the order dated 25th May, 2011 and the provisions of the Street Vendors Act and the Street Vendors Scheme, 2016; (vii) that the petitioner despite warning did not reduce the area occupied; (viii) that the occupation by the petitioner of excess area causes obstruction to the movement of the visitors to Connaught Place; (ix) that the petitioner is misusing the protection granted vide order dated 25th May, 2011; (x) that the 2007 Scheme, owing to pendency of application of the petitioner whereunder the petitioner had been granted protection, was no longer relevant as the Supreme Court vide its order dated 9th September, 2013 directed that the issue of street vendors would be governed by the National Policy on Urban Street Vendors, 2009 until an appropriate legislation was enacted; (xi) that the order dated 25th May, 2011 in any case could not survive the Street Vendors Act which has come into force w.e.f. 1st May, 2014; (xii) there had even otherwise been sea change in the geographical and socio-economic conditions between 25th May, 2011 and now; (xiii) the construction of Rajiv Chowk Metro Station has multiple number of persons visiting Connaught Place; (xiv) at present about 1.5 lakh people ingress and egress from Rajiv Chowk Metro Station and thousands of shoppers also throng to Connaught Place on a daily basis; (xv) there are more than 200 street vendors who are vending and blocking the area around Metro Station entrances, pavements and footpaths leaving no scope for

anyone else to use these footpaths; (xvi) the number of hawkers/street vendors is disproportionate to the size of the area; (xvii) under Section 322 of the New Delhi Municipal Council Act, 1994 no *tehbazari* is permitted within 100 meters of any municipal market and licensed private market without the permission of the Chairperson of the NDMC; and, (xviii) under the Delhi Metro Rail Corporation Rules, setbacks have to be maintained within 100 meters of the entry and exit gates of Metro Station; (xix) this Court also vide orders in CrI. Misc. Cas. 2431/2013 titled ***Sneh Suman Vs. State*** had directed that encroachments on the pavements should not take place so that citizens have a right of free access to the pavements; (xx) most of the buildings of national importance like Parliament House, President's Residence, South Block, Supreme Court, Delhi High Court, Reserve Bank of India, North Block and other Ministries/Departments of Government of India are located within a range of 2-5 kms from Connaught Place – uncontrolled and unregulated operations by hawkers/squatters also poses a security threat; (xxi) security agencies had been continuously advising that unabated squatters pose serious security threat; (xxii) Supreme Court also in ***Dharam Chand Vs. Chairman, NDMC*** (2015) 10 SCC 612 had expressly recognised the need for keeping certain areas free of hawkers/traders; and, (xxiii) NDMC had also given an undertaking before Supreme Court in the ***Sodan Singh*** case that NDMC shall not propose the areas of Rajiv Chowk, Indira Chowk and the areas around DMRC stations as vending sites for hawkers/squatters in the course of draw of lots then proposed to be held.

6. The counsel for the applicant/respondent NDMC has in addition to the aforesaid argued that (i) Supreme Court in *Pyare Lal Vs. New Delhi Municipal Committee* AIR 1968 SC 133 upheld the right of the then New Delhi Municipal Committee being the predecessor of the New Delhi Municipal Council not to permit any squatting in NDMC area or to permit squatting only in selected areas; (ii) the Constitution Bench of the Supreme Court in *Sodan Singh Vs. New Delhi Municipal Committee* (1989) 4 SCC 155 also though held that hawkers and squatters have a fundamental right to carry on business on public street but the same should be regulated and that hawkers could not be allowed/permitted on every road in the city, if the road was not wide enough to conveniently manage the traffic on it and that no hawker could claim any hawking site on a permanent basis; and (iii) the steps taken by NDMC in pursuance to the above judgment however remained embroiled in litigation. The counsel for the applicant/respondent NDMC has also referred to recent orders in various writ petitions filed after the coming into force of the Street Vendors Act and denying any protection to the street vendors.

7. Per contra the senior counsel for the non-applicant/petitioner has argued (i) that the petitioner runs his livelihood by selling posters etc. without causing any inconvenience to the general public; (ii) that the name of the petitioner figured in the list prepared by the respondent NDMC in June, 2011 of persons eligible for allotment of a vending/squatting site; (iii) Supreme Court vide its order dated 12th October, 2012 in SLP (C) No.1765/2012 titled *Salim Vs. NDMC* and in other connected petitions

directed that those whose names found mention in the list of persons found eligible prepared by the NDMC shall be allowed to continue to do hawking and vending activity; (iv) vide subsequent order dated 31st January, 2013 in IA No.411-412 in W.P.(C) No.1699/1987 titled ***Gainda Ram Vs. MCD*** Supreme Court directed *status quo* to be maintained in respect of all those who are engaged in hawking and street vending as on that date; (v) Supreme Court vide judgment dated 9th September, 2013 in Civil Appeal No. 4156-4157 of 2002 titled ***Maharashtra Ekta Hawkers Union Vs. Municipal Corporation, Greater Mumbai*** (2014) 1 SCC 490 directed the implementation of National Policy on Urban Street Vendors, 2009 and that all the existing street vendors/hawkers operating shall be allowed to operate till registration in terms of Policy was completed; (vi) though the Street Vendors Act had come into force on 1st May, 2014 but Section 3(3) thereof also provides that no street vendors shall be evicted or relocated till the survey specified in terms thereof was carried out and certificate of vending issued;(vii) Section 33 of the said Act gives the said Act an overriding effect; (viii) a vendor can establish his status as “existing vendor” either by way of permission granted by Municipal Authority or by way of various challans/removal receipts etc. issued by the Municipal Authority in respect of his place of squatting and under the strength of interim order passed by the Court;(ix) the Division Bench of this Court also vide order dated 18th May, 2016 in LPA No.136/2016 titled ***Bhola Ram Patel Vs. New Delhi Municipal Council*** and other connected appeals 2016 SCC OnLine Del 3340 has directed that the pre-existing right holders now defined as street vendors, whether called *tehbazari* licensees etc. shall not be disturbed except to the

extent the Town Vending Committee determines that space or place to be occupied by them; (x) the petitioner is a pre-existing right holder; and, (xi) the petitioner has not been given any notice of violations alleged.

8. I have considered the rival contentions.

9. What would be obvious from the aforesaid narrative is-

(i) that the petitioner does not have and never had any express permission or licence from the respondent NDMC to street vend/hawk from where he claims to be doing so; and

(ii) this Court in order dated 25th May, 2011 did not find any right of the petitioner to street vend/hawk from the said site but granted protection upon being told that the application of the petitioner for a vending site was under consideration and the decision thereon was likely to be taken by end of June, 2011.

10. The order dated 25th May, 2011, seeking vacation/modification of which this application has been filed, as per its express terms was in the nature of an 'interim order' till the Vending Committee under the legal regime then prevalent determined/decided the application of the petitioner and which this Court was informed was to happen in slightly more than one month therefrom i.e. on or before 30th June, 2011.

11. However, more than five years have since elapsed. The scheme under which the petitioner had then applied and which application was under

consideration is no longer in force and new legislation in the form of Street Vendors Act has been enacted and brought in force.

12. The Courts grant permanent relief only on finding a right in favour of the person who approaches the Court therefor and cannot without such adjudication and finding grant a permanent relief. The Courts are also empowered to grant interim relief or protection pending such adjudication. However an interim relief granted without a finding of right in favour of petitioner/plaintiff cannot be allowed to become a permanent relief.

13. That is what has happened in the present case. A relief which was intended for slightly over one month, has continued for over five years.

14. Undoubtedly the adjudication/consideration pending which and which was to be decided on or before 30th June, 2011, has not happened till now. The reason therefor is the subsequent orders of the Courts and the subsequent legislation. Undoubtedly the process of consideration of the claim of the petitioner under the subsequent legislation i.e. the Street Vendors Act has also not happened till now.

15. The same however, in my view, is irrelevant. What this Court, in the order dated 25th May, 2011 did not intend to be for five years and more, cannot be permitted to continue for a day more than the time for which it was intended. The relief granted by the Court is relatable to the facts and circumstances and reasons citing which it is granted and if such facts, circumstances, reasons disappear or there is a subsequent change, it is for the

parties to approach the Court therewith and only if the Court, taking note of the said change deems it appropriate for the relief to continue inspite of such change, can the relief so continue. The petitioner herein did not so approach the Court. The petitioner cannot extrapolate the relief given for slightly over one month and for the reasons specified, forever and in perpetuity, as has happened in the present case.

16. As far as the contention of the senior counsel for the petitioner of being entitled to protection under the new regime also is concerned, that, I am afraid was not the subject matter of the writ petition and did not form a reason for the protection granted on 25th May, 2011 and cannot be adjudicated in response to this application and the petitioner if so desires will have to take independent remedy if available therefor.

17. I may in this respect also mention that I have in a spate of orders starting from order dated 30th June, 2015 in W.P.(C) No.6115/2015 titled ***Brahm Pal Vs. New Delhi Municipal Council*** and other connected petitions and ending with the order dated 13th May, 2016 in W.P.(C) No.4256/2016 titled ***Jaivir Singh Vs. New Delhi Municipal Council*** and other connected petitions and for the reasons given therein held that no protection from removal to the persons who do not hold an express license/permission from the respondent NDMC to squat and vend/hawk from pavements/streets and other public spaces can be granted *inter alia* reasoning that:-

- a) the Street Vendors Act does not contain any provision giving any priority or beneficial treatment or weightage to such of the street

vendors who under the earlier regime may have been held to be Category-I or Category-III vendors or who may have interim order(s) of the Courts in their favour;

- b) Section 3 of the said Act requires the Town Vending Committee to be constituted thereunder to conduct a survey of all existing street vendors and accommodate them in the vending zones in accordance with the plan for street vending and the holding capacity of the vending zones; sub-Section (3) thereof provides that till then no street vendors shall be evicted or relocated;
- c) it is thus not as if street vending is to be unregulated and there is an absolute right to street vend from wherever one may desire;
- d) streets are primarily meant for passage, of pedestrians and vehicles and unregulated street vending invariably is an obstruction to movement on the streets;
- e) 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 concerns of others;
- f) this Court would not be justified in issuing restraint orders without satisfying itself, (i) that the petitioner in fact has been street vending from the site from which he claims; (ii) whether the said street vending is an obstruction to free movement on the streets / pavements of the pedestrians and vehicles; (iii) 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; (iv) whether such street vending poses any security or fire or other hazard; and (v) whether such street vending is in infringement of the rights of any other person's residence or commercial establishment abutting the said street;

- (g) such an exercise is not in the domain of jurisdiction under Article 226;
- (h) even if this Court were to undertake such an exercise, it would tantamount to this Court conducting the survey and formulating the Scheme which the other Authorities under the Street Vendors Act have been mandated to do;
- (i) if this court commences giving protection to all who come before it claiming to be hawking/vending from the streets it would create 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 street vendors and which the law enforcement agencies would be unable to control because of each having an order in his / her favour;
- (j) granting of such protection would also come in the way of the Town Vending Committee under the Street Vendors Act being able to perform its functions;

- (k) Supreme Court *Dharam Chand* supra also had held that the constitutional right of a citizen to carry on business is subject to restriction and that there are certain areas which may be required to be kept free from such type of kiosks for security reasons and the Court cannot direct the administration to allow such kiosks even if there is a threat to safety and security and that the rights of the street vendors have to be balanced with the rights of the society in general for security and 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; and,
- (l) that the Town Vending Committee under the Street Vendors Act is now functional and in the process of performing its functions and the petitioners can apply to the Town Vending Committee and if found eligible and entitled to street vend/hawk, would in accordance with scheme prepared, be allocated a site.

18. Though I have recorded hereinabove the reasons which have prevailed with me for declining protection under the regime after the coming into force of the Street Vendors Act but it will have to be considered in the fresh proceedings if any instituted by the petitioner whether the petitioner is today entitled to any protection in accordance with the dicta dated 18th May, 2016 of the Division Bench in *Bhola Ram Patel* supra or the prevalent laws.

19. The application is therefore allowed. It is declared that the order dated 25th May, 2011 is no longer in force and does not bind the applicant/respondent NDMC.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 22nd, 2016
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