

(2019) 01 DEL CK 0096

In the Delhi High Court

Case No : Civil Miscellaneous Application No. 6624 Of 2017; 37378, 37381 Of 2016, Revision Petition No. 460 Of 2016, Letters Patent Appeal No. 136 Of 2016

Bhola Ram Patel

APPELLANT

Vs

New Delhi Municipal Council And Anr

RESPONDENT

Date of Decision : 16-01-2019

Acts Referred:

Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014
— Section 2(m), 3(a), 3(b), 3(c), 3(d), 3(e), 3(1), 3(2), 3(3), 21, 22, 27, 38

Citation : (2019) 257 DLT 191

Hon'ble Judges : S. Ravindra Bhat, J; Prateek Jalan, J

Bench : Division Bench

Advocate : Indira Unninayar, Gaurav Jain, Rahul Sagar Sahay, Siddharth Bangar, Sriharsha Peechara, Mananjay Mishra, Vidhi Jain, Devesh Singh, Sukriti Ghai, Urvashi Tripathi

Final Decision : Disposed Off

Judgement

S. Ravindra Bhat, J

1. The third-party review applicant seeks recall and modification of the judgment of this court delivered, while disposing of a batch of letters patent appeals. Those appeals had questioned the decisions of a single judge, which dismissed their writ petitions. The third-party applicant contends that the judgment in question operates in rem and has serious public repercussions, due to which it is essential for the court to take corrective action.

2. The background in which the writ petitions were preferred was that individuals approached this court, articulating the grievance that as street vendors, they were subjected to the whims of the municipal authorities and the police, inasmuch as they lived under daily threat of removal from their places of livelihood, despite the fact that they had carried on business and the vocation of street vending for several years- and, in several cases- several decades. It was

contended that the enactment of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (hereafter called "the Act") was meant to provide a protective cover to all existing street vendors and provide a statutory guarantee against eviction, till mechanisms were set up to ensure proper survey of the places occupied by them, determine the appropriate places suitable for vending, and the process of allotment of licenses was completed.

3. After hearing parties and considering their submissions, this court disposed of the appeals, in terms of the following directions:

"26. In view of the above discussion, the following directions are issued: -

(1) The concerned TVC exercising jurisdiction over NDMC areas shall proceed to conduct the survey in accordance with the Scheme, i.e., with respect to identification of specific sites/spaces and complete it within two months from today.

(2) All pre-existing "right holders" - now defined as street vendors (whether called as tehbazari licensees etc.) shall not be disturbed except to the extent that the TVC determines that space or place occupied by them is prima facie not in accordance with paragraph 2.1.17 - 2.1.22.

(3) In case the TVC is of the opinion that any street vendor in terms of the above directions has to be displaced, the principle of "last come first go", i.e., chronological seniority shall be followed.

(4) The task of compiling the eligible applicants shall be first preceded by an appropriate advertisement and thereafter proceed to allot the specific or particular space to the street vendors, in terms of the Act, Rules or Scheme.

(5) The authorities are at liberty to ensure that the walk way in all the NDMC areas shall be in conformity with the paragraph 2.1.22, i.e., two meter width on the footpath would be left. At the same time, while removing or evicting any existing street vendor, the NDMC shall also ensure that the principle of seniority - referred to earlier LPAs-136, 233, 256, 281, 286, 291, 292, 245, 303, 305, 310, 312 & 315/2016 Page 21 in terms of rights of existing holders is maintained. If no document or evidence of long use exists, it is open to the NDMC to remove those obstructing such footpath or way.

27. All these appeals and accompanying applications are accordingly disposed of in the above terms; this judgment would stand substituted in place of the orders of the single judges. No costs."

4. It is contended by the review applicant that contrary to the observations and premise of the judgment of this court (under review) - which held that the Act contemplates a two-stage survey, in fact the law provides for a single-stage survey, followed by determination of areas, earmarking of spaces or areas for vending zones, etc. as a subsequent stage. It is stated that the Act contemplates a single-stage Survey under Section 3(1), of all existing street vendors to be

conducted by the Town Vending Committee (TVC), defined in Section 2(m), constituted under Section 22 of the Act and the subsequent survey to be carried out every five years. It is submitted that as far as the determination of areas or areas and spaces where vending is permitted, etc. is concerned, that is to form a part of the 'Plan for street vending' (Section 21 read with the First Schedule), a stage categorically subsequent to the Survey.

5. It is contended by Ms. Indira Unninayar that the First Schedule shows that the Plan shall ensure that all existing street vendors identified in the "survey" are accommodated in the Plan for street vending, subject to the norm of 2.72 %of the population of the ward, zone, town or city. Further, the First Schedule, Point No 3, provides that it is the Plan that would determine whether an area is to be declared as a 'no vending zone' or 'not' subject to principles including:

(i) By Section 3(a) any existing market, or natural market as identified under the survey shall not be declared as a no-vending zone;

(ii) By Section 3(e) till such time the survey has not been carried out and the plan for street vending has not been formulated, no zone shall be declared as a no-vending zone.

(iii) By Section 3 (b), 3(c) and 3(d) - declaration of no-vending zones has to ensure minimum displacement of vendors, overcrowding and sanitary conditions not to be basis for declaring any area as no-vending.

6. It is submitted that this court in its judgment dated 18.05.2016 and clarification dated 27.09.2016, completely overlooked the plan as per Section 21 read with the First Schedule. It is argued that apart from this, the Second Schedule - by the Scheme provides that relocation should be avoided as far as possible unless there is a clear and urgent need for the land in question by reason of Section 2 (zb) (i), affected vendors or their representatives shall be involved -in planning and implementation of rehabilitation, by Section 2 (zb) (ii), for improvement of livelihoods and living standards of vendors[Section 2 (zb) (iii)] avoidance of loss of assets [Section 2 (zb) (v)] and that the State has to control the practice of forced evictions, etc.[Section 2(zb) (vii)]. Ms. Unninayar argued that thus, a preceding stage of inquiry or determination where the claims that the pavement, footpath, etc. require to be free of encroachment cannot be sustained as the Act categorically requires that till such time the survey has not been contemplated and the plan for street vending is not so formulated. Furthermore, 'no zone shall be declared as a no-vending zone' by virtue of the First Schedule- Section (3) (e). Further, any existing market shall not be declared no-vending, overcrowding of a place shall not be a basis for such declaration and restrictions are to be placed after issuing COVs (not before). Sanitary conditions shall also not be the basis for declaring a place no-vending unless such concerns can be solely attributed to street vendors and cannot be solved through appropriate civic action by the local authority (First Schedule Section (3) (a-d)).

7. The consequence of the errors in Paras 4 and 11 of the judgment, directing

interim survey by NDMC and prior removal of vendors, is in gross violation of the Act as the NDMC has been allowed to wrongfully declare 'no-vending zones' prior to the 'completion of survey' and or remove street vendors prior to completion of survey and issuance of COV by the TVC. As the Act has expressly given the power to the TVC to conduct the survey and not the NDMC, the directions of the court cannot be sustained in law. It is argued that this in turn, has created the base for rampant and large-scale harassment and unlawful removal of vendors. Section 27 specifically provides for prevention of harassment of street vendors by police and other authorities as it is widely acknowledged that they are vulnerable targets for 'graft' or 'extra income' for these authorities.

8. It is argued that this court's direction with respect to interim survey and prior removal of street vendors is contrary to the provisions of the Act. Counsel seeks review of the judgment of this court to the effect that "As an interim measure, till the final decision of the TVCs is undertaken and completed, the NDMC- in cooperation with the TVC should first conduct the survey of the existing street vendors and ensure which of them would confirm to the names in the list prepared in the surveys pursuant to the Thareja Committee and the surveys carried out in 2007 and 2011. While doing so, the TVC may in addition wherever needed indicate those existing vendors who may not be entitled to continue during the completion of process of settlement of street vending rights. ...if the TVC is of opinion that there are vendors occupying spaces which cannot prima facie be permitted because of the width of the street, or location of the particular vending site, or other relevant concern, it can indicate that such vendor may be removed....If the reason for removal is that there are more number of vendors than permissible (or that some of them would impede smooth passage on the pavement, etc.) the principle to be applied would be last come first go".

9. Review is also sought of the judgment, to extent it states that the authorities are at liberty to ensure that the right of way in all the NDMC areas shall be in conformity with the paragraph 2.1.22 i.e. two metre width on the footpath would be left. At the same time, while removing or evicting any existing street vendor, the NDMC shall also ensure that the principle of seniority - referred to earlier in terms of right holders is maintained and that if no document or evidence of long use exists, it is open to the NDMC to remove those obstructing such footpath or way.

10. Counsel submits that thus, the judgment in Paras 21 & 26(5) directs:

- a) Interim survey by NDMC with TVC,
- b) Gives wide discretion to the NDMC by arraying criteria such as overcrowding and adding an etc,
- c) Prior removal of vendors, before completion of survey
- d) allows implementation of a scheme that exceeds the Act (described in a later section of this petition).

11. It is stated that the above are in direct contravention of the Act, which does not permit any such 'interim survey' of street vendors, that too, by authorities such as the NDMC, from which the vendors are to be protected from harassment (Section 27). Further criteria for relocation, eviction etc. as per Second Schedule are to be decided by the TVC, and not any other body.

12. Thus, it is submitted that it is only the TVCs as defined under S 2(m) constituted under Section 22, that can conduct the survey under Section 3(1) of the Act. Further, the Scheme referred to must be prepared as provided under Section 38 of the Act After due consultation with the TVC and local authority. Therefore, any survey conducted in violation of the above, interim order or otherwise, is ultra vires the Act and can claim no sanctity in law. It is the Scheme framed as per Section 38 prepared by the appropriate government after due consultation with all TVCs (proposed to be 70 in number) that will contain criteria for relocation, eviction, etc. Ms. Unninayar urges that the Act expressly prohibits any prior removal of vendors, prior to completion of survey, fixing of vending zones, etc. Section 3(2) of the Act makes the purpose of Survey clear under S 3(1) which is that the TVC shall ensure that, (a) all existing street vendors are identified in this survey,(b) those identified in the Survey are accommodated in the vending zones subject to inter alia norm of conforming to 2 ½ % of population, the plan for street vending and the holding capacity of the vending zones. The plain and unambiguous language of Section 3(3) of the Act provides that 'no street vendor shall be evicted or relocated till Survey specified under Section 3 (1) has been completed and the COV is issued to all Street Vendors by the TVCs. Further, because of the First Schedule, point 3 (a-e) does not permit criteria such as overcrowding, etc. to be a basis for declaring any zone as no-vending, and also, provides that no area shall be declared as no vending until the survey is completed and the plan is formulated, and that any such declaration shall be done in a manner which displaces the minimum possible vendors. The second schedule also frowns upon relocation which is to be avoided; the Act does not permit any prior removal of any existing vendor.

13. It can be seen from the above factual discussion that the rationale for the review is that the scheme and directions given by this court, is contrary to law; according to the review petitioners, the court overlooked the fact that firstly Town Vending Committees are to be set up; they would then have to first fix vending zones; while doing so, the law requires them to take into account various factors and ensure that no zone is to be declared as a no vending zone. In the meanwhile, till all steps are taken and the right of street vendors to be accommodated in the zones they operate, is determined, they have a right to continue their occupation. Lastly, relocations are to be avoided. The court was informed during the hearing that till date the composition and setting up of TVCs has not been finalized.

14. It is apparent that the review petitioners (who have chosen to apply only in one disposed of appeal, and not other letters patent appeals) are aggrieved by

the liberty given to NDMC to disturb or evict the street vendors; much emphasis was given to the fact that existing license holders and vendors have a right to continue vending till allotment of that space or an alternative locale is granted. Likewise, the right of existing vendors to continue to occupy the places from which they sell the articles.

15. This court is of the opinion that the manner by which the judgment under review was made, and the directions given, were not to in any manner determine finally the rights or liabilities of the vendors or other individuals who ply their trade as street vendors. The emphasis by the review petitioners is upon the right of existing vendors to continue to trade in the same places that they transacted their businesses.

16. No doubt, the Act does talk of- and assures vendors the right to continue to occupy the places that they traded in or carried on their vocation. Yet, this court was of the considered opinion that some working guidelines are put in place. As of now, the TVCs are not in position. In these circumstances, the court has to ensure that pavements and pedestrian areas are made available as passage ways. To that end, directions were issued. One important factor that weighed while the directions were made, is that the pavements and walking paths are to be kept free for that purpose. To achieve that purpose, the court directed that if any action is warranted, the NDMC is to ensure that street vendors are removed only by following the principle of last come first go; furthermore, a record of all vendors is to be kept.

17. There is no gainsaying that the Act seeks to consolidate the orders and directions contained in several judgments of the Supreme Court, which have iterated time and again that street vendors have the right to livelihood to carry on trade and profession and that public streets can be used for that purpose. At the same time, the Act also seeks to regulate that activity and does not envision that all those who function as street vendors can do so, on every pavement and walkway; in such eventuality, those citizens who wish to use pavements and foot paths for the purpose that they are principally created, would be hindered. Public streets would sans any regulations cease to be streets and footpaths and become trading zones for street vendors. It is primarily keeping in mind these considerations that the court issued directions that it did, in the judgment under review. Furthermore, it is clarified that nothing stated in the judgment can be construed as a final view on the provisions of the Act and the regulations framed under it. Depending upon the setting up of TVCs (only three of which have been constituted as against several such required in Delhi), the survey of vendors conducted and the records therefor maintained by them on the one hand, and the suitability of areas or spaces for vending determined by them, keeping in mind statutory parameters, the rights of all street vendors is kept open. The directions issued therefore, are not to be seen as final and only to achieve efficient working guidelines. In saying so, the court also is conscious of the fact that though the Act came into force almost 5 years ago, the mechanisms

envisioned i.e. setting up of TVCs and the discharge of responsibilities by them, has so far been a non-starter. In the meanwhile, more individuals have occupied pavements and footpaths; the task of identifying those who were existing vendors at the time of the coming into force of the Act, therefore, has been rendered more complex.

18. One more reason why the court is not inclined to review the judgment is that it was made in the course of appeals filed by several individual street vendors. They are not before the court; they were content with the judgment and have not approached the court for any further modification or recall.

19. The present review petition is disposed of in accordance with the above observations and clarifications.