

(2017) 10 DEL CK 0199

In the Delhi High Court

Case No : Civil Writ Petition No. 11552 Of 2016, Civil Miscellaneous No. 45502 Of 2016, 29255 Of 2017

Virender And Ors

APPELLANT

Vs

South Delhi Municipal Corporation

RESPONDENT

Date of Decision : 25-10-2017

Acts Referred:

Street Vendors (Protection Of Livelihood And Regulation Of Street Vending) Act, 2014
— Section 3(3)

Citation : (2017) 10 DEL CK 0199

Hon'ble Judges : G. S. Sistani, J;V. Kameswar Rao, J

Bench : Division Bench

Advocate : C. Mohan Rao, Lokesh Kr. Sharma, Devendra Kumar, Mukesh Gupta, Sanjeev Garg, Abhinav

Final Decision : Disposed Of

Judgement

G.S.Sistani, J

1. Eleven petitioners have filed the present petition. The petitioners seek a direction to the respondents to comply with the orders passed by the Single Judge of this Court dated June 02, 2010 and October 13, 2014 permitting the petitioners 1 to 9 to carry on hawking from the plaza area of Nehru Place or any other area.

2. The case of the petitioners is that they are regular street vendors and have been vending at the Nehru Place plaza area since the year 1988/1990. Aggrieved by the action of the Officials of the DDA, the petitioners approached this Court by filing Writ Petition No. 2545/2010 (hereinafter referred to as the first writ petition). The petitioners were protected by an order dated June 02, 2010 passed by a Single Judge of this Court. The petitioners were allowed to carry on their hawking activities from the sites from where they were removed. The aforesaid writ petition was disposed of by an order dated October 13, 2014.

3. In the year 2014, Nehru Place area was transferred by DDA to Municipal Corporation of Delhi. As petitioners 1 to 9 were being prevented from hawking in the Nehru Place area, the petitioners were forced to file CM No. 472/2015 in the disposed of first writ petition. The said application was dismissed by an order passed by the Single Judge dated July 08, 2016. Aggrieved by the order dated July 08, 2016, the petitioners filed an LPA bearing No. 513/2016, which was also dismissed on September 19, 2016. Thereafter, the petitioner filed a Contempt Petition being Cont. Case No. 927/2016, which was also disposed of by an order dated August 17, 2016. Thereafter, the present writ petition has been filed.

4. Mr. Rao, learned counsel for the petitioner submits that the petitioners are regular street vendors, which is evident from the fact that they had approached this Court in the year 2010 and protection was granted by this Court by an order dated June 02, 2010. He further submits that when the possession of some of the petitioners was disturbed in the year 2016, the petitioners approached the Single Judge. However, prior thereto the petitioners continued to vend at their respective sites. Counsel further submits that the erstwhile land owning agency had also recognized the presence of the petitioners, which is evident from the fact that they had filed an affidavit before the Supreme Court of India pursuant to a Special Leave Petition filed assailing the judgment of the Division Bench of this Court in the case of Manushi Sangathan, Delhi vs. DDA & Others 159 (2009) DLT 82 (DB). Mr. Rao contends that in the affidavit, a copy whereof has been placed in this file, reference was made to the first writ petition. A stand was taken by the DDA before the Supreme Court of India that persons in the Manushi Sangathan and 85 hawkers sitting under various orders of various Courts at Delhi would not be removed. In this backdrop, Mr. Rao contends that the action of the respondent in removing the petitioners is illegal, mala fide, arbitrary and against the principles of natural justice.

5. Mr. Mukesh Gupta, learned counsel for the MCD submits that no benefit can accrue in favour of the petitioners in pursuance of order dated June 02, 2010 as the aforesaid order was merely an interim order, which was not confirmed when the writ petition was disposed of in the year 2014. It is contended that the petitioner No. 1 to 9 are not regular street vendors and after the year 2010, they had in fact abandoned their sites, which is evident from the fact that between 2010 up till 2016 when CM No. 22434/2016 was filed in the disposed of writ petition, no complaint or grievance was made. It is submitted that post 2016, three surveys (two surveys prior to 2016 and one survey in 2016) were conducted. However, petitioners 1 to 9 were not found vending at the alleged sites during the three surveys. Mr. Gupta further submits that the submissions sought to be urged today did not find favour by the Single Judge, who did not entertain CM No. 22434/2016, did not find favour before a Single Judge where Contempt Case No. 927/2016 was filed, neither found favour by the Division Bench in LPA No. 513/2016. Mr. Gupta contends that in fact while dismissing LPA No. 513/2016, the Division Bench has rendered a categorical finding as is evident upon reading the order of September 19, 2016. Additionally Mr. Gupta contends

that Nehru Place plaza area has been declared as a no hawking no vending zone. He has relied on the minutes of the meeting dated August 10, 2009, the note of confirmation and the minutes ratifying the minutes of the earlier meeting in support of his contention. He further submits that once Nehru Place area has been declared as no hawking no vending zone, only those persons, who have been regularly vending and are part of Manushi Sangathan and 33 other persons, whose documents have been verified, no other person is being allowed to hawk and vend. Mr. Gupta also contends that the fact that MCD has acted in a fair and just manner, which is evident from the fact that in the survey, petitioner No. 10 and 11 were found vending and thus the respondents would allow the said petitioners to vend in the Plaza area purely as an interim measure till a final uniform decision is taken in the matter and as per the stand taken by the MCD in W.P.(C) No. 6823/2017.

6. In response to the submissions made by Mr. Gupta, Mr. Rao submits that the respondent cannot singled out the petitioner No. 1 to 9, who have been continuously earning their livelihood in the Nehru Place area. It is submitted that their possession was disturbed on account of certain construction activity, which was being carried out and in view thereof, they were not vending at the time of the survey, which cannot be a ground to reject their case.

7. We have heard the learned counsel for the parties and given our thoughtful consideration to the matter.

8. In the first writ petition filed by the petitioners, the Single Judge of this Court granted protection to the petitioners by an order dated 02nd June, 2016. The relevant para reads as under:-

"Keeping in view the hardship being faced by the applicants on account of not being provided alternate sites for the past more than three years and to safeguard their families from starvation, purely as an interim measure, till such time the MCD is able to provide more alternate sites to the applicants and Delhi police grants clearance to those sites, the applicants herein shall be allowed to carry on their hawking activities from that very sites from where they were removed, subject to such reasonable conditions as imposed upon similarly situated persons including the conditions (i) that applicants would start the hawking activities from 10.30 am to 5.30 pm; (ii) applicants would not be entitled to build pucca structure and will not extend the area more than what is allowed, as per the rules and guidelines of the MCD and DDA; and (iii) that the hawking shall be carried out in an organized manner and it would be open for the DDA to regulate the same. Applications stand disposed of."

9. The writ petitions were disposed of by an order of October 13, 2014. The order reads as under:-

"XXXX XXXXX XXXXX

This Court is of the view that the present writ petitions have been overtaken by

subsequent events inasmuch as the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (hereinafter referred to as Act, 2014) has come into force on 4th March, 2014. The Act, 2014 provides for constitution of a Committee, which is to conduct survey of existing street vendors and frame a scheme for relocation.

In the opinion of this Court, Section 3(3) of the Act, 2014 clearly states that no street vendor shall be evicted or relocated till the survey to be carried out by the Committee has been completed and certificate of vending has been issued to all street vendors.

Consequently, State Government is directed to make the Town Vending Committee functional within a period of eight weeks. Petitioners are also permitted to simultaneously file their representations with the Committee within a period of eight weeks.

Upon the said representations being filed, the Committee is directed to decide the same expeditiously, preferably within six months.

With the aforesaid direction, the present writ petitions and applications are disposed of."

10. It would also be useful to reproduce the orders passed in CM No. 22434/2016 and Contempt Case No. 927/2016, which read as under:-

"C.M.No.22434/2016

Matter has been listed today as 7th July, 2016 was declared holiday on account of Idu"l Fitr.

Present application in a disposed of matter is not maintainable.

However, if the petitioners are of the view that the order passed by this Court is not being complied with, they are given liberty to file an appropriate proceeding in accordance with the law.

With the aforesaid liberty, the present application is dismissed."

11. In the Contempt case, the following order was passed:-

"CONT.CAS(C) 927/2016

Learned counsel for petitioners wishes to withdraw the present contempt petition with liberty to file a fresh contempt petition alleging wilful disobedience of the order dated 18th May, 2016 passed by the Division Bench.

With the aforesaid liberty, present petition and application are disposed of."

12. The LPA filed assailing the order dated July 08, 2016 reads as under:-

"LPA 513/2016 & CM 34046 /2016 (delay)

There is a delay of 32 days in filing the present Intra Court Appeal.

Before issuing notice on the application, we deem it appropriate to hear counsel for the appellant on merits.

2. The impugned order dated 08.07.2016 reads as under:

"C.M.No.22434/2016

Matter has been listed today as 7th July, 2016 was declared holiday on account of Idu"l Fitr.

Present application in a disposed of matter is not maintainable. However, if the petitioners are of the view that the order passed by this Court is not being complied with, they are given liberty to file an appropriate proceeding in accordance with the law.

With the aforesaid liberty, the present application is dismissed."

3. Learned counsel for the appellant submits that in the present case, application should have been entertained and appropriate orders should have been passed. He relies upon the decision of the Supreme Court in Delhi High Court and another v Atul Kumar Sharma, (2001) 9 SCC 108.

4. We are not inclined to interfere with the impugned order.

5. The W.P.(C) No. 2545/2010 was disposed of on 13.10.2014 recording that the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 had come into force on 04.03.2014 and it provides for constitution of a Town Vending Committee which is to conduct survey of existing street vendors and a scheme has to be framed for relocation. This was on account of the fact that MCD had notified "no hawking zones".

This order also refers to Section 3(3) of the aforesaid Act and states that the State Government has to set up a Town Vending Committee. The appellants were directed to file their representation with the Committee.

6. The Nehru Place Zone was under the Delhi Development Authority. This zone was subsequently transferred to the respondent No.2 - South Delhi Municipal Council (SDMC) on 02.09.2014. At the time of said transfer, Delhi Development Authority had furnished a list of court cases, with details of the orders passed by different courts. This list of 114 hawkers included the appellants.

7. The respondent No.2 - SDMC had carried out their own survey in the month of November, 2014 and on 2nd December, 2014. As per the survey report, the present appellants were not carrying on hawking and were not squatting in Nehru Place Plaza area. Another survey was conducted in June, 2016. The appellants were again not found and available at the said site.

8. The appellants profess and claim that because of the construction work by the Delhi Metro, they were forced and compelled to move / shift from place to place. Taking advantage, the respondent no.2- SDMC had given the hawking sites to other hawkers.

9. The appellants thereby accept that they were not found to be present at the site at the time of inspection / survey. The reason and cause why they were not found is a question of debate and dispute.

10. Keeping in view the aforesaid facts and the cross - submissions, we hold that the Ld. Single Judge was right in directing that the appellants herein if aggrieved should file a fresh/new writ petition. The appellants should not be heard in an application in the disposed of matter.

11. In these circumstances, we do not feel that the decision in the case of Atul Kumar Sharma (supra) relied upon by the appellants has any relevance or is applicable in the facts.

12. Accordingly, we are not inclined to issue notice on the application for condonation of delay. The application for condonation of delay and the appeal are dismissed."

13. Reading of the orders extracted hereinabove would show that eleven petitioners approached this Court, firstly in the year 2010 when interim protection was granted to the petitioners by an order of June 02, 2010. When the writ petition was disposed of, admittedly the interim order was not confirmed or continued by an order of October 13, 2014. The case of the petitioners, as set out in para 7 of this writ petition, that post passing of the order in 2010, petitioner No. 1 to 9 were shifted from place to place on various occasions under the garb of regulating hawking and convenience of general public and by the year 2014, some of the petitioners were shifted out from Plaza area and shifted near bus terminal. Para 7 of the writ petition reads as under:-

"7. At the time of passing of the orders by this Hon"ble Court on 2.6.2010 directing that the petitioners "shall be allowed to carry on their hawking activities from the very sites from where they were removed", the petitioners were carrying on hawking in and around plaza area of Nehru Place. Though the petitioners were entitled to carry on hawking activities from the same sites from where they were carrying on hawking, petitioner No.1 to 9 were shifted from place to place on various occasions under the garb of regulating hawking and convenience of general public. By the year 2014 some of the petitioners were shifted out from the Plaza Area and were shifted near bus terminal. During the period of last three years these petitioners who were hawking near bus terminus were shifted within the terminus area in view of construction activity of Delhi Metro."

14. Attention of this Court has been drawn to para 8 of the writ petition by Mr. Rao, learned counsel for the petitioners to show that the names of the petitioners found mentioned in a register prepared by the DDA, which was handed over by the DDA to the MCD, which fact is denied by the MCD in their counter affidavit. While it is the contention of the petitioners that they are regular street vendors and have been vending and hawking since the year 1988, they were granted protection by this Court on June 02, 2010 and they continued to vend upto 2016

when their possession was disturbed and when CM 22434/2016 was filed.

15. Per contra, it is the case of the MCD that petitioner No. 1 to 9 are not regular street vendors and post 2010, as admitted by the petitioners in para 7 of the writ petition, they were not regularly carrying out the vending activities. Not only para 7 of the writ petition shows that the petitioners admitted to having been shifted to place to place, we also find it unusual that armed with a protection in terms of order dated June 02, 2010, why the petitioners did not approach the appropriate Court of jurisdiction and protest, they are being shifted from place to place. We also find it unusual, that the petitioners only agitated their right in the year 2016 when the application filed was dismissed, the Contempt Petition was also dismissed, LPA was also dismissed. Although, the Division Bench agreed with the Single Judge who directed the appellants, if aggrieved should file a fresh writ petition (the present petition). We also find that the MCD has taken a consistent stand before the Single Judge when CM No. 22434/2016 was filed, before the Division Bench in LPA No. 513/2016 that the petitioner No. 1 to 9 are not vending and hawking at the Nehru Place area. The status report filed before the Single Judge reads as under:-

"It is submitted that pursuant to the directions of the Hon"ble Court, the area of Nehru Place Plaza has been inspected on 02.06.2016 at 04.00 PM in the presence of petitioners. During the inspection the petitioners informed that they are hawking at Nehru Place Plaza and also claiming for the said site i.e Nehru Place Plaza. As per local inquiry and information available it is submitted that the petitioners herein are not squatting/hawking from the said site as alleged. Photographs taken during the inspection are also annexed herewith as Annexure 'A'.

It is further submitted that Nehru Place area was transferred from DDA to South Delhi Municipal Corporation in the month of Nov. 2014 and upon transfer of the same, Licensing Department, Central Zone, SDMC also carried out inspections to verify the status of the squatters as per list submitted by the DDA at the time of handing/taking over of the Nehru Place Area. Even during the said inspection, petitioners herein were not found squatting/hawking at the alleged site. It is further pertinent to point out here that as per information, these 09 squatters have been informed to be hawking/squatting at Nehru Place Bus Terminal, near Delhi Fire Service Office and near Ram Piao Kalkaji Mandir."

16. The Division Bench in LPA has also noticed the submissions of the South Delhi Municipal Corporation in paras 7 to 9, which read as under:-

"7. The respondent No.2 - SDMC had carried out their own survey in the month of November, 2014 and on 2nd December, 2014. As per the survey report, the present appellants were not carrying on hawking and were not squatting in Nehru Place Plaza area. Another survey was conducted in June, 2016. The appellants were again not found and available at the said site.

8. The appellants profess and claim that because of the construction work by the

Delhi Metro, they were forced and compelled to move / shift from place to place. Taking advantage, the respondent no.2- SDMC had given the hawking sites to other hawkers.

9. The appellants thereby accept that they were not found to be present at the site at the time of inspection / survey. The reason and cause why they were not found is a question of debate and dispute."

17. The consistent stand of the DDA, the erstwhile land owning agency and the SDMC has been that Nehru Place area is a no hawking no vending zone. Copy of the minutes of the meeting dated August 10, 2009, post the order passed by the Division Bench in the case of Manushi Sangathan (supra), the relevant portion reads as under:-

"Item No.55/2009

Sub: Rejuvenation of District Centre Nehru Place, New Delhi

F.10(7)/07/CC-XV/DDA

The Authority also discussed the issue of rejuvenating the Nehru Place District Centre. After detailed discussions, it was decided that Nehru Place District Centre should be declared as

"No Hawking Zone".

2) The Authority also decided that separate areas should be identified and earmarked as vending zones in different parts of the city."

18. The matter was placed before the Committee by a note for confirmation. The note reads as under:

"Item No.56/2009

12.10.2009

Sub: Confirmation of the minutes of the meeting of the Delhi Development Authority held on 10.8.2009.

File No. F.2(2)2009/MC/DDA

Minutes of the meeting of the Delhi Development Authority held on 10.8.2009 are submitted for confirmation of the Authority.

(Appendix "A" Page No.2 to 19).

RESOLUTION

Minutes of the meeting of the Delhi Development Authority held on 10.9.2009 were confirmed as circulated."

19. The minutes of the Meeting dated 10.8.2009 were confirmed on 12th October, 2009. The meeting was held under the Chairmanship of the Lieutenant

Governor of Delhi; Vice Chairman; 12 Members; Secretary; and 20 Special Invitees and senior officers. Relevant portion of the confirmation reads as under:

"ITEM NO.56/2009

Sub : Confirmation of the minutes of the meeting of the Delhi Development Authority held on 10.9.2009 at Raj Niwas, Delhi, File No. F.2(2)2009/MC/DDA.

Minutes of the meeting of the Delhi Development Authority held on 10.8.2009 were confirmed as circulated."

20. In the above circumstances, more particularly having regard to the fact that the petitioner No. 1 to 9 having been regularly vending in the Nehru Place area and the fact that SDMC has taken a consistent stand that Nehru Place area has been declared as a no hawking no vending zone, the relevant minutes having been extracted hereinabove, the minutes stand ratified allowing only those persons, who were actually vending barring petitioners 10 and 11 in the present case, no relief can be granted to petitioner No. 1 to 9.

21. As far as petitioner No. 10 and 11 are concerned, the MCD would be bound as submitted by Mr. Gupta by the stand taken by them in the Writ Petition No. 6823/2017 and the petitioner No. 10 and 11 will remain bound by the affidavit submitted by them. Writ petition stands disposed of.

CM Nos. 45502/2016 & 29255/2017

22. In view of the order passed in the writ petition, the applications stand disposed of.